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DEPARTMENT OF LAND AFFAIRS

REPORT AND RECOMMENDATIONS BY THE PANEL OF EXPERTS ON THE DEVELOPMENT OF POLICY REGARDING LAND OWNERSHIP BY FOREIGNERS IN SOUTH AFRICA

The above-mentioned Report is hereby published for general comment by interested persons.

Comment must be submitted in writing within 60 days of the date of publication of this Notice in the Government *Gazette* and sent to :

Dr S M D Sibanda
Chief Director : Policy Development
Department of Land Affairs
Private Bag X833
PRETORIA
0001

Contact details :

Telephone (Office)	:	(012) 312 9705
Cellular	:	082 440 3078
Fax	:	(012) 312 9441
E-mail	:	smdsibanda@dla.gov.za

Note : The Afrikaans version of the Report is a translation of the original English Report.

DR S M D SIBANDA
for DIRECTOR-GENERAL

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REPORT AND RECOMMENDATIONS
BY THE PANEL OF EXPERTS ON THE DEVELOPMENT OF POLICY REGARDING LAND OWNERSHIP BY FOREIGNERS IN SOUTH AFRICA

PRESENTED TO
THE MINISTER OF AGRICULTURE AND LAND AFFAIRS, HON. LULU XINGWANA

Panel Members:
Prof. Shadrack Gutto (Chairperson), Dr Joe Matthews (Deputy Chairperson)
Prof. Fred Hendricks, Mr. Bonile Jack, Prof. Dirk Katzé, Mr. Mandla Mabuza, Ms Nothemba Rossette Mlozi, Ms Mandisa Monokali, Mr Cecil Morden, Ms Christine Qunta

Departmental technical support team:
Mr Jeff Sebape, Ms Tumi Seboka, Mr Sunday Ogunronbi, Mr Sam Lefafa
Dr Sipho M D Sibanda, Dr Kwandi K M Kondlo, Mr Ndiphiwe Ngewu

Pretoria, City of Tshwane, August 2007

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ACKNOWLEDGEMENTS

The Panel of Experts on the Development of Policy Regarding Land Ownership by Foreigners in South Africa wishes to acknowledge and thank all those who have participated in, and assisted with, the investigation. In particular, the following deserve special mentioning:

In South Africa:

- The persons who made written and oral presentations to the Panel

  - Department of Land Affairs

  - Department of Provincial and Local Government

  - Institute of Estate Agents, South Africa

  - Parliamentary Committee on Agriculture and Land Affairs

  - Total Geo-spatial Information Solutions

  - National Land Summit (2005)

Outside South Africa:

Singapore:	Singapore Land Agency
Indonesia:	National Land Agency
Canada:	Highlands Regulatory Appeals Commission Ministry of Natural Resources and Environment Foreign Ownership of Land Administration
Chile:	Ministry of National Properties Ministry of Agriculture National Agricultural Society Chilean and South African Chamber of Commerce
Scotland:	Department of Environmental and Rural Affairs Crofting Law Group Scottish Land Court
England:	Department of Constitutional Affairs Royal Institute of Chartered Surveyors Chartered Institute of Taxation
Brazil:	Ministry of Agrorian Development
USA:	Embassy in Pretoria

INTRODUCTION AND TERMS OF REFERENCE

Since the establishment of democracy in South Africa the Constitution (section 25) allowed for the right to own property and the quest for land reform to stand in a delicately balanced relationship. Ownership of land by non-South African citizens (foreigners) is an intervening factor, and its impact on ownership patterns and land reform is not clearly known to policy-makers. In the first ten years since 1994 the impression emerged that foreigners are increasingly acquiring land in South Africa. The extent of it remained unknown, and therefore informed policy-making remained elusive.

As a consequence of this uncertainty, the Panel of Experts on the Development of Policy Regarding Land Ownership of Foreigners in South Africa (hereafter the Panel) was appointed by the former Minister of Agriculture and Land Affairs, Hon. Ms Thoko Didiza, on 24 August 2004. The Panel was established several months before the National Land Summit held in July 2005, which urged the Government to impose a moratorium on acquisition of land by foreigners in South Africa. On August 14, 2006, the Minister of Agriculture and Land Affairs, Hon. Ms Lulu Xingwana, extended the mandate of the Panel to 15 January 2007 and appointed two new members to the Panel as replacements for two of the original members who requested to step down.

On 17 February 2006 the Panel handed an interim report to Minister Didizo. The report was also released to the public for consideration and further inputs. It received substantial coverage in the media. The Panel received several responses, notably from the diplomatic community in South Africa.

An updated report was presented to Minister Xingwana on 5 December 2006 as a means to brief her on the developments in the Panel's work.

In view of the uncertainty regarding foreign landownership, and hence its relevance for policy-making, the Minister determined that the Panel's Terms of Reference (TOR) were to investigate, consider and make recommendations regarding:

- The nature, extent, trends and impact of the acquisition and use of, and investment in, land in South Africa by non-South African citizens;
- The extent to which the current lack of a comprehensive policy and legislative framework contributes to the acquisition, use and investment in land by non-South African citizens;
- Whether the Government should (and how) monitor and intervene by policy, legislative and other means, in monitoring and preventing any possible negative consequence of land acquisition/use by non-South African citizens;
- The impact on the property markets on land acquisition and use by non-South African citizens, distinguishing between land use for residential, commercial, agriculture, eco-tourism/tourism/ game lodge and golf course purposes; and
- Comparative international/foreign practices (laws, policies, impact, etc) on the issue of land ownership by non-citizens.

The Panel interpreted its task on the basis of the TOR to be the following:

The Panel has to provide answers to the questions 'Who owns South Africa?' and "How much do they own?' specifically in relation to non-citizens. Therefore, the first task is to determine the extent and nature of foreign land-ownership. The Deeds Registries do not keep such information. The Panel's task was therefore to analyse available but incomplete information to provide a partial indication of the extent and nature of foreign ownership. At the same time, the Panel has to recommend improvements on disclosure of information to improve the national statistics on this type of ownership.

For the purpose of designing an appropriate policy framework, the Panel interpreted the TOR as an instruction to investigate international policies and practices in this regard, and to distill the most appropriate elements from them for consideration in South Africa.

At the same time the Panel understood its task to be an investigation into the impact which the current policy of non-regulation of the property market in respect of foreigners, has had so far on ownership patterns and use of land in South Africa. Taking the public's view and perceptions into account and weighing them against the arguments of the relevant interest groups, the questions to answer are whether policy intervention and regulation will be appropriate, what should the nature of such intervention be, and what will its possible impact and side-effects be?

Taking all these considerations into account, the Panel understands its TOR as an instruction to integrate all its analyses and conclusions into policy-relevant recommendations.

STRUCTURE OF THE REPORT

This Report is the product of a two reports already presented to the Minister in 2005 and 2006, as well as investigations done since those reports. It also incorporates the Panel's response to the public and media comments on the interim report. It further incorporates elucidation of some aspects in response to the observations and directive of Cabinet following its initial consideration of the draft Report on 24 July 2007. The Report is divided into three sections:

• **Section 1** consists of the Executive Summary – being a concise synthesis of the Panel's methodology and its main findings, conclusions and recommendations.

• **Section 2** consists of an analysis of the public hearings and submissions presented to the Panel; a quantification and spatial mapping of patterns of land ownership in South Africa; a brief comparative discussion of the regulation of ownership and use of land and landed property by non-citizens in a number of other countries; a discussion in which the South African legislation regulating development planning and the use of land are investigated with the view that they might have to be revised, harmonized or rationalized; and finally the Panel's recommendations.

• **Section 3** is a separate compilation consisting of appendices 1-13 which clarify some of the aspects raised in Section 2. Appendices 1-12 were already included in the first interim report, while appendix 13 is on addition, containing statistics of "properties without owners". [The explanation from the Office of the Chief Registrar of Deeds is that these are mainly properties in "township registers"[1]. Their information is therefore incomplete.]

[1] Memo from Deeds Registries to Dr Sipho Sibanda of the Department of Land Affairs dated 5 February 2007.

SECTION ONE:

EXECUTIVE SUMMARY

1. Policy making and the meaning of "land" and the size, value and significance of land owned by foreign nationals

1 Introduction

1.1 For reasons contained in the Report, land is a finite and an indispensable asset which defines a people's identity and provides human dignity. It is an integral component of national sovereignty and a basis for national cohesion. To the extent that the Executive Authority is enjoined by the Constitution to develop and implement national policy[2], the Panel concluded that Cabinet ought to consider a wide range of factors raised in the Report, and not focus exclusively on the size or percentage of land owned by foreigners. In other words, the precautionary principle in responding to threats ought to be preferred[3].

The Panel's opinion is that determining the exact size of land owned by foreigners and the purpose for which the land is used, are indeed important and will be relevant for national sovereignty, governance, security and economic policy considerations. They have to be pursued as a matter of urgency. This Report provides indicative statistics and information regarding land ownership by foreign individuals. As far as ownership by foreign corporations and trusts is concerned, statistics are incomplete and extremely difficult to collect and interpret. The Panel has initiated a process to analyse the existing records held by the Deeds Registries, the Masters' of the High Court's Offices, Companies and Intellectual Property Office (CIPRO)[4] and commercial banks. It is one of the tasks which the Department of Land Affairs will have to continue with after the Panel has concluded its work.

For the purpose of assisting in developing South African policy on landownership by non-South African citizens it is important to provide international comparisons. This is vital to determine whether there are any appropriate lessons to be learnt from attempts to regulate foreign land ownership in other countries. To this end, the Panel investigated comparative foreign trends at some length. The Panel analysed policies and laws from several countries and then selected and visited a few, on the basis of their levels of economic development and the manner in which they have managed regulation of land holding by foreigners while continuing to attract foreign direct investment. The countries visited were Canada, Chile, Brazil, Indonesia, Singapore, England and Scotland.

1.2 In carrying out its mandate, the Panel adopted an approach that starts with a critical and holistic understanding of the meaning of land and the land question in South Africa. In brief this entailed a departure from the narrow meaning of land as merely an economic resource and a commodity in the market, to the understanding of land as the national heritage of all the peoples of South Africa. It was bequeathed by nature and past generations (ancestors) to those who are living to-day to hold and nurture for the benefit of the present and future generations. In the broader African context, land is not just "a thing", as understood in transplanted conventional Roman Dutch Law that places land in the legal regime of the "Law of Things". As a Nigerian Chief submitted to the West African Land Commission in 1912: "I conceive that land belongs to a vast family of which many are dead, few are living and countless yet unborn"[5]. In Africa, including South Africa, land has historical, political, economic, social, cultural and spiritual value and meaning. There are indeed many other societies, such as the Chinese, who regard land as holy.

It is to be pointed out that except for land previously falling within the infamous 13% reserved for the majority "natives" by the colonial regimes in South Africa since 1913, land in South Africa has been the subject of sustained commoditisation for a long time. In determining the significance and policy-relevance of the size, value and impact of land owned by foreign nationals, one has to take account of these multiple, but interrelated, meanings and context.

1.3. The Panel concluded that foreign natural persons own around 3% (and a significantly higher percentage in coastal and game farming areas) of land in the categories of erven (land used for residential housing), agricultural holdings, farm land and sectional titles. The size and value of foreign ownership will certainly be higher once the process of analysing information regarding corporations, trusts and section 21 companies is completed. It is important to point out, however, that the exact size and value of land owned by foreign nationals can only be established definitively once all existing and future registered owners (natural and corporate) have made declarations and disclosures in the form and manner recommended below.

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2 Section 85 (2)(b) of the Constitution.

3 pIG N Mandel and J T Gathi, "Cost-Benefit Analysis versus the Precautionary Principle: Beyond Cass Sunstein's *Laws of Fear*" ***University of Illinois Law Review***, Vol. 2006, Number 5 (2006) 1037-1079.

4 The Panel is aware that CIPRO has been criticized in the media for the backlog in its processing of information and updating of its records (see the Editorial "Sorting out Cipro", ***Business Day***, November 10, 2006).

5 T.O. Elias, ***The Nature of African Customary Law*** (1970) at page 162. See also Edwin A Gyasi and Juha I. Uitto, ***Environment, Diodiversity and Agricultural Change in West Africa: Perspectives from Ghana*** (United Nations University Press (1997), at page 1.

1.4. From the public hearings conducted in the nine provinces and written submissions to the Panel, it was established that the ordinary citizens, both black and white, feel very strongly that acquisition of prime land by foreigners is denying them affordable access to land and rendering them strangers in their own country. (See Section One, Part 1 below). Given that foreign ownership tends to be concentrated in certain areas (according to a provisional analysis of available Deeds Registries information and information gathered from the public hearings and written submissions), it may have serious implications for the dynamics of development in the country.

1.5. The Panel established that the lack of a national policy on the regulation of foreign ownership of land in South Africa is certainly not the norm in the world, including countries with comparable economic systems and levels of development and even in countries with more advanced economies.

2. Some constitutional imperatives

2.1 The Constitution of the Republic of South Africa 1996 (hereinafter "the Constitution") makes an important and material distinction on the conferring of rights and freedoms to citizens on the one hand and non-citizens or foreigners on the other. As a general rule, the Bill of Rights (Chapter 2 of the Constitution) confers rights on "everyone" or "a person". In such cases, the rights and freedoms are presumed to be bestowed on all persons, citizens and non-citizens. However, where the Constitution specifically confers rights and freedoms on "citizens", it is clear that such rights and freedoms cannot generally apply to non-citizens or foreigners. Examples of the former include the right to life, human dignity, equality before the law, and freedom of association (sections 11, 10, 9 and 18 respectively). Examples of the latter include political rights, the right to a passport and the right to choose their trade, occupation or profession freely (sections 19, 21(4) and 22, respectively).

For the present purposes, the relevant provisions in the Constitution that bestow rights on citizens only are section 21(3) – right to enter, to remain in and to reside anywhere in the republic – and section 25(5) – state duty to make resources available and to create conditions which enable citizens to gain access to land on an equitable basis.

It is necessary to emphasise that the differentiation that the Constitution makes between citizens and non-citizens on the issue of residence, access to land and participation in politics creates constitutional expectations and obligations on the government.

2.2. It is clear from the above that policy and legislative measures may be taken to give meaning to the specific rights and freedoms of citizens with regards to residence and access to land that may positively discriminate against non-citizens, provided that such measures do not amount to arbitrary deprivation of property as contemplated in section 25(1) of the Constitution.

2.3. In interacting with the Public Land Support Services (PLSS) of the Department of Land Affairs, the Panel learnt that by convention public land falling within the jurisdiction of municipalities continue to be categorised as "private" and not "state" land. This clearly explains the disparities in the manner municipalities handle allocation of land for housing and other constitutional imperatives and the latitude they have in selling off public land to private developers – including foreigners. It is self-evident that municipalities are organs of state and a sphere of government (sections 140 and 239 of the Constitution). Besides, land is a national competence. Regulation of land ownership and use, especially by foreigners, cannot be properly carried out if municipalities, which cover the entire country "wall-to-wall", are left to their own devices in matters pertaining to disposal of a national asset of supreme importance. This understanding should not be viewed as being unmindful of the needs of municipalities to utilise land as a development and revenue generating asset.

3. Summary of Actionable Recommendations

The policy-relevant recommendations vary in the degree to which they remain at the level of policy alone or are accompanied by suggested legal strategies for implementation. The Panel is of the view that once Government has adopted a policy option(s), details about implementation mechanisms have to be developed by the Department of Land Affairs.

The following are the recommendations:

3.1. Compulsory Disclosure of Nationality, Race and Gender and other information

(i) To improve the information and statistics in the Deeds Registries, it is recommended that all owners of properties – not only foreigners – should be subject to Compulsory Disclosure Requirements for all past, present and future registrations of titles along the lines of the FICA. A two-pronged approach is recommended for existing and future disclosure by registered owners: (a) amending Regulation 18 of the Deeds Registries Act, No. 47 of 1937 and (b) amending the Act itself.

(ii) Amendment to Regulation 18 can be effected immediately by the Deeds Registration Regulation Board which,

subject to the approval by the Minister, is empowered under section 10(j) of the Act to make regulations prescribing "the manner and form of identity of persons". It is consequent to such authority that Regulation 18(2) in its present form provides for "The name of a person, the relevant identity number, date of birth or registered number as the case may be .... shall be recorded in the relevant records of the Deeds Registry". The Panel recommends that Regulation 18 be amended to have a comprehensive disclosure including:

- Citizenship (including dual citizenship)
- Nationality
- Permanent residents status
- Gender
- Race
- South African national identification number
- Foreign passport number
- Company registration number
- Income tax registration number
- VAT registration number
- Nature of shareholders (name and place of ordinary residence of all substantial shareholders and their race, gender and citizenship)
- Trust registration number and the nature of beneficiaries (and their race, gender, citizenship and place of ordinary residence).

The object of Regulation 18 is for disclosure and statistical purposes and not for effecting any unfair discrimination. A number of pieces of legislation providing for various types of distinctions and differentiations have been passed under the democratic constitutional regime. Examples include the Employment Equity Act, Promotion of Equality and Prevention of Unfair Discrimination Act, Preferential Procurement Policy Framework Act and the broad based Black Economic Empowerment Act.

(iii) Amendments to the Deeds Registries Act will need an enactment by Parliament as it will require the existing owners to make a Declaration/Disclosure similar to what will be expected of all future owners under the amended Regulation 18 (see above). The thrust for the provisions of the envisaged amendment must, amongst other things, be:

- Compulsory identification of land owners
- A verification system of land owners
- Accurate and reliable record keeping of land owners in S.A.
- Admissibility of records for legal purposes.
- Source of finance of land acquisition
- Monitoring mechanism.
- Prohibition of transfers that do not conform to the regulatory regime
- Procedure for forfeiture of land to the state where there is non-compliance
- Protection of confidential information
- Records of current land use.

It is further recommended that the proposed disclosure by companies also be considered for the new Companies Bill, which is under consideration.

The Panel is of the view that the Financial Intelligence Centre Act (FICA) provides a comparable and effective mechanism for disclosures and declarations which can provide important guidance for the proposed recommendations.

3.2. Special Ministerial Approval

The Panel recommends that Special Ministerial Approval (with or without conditions) be introduced for certain changes in land use in general and for disposal of certain categories of land to foreigners – especially where such change of use or disposal to foreigners have the potential to negatively impact on the state's constitutional obligations to effect land reform and achieve realization of access to adequate housing (land which is subject to restitution claims or which is earmarked for redistribution or integrated human settlement). Special Ministerial Approval should also apply to acquisition of land or changes to land use by South African citizens that may have the same negative impact. The decision whether land falls within such a category or categories should be determined by, amongst others, the mechanisms of the Inter-ministerial/ -Depart-mental Oversight Committee (see below in 3.3).

Currently there exists a State Land Disposal Committee and there are provisions allowing the establishment of Provincial State Land Disposal Committees. These committees have no jurisdiction over municipal lands, because they continue to be incorrectly and unconstitutionally categorized as "private land". Besides, not all provinces have functioning committees[6] or cooperate with the State Land Disposal Committee.

3.3. Inter-Ministerial/-Departmental Oversight Committee

A permanent Inter-Ministerial/-Departmental Oversight Committee should be established, consisting of at least Agriculture, Land Affairs, Provincial and Local Government, Housing, and Environmental Affairs and Tourism, to monitor trends in foreign ownership of land and changes in land use, and to recommend to Government appropriate corrective interventions. The suggestion that the existing Cabinet Clusters should be used for this purpose is not supported, because the dedicated purpose of this Committee will then be lost.

3.4. Outright prohibition on foreign ownership in classified/protected areas

Policy is recommended regarding prohibition of private ownership of land by foreigners (and in some cases South African citizens) in certain areas (to be classified) within the territorial jurisdiction of the Republic on grounds of national interest, environmental considerations, areas of historical and cultural significance, and national security[7]. Examples of such land include the National Key Points[8], coastal areas[9], conservation areas, land close to military installations, water catchment areas and land along borders/international boundaries.

3.5. Limited temporary moratorium on the disposal of state land to foreigners

The Panel recommends a Limited Temporary Moratorium of approximately two years prohibiting the disposal of state land, including land held by any organ of state and any of the three spheres of government (including municipal government), to foreigners[10] - and, in limited cases, to South African citizens who do not qualify for redress under the national land reform policies and legislation. This is not a blanket prohibition. It is meant to prevent certain spheres of government and organs of state from disposing land that may be used for land reform and human settlements for the dispossessed and marginalized individuals and communities. Naturally, special exemptions could be considered. The limited, temporary moratorium could be lifted, once the Ministerial Approval process and the Inter-Ministerial/-Departmental Oversight Committee suggested above, have been established and are operational.

The Panel sought the opinion of senior legal counsel on the issue of a moratorium[11]. The Panel is advised that such a moratorium is not unconstitutional provided it does not lead to arbitrary deprivation of property and is imposed through a law of general application (see Recommendation under paragraph 3.9 below).

Since the recommendation is limited to broadly-defined state/public land (including municipal land), it should be expected that the entities that own the affected land shall comply in any case with national policy even in the absence of a statutory prohibition.

3.6. Zoning, land use and planning legislation

The Panel recommends that there should be rationalisation and harmonisation of laws affecting land use planning and zoning through enactment of overarching national legislation to provide some certainty, minimum standards and order. The current Land Use Management Bill should be revisited and activated. The lack of overarching national standards leads to disparate and confusing practices in land use, especially at local government level. Foreigners and powerful "developers" seem to exploit the situation, thus leading to public resentment and perceptions of corruption. A review of current practices in the zoning and rezoning procedures, the development of golf estates, lifestyle farming, polo estates and game farming[12] ought to be brought under the purview of ministerial and intergovernmental oversight.

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[6] See Recommendation 3.7 on page 11.

[7] Reporting obligations on existing ownership by foreigners on the designated areas within a prescribed period should be imposed via the Full Disclosure Regulations. Thereafter, Government may exercise the constitutional power of expropriation, subject to the "just and equitable" compensation, of such land and either hold the same as state land or allocate the land to authorized nationals.

[8] National Key Points Act, No 102 of 1980

[9] The Coastal Management Bill covers aspects of this.

[10] Should it be determined that any legislation, including municipal by-laws and ordinances, exist that categorises land belonging to any organ of state or sphere of government as "private land", this would be unconstitutional and the Constitutional Court may be approached for an order under section 167 (5) of the Constitution for an appropriate declaration.

[11] Available at the Department of Land Affairs.

[12] The country is already sitting with a case of murder of a farm manager connected to the conversion of land use to game farming (see, W Hlongwa, "Make Way for Wild Animals" ***City Press***, 28 January 2007 at p. 21).

3.7. Disposal of State Land

As pointed out in the recommendations under paragraph 3.2 above, the State Land Disposal Committee and provincial committees have no jurisdiction over municipal lands which (in the view of the Panel) continue to be incorrectly and unconstitutionally categorized as "private land". This is a convention or practice inherited from the past. The three spheres of government are institutions and organs of one sovereign democratic state and schedules 4 and 5 of the Constitution do not bestow state land ownership and disposal as an exclusive competence of municipalities (sections 1 read with Chapter 3 and Schedules 4 and 5 of the Constitution). It is therefore recommended that all the three spheres of government should be covered by all the recommendations in this Report. Government and all organs of state ought to lead by example in implementing the regulatory regime on foreign landownership and a general prohibition on disposal or change in land ownership which may undermine land reform and compromise the sovereignty of the state.

3.8. Leaseholds

In line with the practice in some of the countries studied, the Government may consider medium- and long-term leases of public land as a viable mechanism for future acquisition of land use by foreigners. Leaseholds have time limits and may be less controversial than full ownership rights, even though in practice they still exclude citizens from ownership and use. They provide the type of security of tenure that many genuine foreign investors would actually prefer.

3.9. Enabling omnibus legislative amendments to give effect to some of the recommendations

The Panel recommends a comprehensive General Laws or Land Matters Amendment Bill, similar to Judicial Matters Amendment Bills for the recommendations which may require enabling legislative amendments and not entirely new legislation or subsidiary legislation (regulations), such as the recommended amendment to Regulation 18. The advantage of such an approach is that the consequences to other legislation that may arise from amendments to a specific Act or Acts are easily accommodated in a single Bill.

3.10 Fronting

Fronting has been identified as an issue that can undermine the Government's policy on land reform and regulation of foreign landownership. It is therefore recommended that measures should be included in any policy formulation to deal with this problem. Fronting is a hugely complex policy issue. It therefore necessary to utilize cross-cutting policy and regulatory instruments used in other national Departments. The Panel recommends close cooperation at an inter-ministerial level to address the address. Consideration may be given to various sanctions, including assets forfeiture.

In the next section the Panel presents its analysis of the factors mentioned in the Terms of Reference. The section concludes with recommendations.

SECTION TWO:

ANALYSIS AND RECOMMENDATIONS

This section consists of five parts. In the first part the Panel provides analyses of the written public submissions and oral presentations to the public hearings, of the recommendations made by the parliamentary portfolio committee on Land Affairs, and of the relevant resolutions adopted by the National Land Summit (2005). In the second part the focus is on patterns of land ownership in South Africa. The Panel presents a quantification and spatial mapping of them. In the third part an international comparison is introduced. Regulation of ownership and use by non-citizens of land and landed property in a number of countries are discussed. In the fourth part the legislative dimension is introduced. Possible revision, harmonization and rationalization of legislation which regulates development planning and land use, is considered. In the final part the Panel presents its recommendations.

Section 2 Part 1:

Analysis of written public submissions, oral presentations, the recommendations by the Parliamentary portfolio committee and the relevant resolutions adopted by the National Land Summit (2005) [13]

The Panel received about 60 oral submissions and about 10 written submissions from different organisations and individuals. They represented a wide range of opinions, including organised agriculture, organised estate agents, NGOs, organised business, local communities, municipal councillors, traditional healers, trade unions and political parties.

For the purpose of this report this wide range of views will be summarised in two broad categories. The first category approaches the issues from the perspective of the impact on investor confidence, foreign direct investments (FDI), the free market, and economic growth's "trickle-down" effect on employment opportunities. The second category approaches it from the perspective of land reform and community development. They are not in all respects mutually exclusive.

The first issue addressed in both categories is the relevance of foreign landownership for the general concerns about landownership articulated by propanents of both perspectives. The first category does nat perceive foreign landownership to be a major concern, except by the organised agricultural sector. The second category includes a combination of views. Some are convinced that foreign landownership is an obstacle in land reform and thot they are more insensitive towards the interests of community development than South African owners. Others - notably community organisations in the Southern Cape - do not attribute their land problems to foreigners exclusively but to foreigners ond insensitive local authorities, South African developers ond absentee landowners.

A second issue presented by the submissions, is that foreign landownership is not necessarily an issue throughout South Africa, but that it is regionally concentrated. The number af submissions presented to the Panel is not a scientific method to locate these regions but it is noteworthy that the highest number originated from the Southern Cape and Northern Cape, Limpopo and KwaZulu Natal. They represented concerns in respect of the second category, articulated mainly by community organisations. The Cape Peninsula is certainly another concentration point, mainly from the perspective of the first category. Therefore the main presentatians made there came from the estate ogents and the Democratic Alliance.

A third issue addressed in both categories, is the extent of foreign ownership in the country, and its impact on property prices and land reform. The Panel's dilemma is that almost no empirical evidence ar data has been presented to it to substantiate the various arguments. A number of submissions used the same data made available by estate agents that 0.5% of the tatal value of property transactions between 1997 and 2002 were foreign in nature. Pam Golding claimed that 5-8% of all the company's sales were foreign in nature. Apart from these vague data, nothing has been forthcoming.

Most of the submissions arguing for and against the impact of foreign ownership rely on public perceptians. Perceptions connot be discarded as irrelevant for policy-making when the policy environment is a demacratic one. But it has to be complemented by empirical data, which is incomplete and inconclusive at present.

Moreover, the Panel did not receive adequate submissions or other information from the public about the economic impact of foreign ownership, except as relates to changes in land use and exclusion of nationals from certain "hot spots" because of high property prices. No economic analysis is yet available on the impact of foreign ownership on the property market (prices and changes in land usage) and FDI or investor confidence Equally inconclusive, is the

[13] On 25 February 2007 a public debate on the issue of foreign ownership of land, including housing, in the City of Cape Town, was broadcast on SABC2 under the title. "The Big Question Property Show. The Chair of the Panel participated in the programme and considers the diverse and passionate views presented in the debate as akin to those articulated at the Panel's provincial public hearings and presented and analysed in this Report

impact of commercial agricultural land converted into game farms/lodges on job opportunities, food production and security, income generation, etc.

Within the context of the above considerations, the orguments in the two categories as presented in the submissions, are now summarised:

1) Free market, investor confidence, job creation and no government intervention:

The moin argument is that the South African government since 1994 has embarked on macro-economic policies which opened and liberalised the economy and encourages FDI. It therefore depends on unrestricted competition ond investor confidence. It also assumes that FDI will encourage economic growth, which will "trickle down" and create more job opportunities. Price increoses in the property market since 1994 are attributed to relotively low interest rates, good ond attractive economic policies and rising construction costs.

According to this argument, Government interventian will harm investor confidence and therefore the "trickle down" results. Moreover, it is argued that the extent of foreign ownership in the overall market is relatively small and therefore does nat require policy interventions. The Panel still requires o clarificatian af this argument in view of the fact that, on the one hand it states thot the proportion of foreign ownership is arguably relatively small or even insignificant but an the other hand it is argued that their FDI contribution is an impartant justificatian against any policy intervention. Organised estate agents and the Democratic Alliance are the main praponents of this view. AgriSA uses it also in a qualified manner.

2) Land reform and community development:

The main argument is that a new gavernment policy is urgently required to regulate landawnership, because the principle of "willing buyer, willing seller" promotes a free market but not necessarily land refarm which, tagether with the provision af adequate housing, are constitutional imperatives. Unreguloted property developments also have detrimental effects on estoblished communities. In this category there is no consensus about the blame foreign ownership should carry for the problems experienced in land ownership.

Development is supported by almost oll the proponents of this category, but its preferred nature is contested. Local communities in particular, view development often as a threat to their established livelihoods. In the Southern Cape, for example, new developments (foreign and local) appropriate land used by these communities, who sustain their living conditions partly by using sources from the sea. Developers pay the house owners a substantial amount of money to relocate them ta a house in a tawn, where they cannot continue with their established lifestyle. New developments also require other types of skills from their workers, and therefore form-workers seldom can be re-employed by the new developments. Even if communities can remain an their land, new developments on the coastline (like golf estotes) ore fenced-in and therefore often they deny access to beoches ond the sea for collecting food and fire-wood.

Orgonised agriculture like NAFU and AgriSA, and individual farmers are also in their own way in support of this category. They argue that the Rand currency cannot compete with foreign currencies in an apen market on the basis of willing buyer, willing seller. Therefore prime agricultural lond is purchased by foreigners. Even in the absence of foreign competition the some principle is counter-productive for emerging NAFU farmers. AgriSA added another dimension to it by insisting on policy intervention to protect prime agricultural land ogoinst conversion into other uses, and to protect specified strategic oreas. As noted elsewhere in the Report, incidents of violent conflicts over conversion of agricultural land to game farms have started to be experienced (see footnote 12 on poge 10).

Farmers and local communities olso argue for natianal government intervention in response to the local authorities' inadequate vision and support, as well as the inadequate cooperation between the three spheres of government. They are of the opinion that locol authorities work in cahaots with developers, without being sensitive to established communities. Some proponents of this view believe that local authorities ore overwhelmed by applications for developments, that they do not apply their minds to the opplications but are more concerned about the income (rates and taxes) which the developments can generate thon about their social and environmental impact. Application procedures are so diverse (some are lodged at local autharities; others at tribunals, etc) that coordinated spatial development is almost impossible.

Special areas of contention

Several of the submissions in bath categaries highlighted three contentious areas af landawnership: golf estates, game farms/lodges and high potential agricultural land.

Golf estates are developed mainly in South Africa's eastern and southern coastol areas and in Gauteng. Submissions from the Southern Cape refer to them in particular. It appeared from those submissions that the 34-odd estates are developed moinly by South Africans but marketed abroad. Houses are therefore owned by foreigners but not the estate itself. The public debate an golf estates focuses an their environmental impact like water consumption, but not equally much an their social impact on local communities dislocated by these develapments.

Game farms/lodges are also a contested issue. The free market argument is that they attract FDI which creates employment opportunities and economic growth. It also argues that unproductive or under-utilised agricultural land

will become productive as well as promote tourism/eco-tourism. The contested point is whether game farming is more labour intensive than commercial farming. The intervention argument is that conversion of commercial to game farming/lodges negatively affects South Africa's food security, that it encourages speculation with land, that it does not necessarily create so many new job oppartunities and that it leads to unemployment for farm workers. The latter point is that workers an commercial farmers ore often uneducated and only skilled in commercial forming tasks, while game farming requires higher educated workers with other skills.

The extent of foreign ownership of game farms/lodges, and af conversions from commercial to game farming, is not known to the Panel, and no submission could provide any more clarity on this matter.

Both organised agriculture ond focol communities maintained that high potential agricultural land should be protected by government. The balance of views is in favour of the argument that it should be excluded from foreign ownership.

In view of the arguments raised in the submissions, they made the fallawing suggestions.

Suggestions from the public

The suggested recommendations extracted from the submissions are also summarised in accordance with the two main categories:

1) Free market, investor confidence, job creation, and no government intervention:

The proponents of this category did not suggest many recommendations, except to encourage a free market in the property environment. Gavernment intervention would discourage investar confidence and might olso violate bilateral investment agreements between South Africa and her trade and investment partners. The current tax regime is considered to be appropriate and should not be oltered. The proponents olso endorsed the "willing seller, willing buyer" principle. One of the provincial, organised agricultural societies (but not the national body) argued that the opportunity costs of lond used for agricultural purposes might dictate that it be used for purposes other than agricultural. This cost, according to this argument, can anly be effectively determined if the scarcity value of land is determined by market forces.

2) Land reform and community development:

The following ore suggestions listed in no particular order of importance and also not designed as on internally-consistent package:

i) Leasehold

Title-deed ownership by foreigners should be converted into leasehold rights. Alternatively, new land acquisitions by foreigners should only be in the form of leasehold rights. This does not necessarily improve access to land for South African citizens but it will prevent land from being alienated. The public suggestion is linked to the other suggestion that foreign investors should establish partnerships with South Africans - a model used in several countries.

ii) Land quantity restrictions

A moximum size/value of lond for ownership by foreigners and South Africans should be considered. Such an intervention will have to take into consideration the nature of farming (extensive/intensive) and property utilisation in the different regions of the country.

iii) Impact studies

Environmental impact studies are already a statutory requirement and an established practice. The same principle should be extended to include also o social impact study, which includes the impact a proposed development will have on communities affected by it: their residential and settlement patterns, their economic and sustainability patterns, and the possible impact on sites of historical, cultural and heritage importance.

iv) Indaba of interested groups

Several submissions emphasised thot communities feel isolated from decision-making in the big centres and insisted on more communication with them, and also amongst them. Therefore they proposed a land-use indaba first at local level, which can evolve into provincial or a national indaba.

v) Review of investment agreements

A special committee should be established to review investment agreements based on criteria such as land reform needs, land usage, sensitive heritage sites, and the benefits for the poor and landless.

vi) First-option purchaser ("option of first refusal")

Whenever agricultural lond becomes ovailable on the market (the relevance of nationality is not specified here), the South African government should have the right of first option for purchasing it.

vi) BEE framework

BEE should be incorporoted into the lond issue and it should opply to both local and foreign investors.

vii) Local authorities and development
Local authorities have to adhere to national spatial development and planning frameworks. Through their Integrated Development Plans they have to implement policies to promote integration and redistribution of land.

ix) Government regulation of land usage and ownership
Special approval procedures should be applicable when land exceeding a certain value or size changes in ownership. This should apply to all buyers and sellers, irrespective of their nationality. The agricultural community is also in favour of regulations to protect South African ownership of certain strategic areas while other areas are regulated by lesser restrictions.

x) Limitations on foreign ownership
Some submissions suggested an immediate moratorium on foreign ownership and others suggested an arbitrary cut-off date for transactions with foreigners. The majority of submissions did not support such drastic intervention.

xi) Permanent residents
The Panel distinguishes mainly between South Africans and foreigners on the basis of citizenship. A submission also suggested that "permanent residents" should be treated as another, intermediary category, and should be distinguished from seasonal foreign visitors.

xii) Taxation/land-fee
Taxation as an alternative for restrictions on foreign landownership emerged as a popular proposal in a number of submissions. The one set of proposals suggested:

- foreigners should pay a separate scale of duties and transfer fees when purchasing property
- different rates should be paid to local authorities in respect of undeveloped stands; properties owned by foreign, permanent residents; and by foreign, seasonal visitors.

xiii) Another public suggestion is the following:
A distinction is made between "raw land" (the value of the property which arises independently of the owner's efforts, such as by nature, good governance, public infrastructure, amenities, etc) and "improvements". The value of raw land lasts "in perpetuity" while improvements have a shorter economic life due to depreciation and obsolescence. Alienation of raw land to foreigners means that its rental income leaves South Africa for as long as the foreigner retains ownership. Improvements - even by foreigners, on the other hand, are good for the economy and can create job opportunities. Therefore the suggestion is a policy to prohibit alienation of land but one which encourages investment in improvements by foreigners. This can be achieved by introducing a land-user charge or land-fee, which is similar to the "differential" rating available as an option in the new Rates Act. Depending on the rate used to calculate the land-fee, it can deter absentee ownership (foreign and local), and it can ensure that both urban and rural land are developed and not left vacant. It can also ensure that more improvements are made and that land prices across South Africa are reduced, because it discourages speculation with land.

Consultation with, and special submissions by, the Institute of Estate Agents of South Africa

The Panel received written submissions and presentations during the public hearings in which estate agents were generally critical of contemplated government interventions in foreign land ownership. In recognition of the important role estate agents play in the matters included in the Panel's Terms of Reference, it held consultative meetings in Pretoria/Tshwane and Cape Town with the representatives of the Institute of Estate Agents of South Africa (hereinafter the "Estate Agents"). The written submission presented by the Estate Agents confirmed some of the information in the possession of the Panel, but also introduced some new information and opinions. The following were particularly relevant for the work of the Panel:

- Confirmation of administrative bottlenecks and sometimes inadequate capacity at local government level;
- Confirmation of rapid escalation in house prices leading to lack of affordability for new-comers;
- Confirmation that between 1999 and 2004 the sale of housing units to foreigners in Cape Town averaged between 6% and 7% of the total sales. (Addendum A provides statistics about the residential property market in the Western Cape.)
- Confirmation that foreign buyers hove significant investments in wine farms;
- Contention that sales to foreigners (not cumulative ownership by foreigners) does not exceed 1% of residential property sales, except for some prime seaboard areas in Western Cape and KwaZulu-Natal where foreign buyers constitute a significant percentage. The percentage of carporate property sales is not known.

The Estate Agents recommended, amongst others, that:

- A common definition of a foreign buyer is needed; and
- The Deeds Registries Office should be mandated to record disclosures of foreign ownership in relation to transfer of residential property.

ADDENDUM A

SUBMISSION TO THE DEPARTMENT OF LAND AFFAIRS FROM THE INSTITUTE OF ESTATE AGENTS OF SOUTH AFRICA REGARDING THE MAGNITUDE AND IMPACT ON THE RESIDENTIAL PROPERTY MARKET OF ACQUISITIONS BY NON-SOUTH AFRICAN CITIZENS

SOURCE: Residential Property Price Ranger (RPPR) by month for the Western Cape
& South African Property Transfer Guide (SAPTG) totals for the Western Cape

RPPR – TOTAL SALES IN TERMS OF UNITS

UNITS	Dec/Jan	February	March	April	May	June
1999	1133	778	1033	922	920	910
2000	1685	1412	1389	908	1165	1004
2001	1785	1217	1241	1017	1135	1109
2002	2245	1527	1356	1294	1650	1191
2003	2346	1458	1325	1266	1297	1372
2004	2538	1597	1631	1423	1405	1508

SAPTG – TOTAL SALES IN TERMS OF UNITS

UNITS	July	August	September	October	November	TOTAL
1999	873	1023	987	1138	1130	37 258
2000	962	1152	1002	1286	1139	37 734
2001	991	1165	1014	1298	1290	38 890
2002	1134	1347	1265	1397	1309	47 033
2003	1480	1306	1575	1815	1578	50 103
2004	1232	1373	1485	1492	1435	45 782

RPPR – TOTAL SALES TO FOREIGNERS IN TERMS OF UNITS

UNITS	Dec/Jan	February	March	April	May	June
1999	101	57	56	55	39	31
2000	90	82	68	42	56	37
2001	112	68	76	53	46	45
2002	226	146	145	143	118	71
2003	273	158	149	145	104	79
2004	219	142	141	124	88	83

UNITS	July	August	September	October	November	TOTAL
1999	25	24	27	49	61	528
2000	26	42	38	30	40	549
2001	40	34	34	44	66	618
2002	59	91	86	88	130	1304
2003	140	100	86	116	92	1442
2004	59	68	61	87	54	1126

RPPR – PERCENTAGE UNITS BOUGHT BY FOREIGNERS

UNITS	Dec/Jan	February	March	April	May	June	July
1999	8.9%	7.35%	5.71%	5.97%	4.24%	3.41%	2.86%
2000	5.34%	5.81%	4.90%	4.63%	4.81%	3.69%	2.70%
2001	6.35%	5.59%	6.12%	5.21%	4.05%	4.06%	4.04%
2002	10.07%	9.56%	10.77%	11.05%	7.15%	5.96%	5.20%
2003	11.64%	10.85%	11.25%	11.45%	8.02%	5.76%	9.46%
2004	8.63%	8.89%	8.65%	8.71%	6.26%	5.51%	4 79%

SPTG – PERCENTAGE OF UNITS BOUGHT BY FOREIGNERS

UNITS	August	September	October	November	TOTAL	TOTAL
1999	2.35%	2.74%	4.31%	5.40%	4.87%	1.42%
2000	3.85%	3.59%	2.33%	3.51%	4.19%	1.45%
2001	2.92%	3.35%	3.39%	5.12%	4.67%	1.59%
2002	6.76%	6.80%	6.30%	9.93%	8.30%	2.77%
2003	7.66%	5.48%	4.85%	5.83%	8.58%	2.88%
2004	4.95%	4.11%	5.83%	3.76%	6.58%	2.45%

RPPR – TOTAL VALUE OF SALES FOR THE YEAR (in Rand)

UNITS	Dec/Jan	February	March	April	May	June	July
1999	459,532,643	329,113,817	388,528,841	367,725,500	385,321,204	344,189,287	335,517,534
2000	716,444,914	588,142,784	624,948,091	422,913,961	475,245,212	398,955,466	389,122,010
2001	821,837,321	801,195,130	604,560,018	483,303,959	578,982,255	528,725,451	457,851,191
2002	1,233,604,975	969,764,035	877,414,060	853,935,238	970,069,200	756,264,428	655,624,514
2003	1,664,478,810	1,057,967,442	983,408,343	926,839,184	947,788,816	1,008,477.683	1,022,759,450
2004	2,220,684,273	1,443,107,950	1,417,127,314	1,272,145,314	1,331,295,877	1,356,129,244	1,191,618,206

SPTG – TOTAL VALUE OF SALES FOR THE YEAR

UNITS	August	September	October	November	TOTAL	TOTAL
1999	330,330,982	406,722,385	458,493,789	215,867,070	4,049,343,062	16,069,816,600
2000	514,106,800	418,367,541	556,119,048	311,008,308	5,411,374,155	16,050,619,569
2001	541,139,964	438,304,295	602,557,533	619,132,609	6,275,599,724	15,180,963,243
2002	781,687,678	789,980,180	850,455,457	915,494,611	9,654,294,356	17,398,475,492
2003	931,867,328	1,203,671,298	1,292,467,414	1,137,589,508	12,177,315,276	23,491,649,609
2004	1,252,299,242	1,434,732,891	1,516,005,447	1,519,000,765	15,954,146,620	30,286,719,634

SOUTH AFRICAN TRANSFER GUIDE (SAPTG)
SAPTG excludes sales to Companies and Closed Corporations
Information obtained from the Deeds Office.
SAPTG data in report reflect date of sale and not date of transfer.

RESIDENTIAL PROPERTY PRICE RANGER (RPPR)
RPPR report criteria: Sales confirmed during the month as recorded as per sales date, to be transferred later.
The RPPR report is inclusive of sales to Companies, Closed Corporations and Trusts.
The areas reported on are listed in an addendum.
Note: The interpretation by individual estate agents is subjective based on accent, source of capital, etc.

Recommendations by the Parliamentary Portfolio Committee and the relevant National Land Summit resolutions

The Panel took note of three of the recommendations by the Portfolio Committee on Agriculture and Land Affairs formulated on 7 June 2005 that have relevance for the TOR. The three recommendations are the following:

- Government must consider placing a morotorium on the selling of agriculturol land to foreigners until the Ministerial Panel on Land Ownership by Foreigners reported to the Minister;
- The office of the Registrar of Deeds should register land in terms of race so that land reform progress or the transfer of land to blacks could be adequately monitored; and
- Government should develop mechanisms especially within the current land policy to dissuade an inappropriate inflation of lond prices.

The Panel also noted that before the National Land Summit provincial land marches and summits in all the nine provinces strongly recommended o maratarium on acquisition of land by foreign individuals and corporations as well as the need for government regulation of lond prices to ensure affordability so that land restitution and redistribution could be accelerated.

Special attention was given to the recommendations of the National Land Summit that

- "the state should actively intervene in the land morket including through reguloting foreign ownership";
- foreigners should only be allowed to purchase land if there is clear indication of productive investment and sustainable job creation; and
- a land tax should be introduced.

In her closing address at the Summit the Minister of Agriculture and Land Affairs noted the following:

"Simultaneously, the issue of foreign land ownership was raised sharply, with almost unanimity that a policy on this motter must be developed. I am happy that that this summit had three members on the Ministerial panel that is attending to this matter."

Section 2 Part 2:
Patterns of land ownership in South Africa – quantification and spatial mapping

1 The General Overview

This section concentrates on a quantification of landownership, the use of land and prices of land and property. The national division of landownership in South Africa reveals that 76,2% of the total land surface is privately held, and that the rest is held by the State (20,4%) or in trust on behalf of the state (3,4%). It should be emphasized that land owned by municipal authorities are not yet included under "state land" but is still listed under "privote land". The following table provides a more detailed breakdown of ownership in South Africa.

TABLE 1: DIVISION OF LAND OWNERSHIP

	Hectare	**Hectare**	**%**
State Land: Department of Public Works	6,845,916	24,919,290	20.4%
Department of Land Affairs	13,759,968		
Provincial	4,313,406		
Trust:		4,103,096	3.4%
Ingonyama	2,893,232		
Coloured Rurol	277,926		
Traditional	931,938		
Private: **Total**		92,885,406 **121,907,792**	76.2% **100%**

1.1 The use of land in South Africa

In terms of land use, most of South Africa is under naturol pasture (73,2%), approximotely 12% is arable productive agricultural land, and about the same proportion is allocated to nature conservation while only about 1% of the land is currently used for urban and residential purposes.

Table 2 provides a detailed presentation of land use in South Africa.

TABLE 2: LAND USE PATTERNS

Land Use	**Hectare**	**%**
Arable / Agriculture	14,753,249	12.1%
Nature Conservation	14,549,797	11.9%
Forestry	1,790,270	1.5%
Natural Posture	89,240,143	73.2%
Industrial / Commercial	274,549	0.2%
Urban Residential	1,299,784	1.1%
TOTAL	121,907,792	100.0%

This table does not yet indicate the propartion of foreign ownership in each of these categories. Three categories will receive more attention in this regard, namely urban residential property, industrial/commercial use, and arable/ agricultural use.

1.2 Land prices

The Panel's TOR includes a request to look at property prices and the possible impact of foreign ownership on them. Regarding patterns of property prices without distinguishing between domestic and foreign ownership, the focus will be on the three categories most relevant for foreign ownership.

i) Urban residential

Urban residential use of land constitutes one of the smallest proportions (1.1%) of land use. However, the number of landowners in this category is much more significant. Residentiol properties can be divided into three distinctive market categories, viz. low (below 80m2), middle (between 80m2 and 440m2 or with a value below R2 million) and high/luxury (bigger than 440m2 or with a value more than R2 million). Since 1998 property prices in the low segment of the market have increased at a rate below the average inflation rate while prices at the high end of the market increased more or less in line with inflation. Residential property prices of the middle-market have recorded substantial increases in real terms.

The following table is a summary of price movements in the middle-category residential market.

TABLE 3: PRICE PATTERNS

Newly-built homes (160m2)	Land (in Rand)	Building (in Rand)	Total (in Rand)	Land as % of total value	Building as % of total value
June 1998	65,776	208,138	273,914	24.0%	76.0%
June 1999	80,562	238,775	319,337	25.2%	74.8%
June 2000	92,335	258,335	350,670	26.3%	73.7%
June 2001	101,825	288,314	390,140	26.1%	73.9%
June 2002	120,695	337,243	457,938	26.4%	73.6%
June 2003	154,575	414,872	569,447	27.1%	72.9%
June 2004	178,639	445,460	624,099	28.6%	71.4%
% change per annum	**18.1%**	**13.5%**	**14.7%**	**3.0%**	**-1.0%**

Source: *Finance Week* – 27 September 2004: ABSA

This table indicates that over a period of six years the increase in prices was 14.7%. It is apparent that the land prices increased substantially more than the building/construction component of urban residential properties. It means that in comparative terms land is becoming increasingly expensive (24% of total costs in 1998 compared with 28.6% in 2004) and the building/ construction prices are becoming less (76% of the total costs in 1998 versus 71.4% in 2004).

Some of the factors that have contributed to the significant increases in property prices of middle-category houses are: relotively low interest rates, higher disposable income of middle-income earners partly due to tax relief, increased demand by an expanding black middle class, and increased demand by foreign buyers partly due the weakening of the Rand in 2000 and 2001.

ii) Commercial and industrial properties

Price increases in commercial and industrial properties have been around 10 per cent per annum.

iii) Agriculture

Price increases in agriculture properties have been between 10 and 25 per cent per in 2002 and 2003.

Although substantial more work is required to quantify the impact of foreign buyers on the prices of properties in all sectors of the property market (residential, agriculture, commercial and industrial) there ore clear indications that the increased demand by foreigners have put upward pressure on property prices, especially residential properties in Cape Town and areas such as Umhlanga near Durban [see Appendix 9). Further examination of the available data is required before any definitive opinion can be made by the Panel on the exact impact of foreign ownership of land on the escalation of land prices in general.

2 Registrar of Deeds' data: spatial mapping, analysis, interpretation

The Panel had to investigate the nature and scope of the data available in the Office of the Registrar of Deeds and how it can assist in analyzing foreign landownership in South Africa. The data supplied by the Deeds Registry is generally:
(i) not designed to differentiate between citizens and non-citizens [or foreigners) in general
(ii) poorly structured
[iii) contains significant errors in data the entries, and
(iv) includes significant duplication.

A key feature of the data and information provided on registration documentation is that they are never updated after the registration of the deed. The prices of land reflect the price at the time of registration and do not necessarily reflect the current value. According to the Chief Registrar of Deeds, data capturing and recording takes place only when a transaction is presented for registration. Given the fact that overall foreign purchases have increased since 1994, and especially during the weakening of the Rand, it is reasonable to conclude that the value of the bulk of the land owned by foreigners reflect values that ore close to the 2005 prices.

Categories of Foreigners

Registration of deeds requires only a South African identity document number or a passport number. The absence of an ID number and the presence of a foreign passport number is assumed as indicotive of foreign ownership. This ossumption is more reliable for analyzing the identities of individual owners than for corparate owners. For the purpose of onalysis, the Panel ossumes that foreign ownership is made up of the following categories:

i. Externol Public: Foreign public companies
ii. Foreign - Permanent Residents
iii. Foreign Refugee

It should be noted that the Deeds Registries regard persons who were citizens of the former TBVC states at the time when they registered their title deeds, as "foreigners", and therefore it continues to distort any analysis of the available data.

Regarding foreign landownership, in an analysis of the Deeds Registries' data, corporote ownership of properties will most probably be found in the following categories:

i. Conflicting/Unidentified/Blank
ii. Different number/text: Registrotion entries which don't conform to a known pottern
iii. Pty. Ltd [private componies]
iv. Public Compony (public companies)
v. CC (close corporations)
vi. Section 21 (Section 21, non-profit companies)
vii. Trust (registered trusts)

2.2 Consolidated statistics on land ownership in South Africa

The following three tables represent a consolidated view of the various percentages of ownership for each of the five major owner groupings and four forms of land use.

The five owner groups are incomplete or defective Registrar data in which the category of ownership is unclear (the category "Defective records"), secondly South African private, individual owners ("South African"), thirdly land owned the South African state ("Stote-owned"), fourthly foreign londownership by individuols ("Foreign individuals") and lastly properties owned by corporate bodies, both South African and foreign ("Corporate"). The land use categories are urban residential use ("Erf"), for commercial agricultural purposes ("Farm"), agricultural holdings ("AH") and sectional title use ("Sectionol"). Table 4 summarises the number of owners in eoch of these cotegories.

TABLE 4: HEAD-COUNT

OWNER	ERF	FARM	AH	SECTIONAL
Defective records	11.15%	16.40%	10.52%	5.28%
South African	71.06%	49.80%	69.95%	74.33%
State-owned	12.19%	5.80%	6.17%	1.11%
Foreign individuals	0.93%	0.55%	1.79%	3.02%
Corporate	4.67%	27.45%	11.57%	16.26%
TOTAL	**100.00%**	**100.00%**	**100.00%**	**100.00%**

Table 5 presents a summary of the value of properties in all the categories.

TABLE 5: VALUE OF THE PROPERTIES

OWNER	ERF	FARM	AH	SECTIONAL
Defective records	17.66%	15.70%	4.10%	11.40%
South African	17.73%	5.69%	43.19%	48.03%
State-owned	0.26%	0.37%	0.14%	0.14%
Foreign individuals	0.74%	0.15%	1.75%	2.46%
Corporate	63.61%	78.09%	50.82%	37.97%
TOTAL	**100.00%**	**100.00%**	**100.00%**	**100.00%**

Table 6 presents a summary of the area or size of the land owned by the different categories of owners.

TABLE 6: AREA/SIZE OF LAND

OWNER	ERF	FARM	AH	SECTIONAL
Defective records	8.27%	11.97%	18.48%	1.17%
South African	6.53%	48.60%	49.34%	22.27%
State-owned	81.00%	5.73%	21.97%	0.11%
Foreign individuals	0.07%	0.07%	1.98%	0.52%
Corporate	4.13%	33.63%	8.23%	75.93%
TOTAL	**100.00%**	**100.00%**	**100.00%**	**100.00%**

This table should not be analysed on its own, because of the regional differences in land uses. It is clear from this table that corporate ownership of farms are high in value but much lower in size. It means that they are high-value farms such as wine estates. Farms owned by South African individuals are big in size but much lower in value. Ownership by individual foreigners in terms of size and value are internally consistent and relatively small.

TABLE 7: COMBINED DATA OF OWNERSHIP BY FOREIGN INDIVIDUALS

Measurement	Erf	Farm	AH	Sectional
Head-count	0.93%	0.55%	1.79%	3.02%
Value	0.74%	0.15%	1.75%	2.46%
Size	0.07%	0.07%	1.98%	0.52%

The only conclusion drawn form these data is that individual foreigners appear to be more interested in urban residential land. Their strongest presence is in the category of sectional title owners.

TABLE 8: PATTERNS OF OWNERSHIP AMONGST INDIVIDUAL FOREIGNERS

Type of land	Head-count	Percentage head-count	Value (in Rands)	Percentage of total value	Size (km2)	Percentage of size
Erf	52 786	65.66%	13,992,479,496	61.99%	945.488	31.99%
Farm	2 540	3.16%	1,009,916,956	4.47%	1724.143	58.33%
AH	1 049	1.30%	258,657,755	1.15%	283.8	9.60%
Sectional	24 013	29.87%	7,312,556,270	32.39%	2.316	0.08%
Total	**80 388**	**100%**	**22,573,610,477**	**100%**	**2 955.804**	**100%**

The difference between table 7 and 8 is that 7 summarises ownership by foreign individuals as o proportion of the other categories of owners. Table 8 focuses only on individual foreigners and summarises tendencies and distribution of ownership only those individuals.

Table 8 above clearly indicates that foreigners are primarily interested in urban residential properties, with erven and sectional title deeds constituting more than 90% of the head-count and value of foreign properties in South Africa. The physical size of their sectional title properties can be ignored, because of the inherently small size of all such units compared to erven, farms and agricultural holdings. This table confirms the internal consistency also prevalent in tables 5-7. Table 8 emphasises urban, residential ownership more than tables 5-7, though the prominence of sectional title properties is confirmed by table 8.

Tendencies regarding erven and farms are the following:

Erven

According to table 7, in terms of numbers, individual foreigners own 0.93% of the residential erven in South Africa. The value and size of these properties as percentages of the total are 0.74% and 0.07% respectively.

According to the table 8, urban residential Erven constitute about 65% of all the properties owned by foreign individuals in South Africo.

The mojority of foreigners who own the 0.93% of properties are persons with permanent residence status (52 529), with foreign refugees (153) making up the second largest group, and foreign Public Companies (104) making up the smallest group. No information is available of individual foreigners who are not permanent residents. They may well lie in the Unknown category of owners. The total percentage of 0.93% residential owners may well change significantly once the category of defective records of owners is rectified.

Farms

The ownership of farms by individuol foreigners account for about 0.55% (table 4), which is significantly lower than the number and value of Erven. These farms are owned almost entirely by foreigners with permanent residence status.

Conclusion

Foreign individuals with permanent residence status have acquired obout 1% of urban residential land in South Africo being. Individual foreigners with permanent residence status have acquired a probably insignificant percentage (0.5%) of rural land in South Africa. However, they are much more significant in the urban residential (especially sectional title properties) category. No conclusions could be reached regarding foreigners who are not permonent residents, because no reliable statistics ore ovailoble.

2.3 Foreign Corporate Ownership

One of the most serious shortcomings in the current registration requirements at the Deeds Registries Offices is that corporate owners or juristic persons do not hove to disclosure their nationality. The deeds statistics are therefore not of any assistance to determine the extent of foreign ownership by carporate entities in South Africa.

The nature of corporate (South African and foreign) ownership has already been demonstrated in tables 4-6, and it can be summarized as follows:

TABLE 9: COMBINED DATA OF OWNERSHIP BY CORPORATE ENTITIES

Measurement	Erf	Farm	AH	Sectional
Volue	63.61%	78.09%	50.82%	37.97%
Head-count	4.67%	27.45%	11.57%	16.26%
Size	4.13%	33.63%	8.23%	75.93%

A striking feature of these statistics is that although the number and physical size of the properties are relatively small, their value is disproportianately high. It means that they are mainly properties in the prime market, which will therefore have a high speculative value. The impact of corporate ownership on the South African economy can therefore not be discarded and requires close monitoring.

Anecdotal evidence (such as those provided to the Panel by estate agents and at the public hearings, or reported in the media) as well as evidence provided by commercial banks, especially ABSA Bank, suggest that foreign corporate ownership is substantial. The following are a few examples:

The Panel has established that there are instances where foreign corporations establish wholly-owned subsidiaries that are registered as South African companies. An example is the Utrechtse Beheer Maatschappij "Catherine" B.V. that owns the Marakele Park (Pty) Ltd, CCG088 Investments (Pty) Ltd and CCG 108 Investments (Pty) Ltd. These corporations have substantial holdings in and around Marakele National Park in Limpopo.

Foreign corporate owners have also invested in the wine farms in a significant number. Recent noticeable foreign investments include:

- French owner Anne Cointreau-Huchon of the liqueur and Cognac family has made huge investments in the Morgenhof Estate.
- Italian Count Ricardo Agusta invested about R17 million in revamping the Agusta Wines' cellar in Franschaek.
- A Bahaman-American-SA wine partnership established BoweJaubert Vineyards & Winery in 2001
- Dornier Wines represents a R100 million investment by its Swiss owner.
  Chateau Pichon-Longueville-Lalande has recently bought a 310 acres estate, Glen Elly, in Simonsberg
  Transnet's sale of the Cape Waterfront is another example which involves substantial foreign capital.

Obstacles to a more accurate analysis of the current situation are the following:

Regarding closed corporations, they are registered at the Companies and Intellectual Property Office (CIPRO). The Registrar's file of such a registration does not provide for a field dedicated to nationality. It requires the owner's South African identity number. In its absence the owner's date of birth is included. Foreign ownership of a closed corparation can therefore only be detected by applying the assumption that the absence of an ID number denotes a foreign owner.

Regarding private companies, no nationality declarations are included in their registration requirements. Therefore, the nationality of their shareholders has to be determined individually. Most companies appear to have a mixture of individual and juristic shareholders. Disclosure of the shareholders by the companies is determined by statutory regulations, allowing them 30 days to respond. It is therefore labour-intensive and a tedious process.

Regarding trusts, the Office of the Master of the High Court in each of the fourteen provincial divisions are responsible for their registration. In view of the fact that a deeds registration does not provide information on the nationality of trustees, the Office of the Master has to be approached for such information.

In view of the above, the following policy considerations will be relevant:

1 The shortcomings in the registration of deeds justify an amendment to the statutory requirements regarding nationality and citizenship not only for foreign individual owners, but also for corporate owners;

2 Possible loopholes in the disclosure requirements, such as fronting, have to be addressed.

3 The definition of "foreign ownership" requires more attention, such as the percentage threshold of its owners, trustees or shareholders for a corporate entity to qualify as either South African or foreign, and how to deal with fluctuating ownership, such as shareholding in listed companies.

3 The extent of state-owned land

The argument is often used that land reform can be achieved by using state-owned land and therefore attention paid to other forms of land ownership (including foreign ownership) is not justified. Hence, attention should be paid to the availability and use of state-owned land.

Given the link between the availability of land for meaningful land reform and the Panel's TOR, the Panel was presented with concrete evidence which dispels the view that the State owns large portions of land suitable for land reform (see also tables 1 and 4-6). The statistics given below speak volumes on the issue. Even if it were to be true that such land existed, the Panel's TOR will still be relevant.

The bulk of state-owned land is already under occupation and used by Africans and Coloureds who were previously merely "tenants" of the state and will now acquire title to the land they occupy under CLARA (approximately 19 million hectares) and other legislation. State land will therefore be dramatically reduced. Other state land owned by the Department of Public Works and in some instances by Land Affairs (in the former homelands), is managed and used by the defence force, public works, state-owned enterprises and conservation. Besides, large areas of state-owned land are in ecologically-poor regions and not suitable for immediate low-cost sustainable productive development.

The Panel is of the view that the Government needs to address the public perception that large areas of state-owned land are not used and can be earmarked for land reform. In terms of the Panel's TOR the need for monitoring and regulating foreign ownership and use of land is enhanced by the fact that the privately-owned land, and not state-owned land, is critically important for land reform and transformation. The answer to equitable access to land cannot be met by distributing state-owned land.

The following is a presentation of the extent of state-owned land in South Africa (in hectares).

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

NATIONAL STATE LAND PER PROVINCE		PROVINCIAL STATE LAND (the nine province government)
Department of Public Works	Department of Land Affairs	

PROVINCE	SANDF	SAPS	DCS	DWAF	AGRICULTURE (FALA-land) (1)	SOUTH AFRICAN NATIONAL PARKS	OTHER (2)	Ex-TBCV-STATE & SGT's	Ex- SADT (3) & Other land obtained for land reform	NATURE RESERVES & PROTECTED ARREAS	OTHER	RSA - TOTAL	%
	18 215	3 870	13 678	246 855	17 060		201 355	4 696 243	78 505	461 984	133	6 007	24.7%
Eastern Cape											300	921	
Limpopo	16 318	2 245	7 890	58 234	8 574	1 025 940	239 385	3 203 840	326 234	335 602	130 050	5 354 312	22,1%
North West	32 110	1 605	2 422	8 742	6 890	0	169 680	3 451 200	77 077	240 119	156 300	4 146 145	17,1%
Mpumalanga	9 890	2 190	3 275	89 478	5 636	955 675	167 600	545 434	161 102	208 900	165	2 314 300	9,5 %
Western Cape	42 824	3 982 146	16 588	396 840	18 315	202 983	226 010	0	0	836 135	120	1 890	7,8 %
Northern Cape 1 298	246 850	1 298	908	11 950	25 483	1 258 842	130 135	0	21 432	62 176	560 116	237 1 875	7,7 %
KwaZulu-Natal	7 860	3 225	17 220	116 678	7 319	0	211 770	30 902	508 106	770 354	250 161	324 1 834	7,6 %
Free State	31 080	875	3 730	7 675	5 508	11 633	87 20	140 557	38 388	202 738	250 58 860	684 588 254	2,4 %
Gauteng	9 766	2 216	10 212	3 815	9	4	70 350	0	35 210	42 191	68 690	242 463	1,0 %
GRAND TOTAL	**414**	**21**	**75 923**	**940 267**	**94 794**	**3 591 933**	**1 503 495**	**12 068 176**	**1 246 054**	**3 160 199**	**1 136 380**	**24 253 640**	

Notes:-

* Excluding the following:-
- some unsurveyed, unregistered state land (e.g. coastal areas)
- foreign properties (e.g. SA embassies)

- offshore islands (e.g. Seal Island) (Robben Island is included under Western Cape "other": 476 ha)
- parastatal land (e.g. Transnet)
- former KwaZulu land (now Ingonyama Trust land - 2 883 884 ha)
- former Coloured Rural Areas (e.g. Rural Area of Enon) - administrated and held in trust in terms of Act 9 of 1987 - 1 277 926 ha
- land held in trust by the Minister of Land Affairs for various African traditional communities (e.g. tribes) - 931 938 ha

(1) FALA-land refers to Financial Assistance Land (land bought in from insolvent farmers and PWD agricultural land) administrated by the National Department of Agriculture.

(2) Includes unreserved PWD-land, land held in shares, and other smaller holder deportments (e.g. Home Affairs, Justice, Mineral & Energy Affairs, etc.).

(3) Ex-SADT - refers to South-African Development Trust land outside the geographical boundaries of the former homelands and Self Governing Territories.

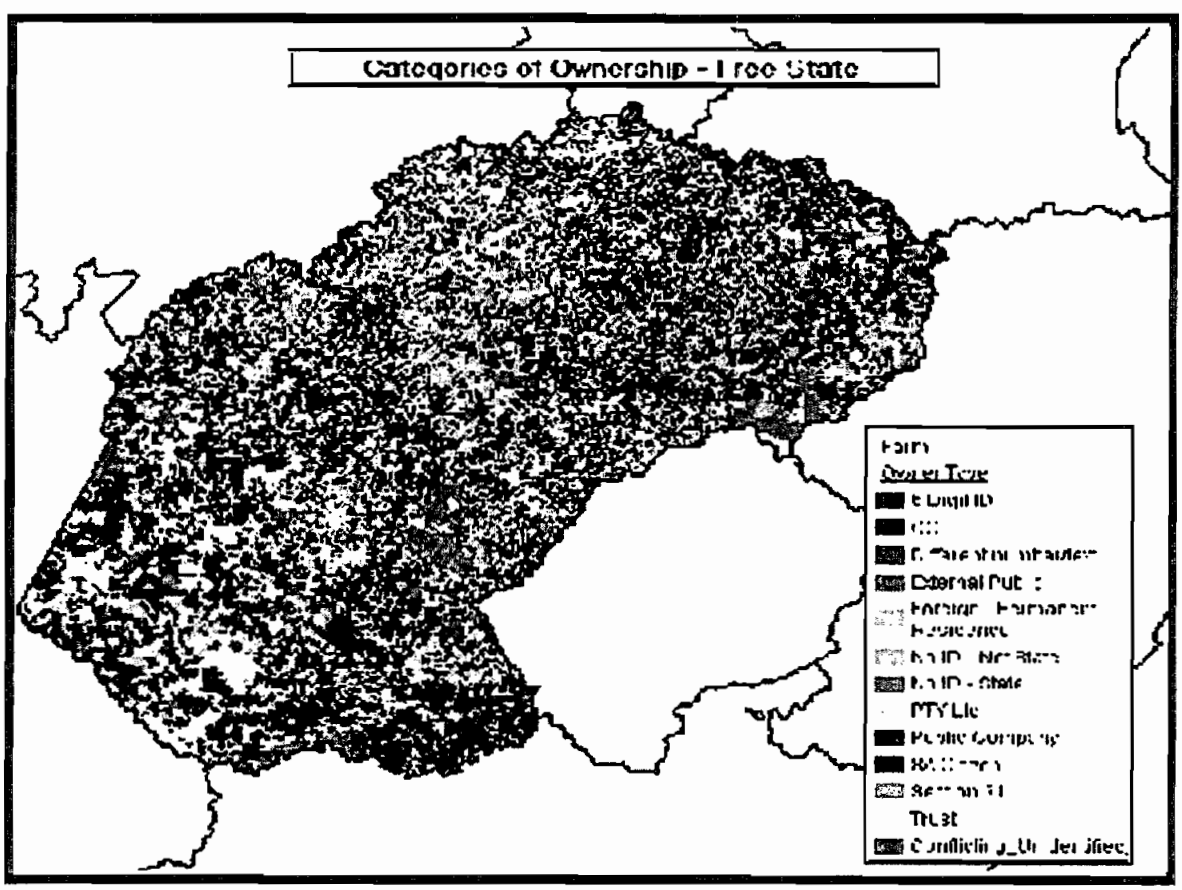
(4) Includes provincial agricultural land, as well as school sites, hospital land and provincial road reserves.

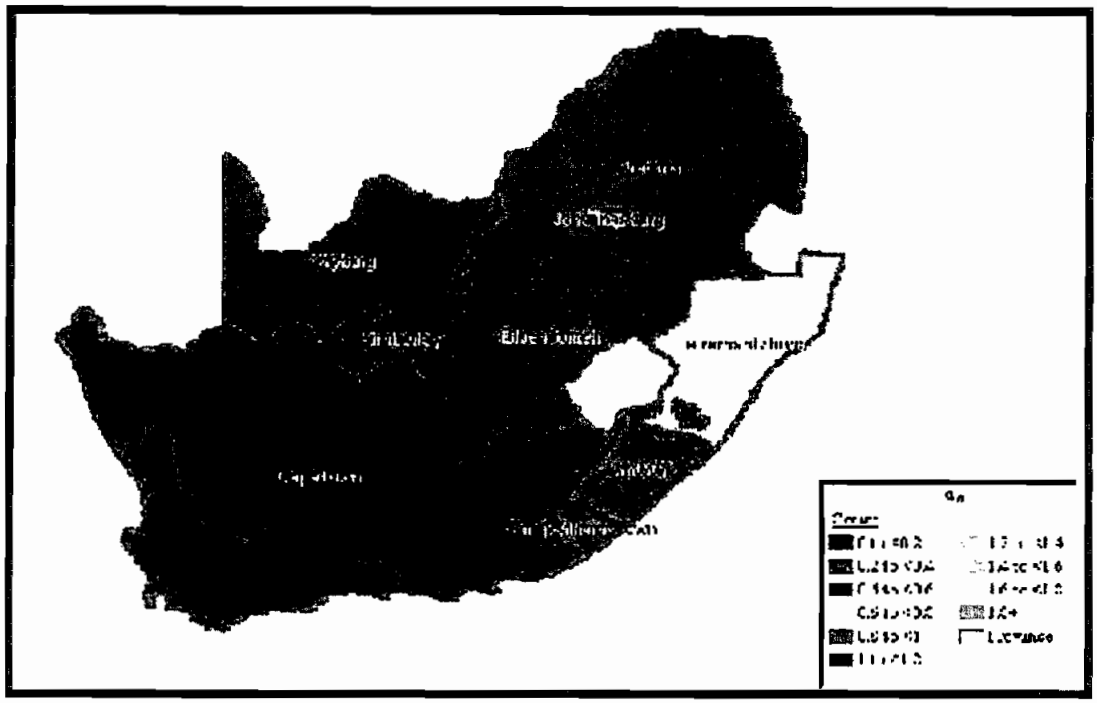
Source: Department of Land Affairs, Directorate Public Land Support Services, 30 June 2006

In the following four maps a visual presentation is made of the nature and extent of foreign ownership of land in South Africa.

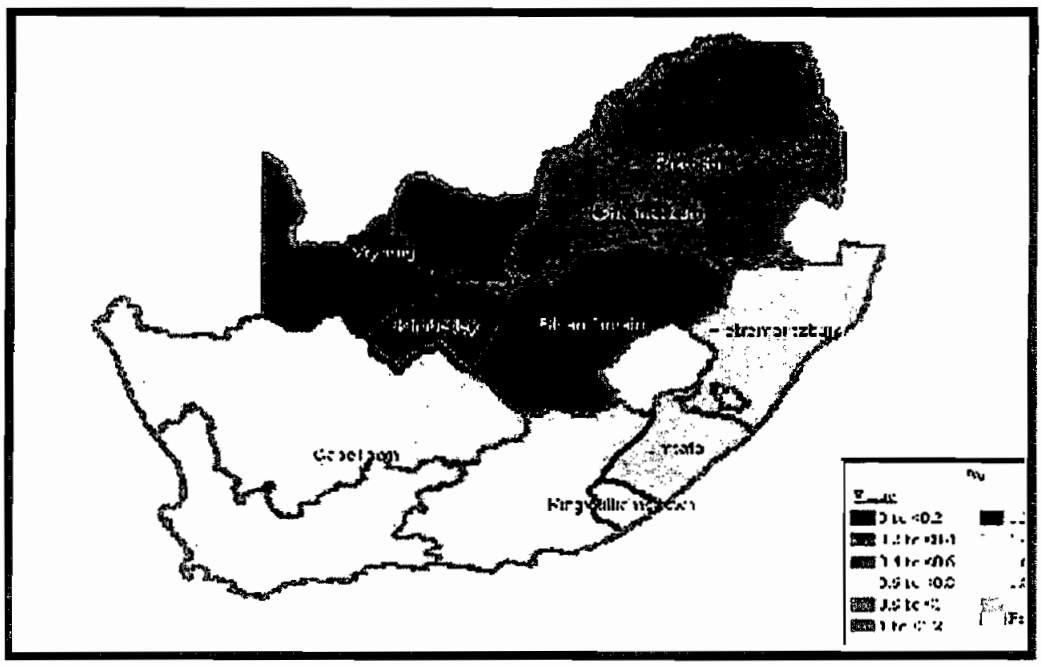
ADDENDUM B

MAP 1: CATEGORIES OF OWNERSHIP – FREE STATE

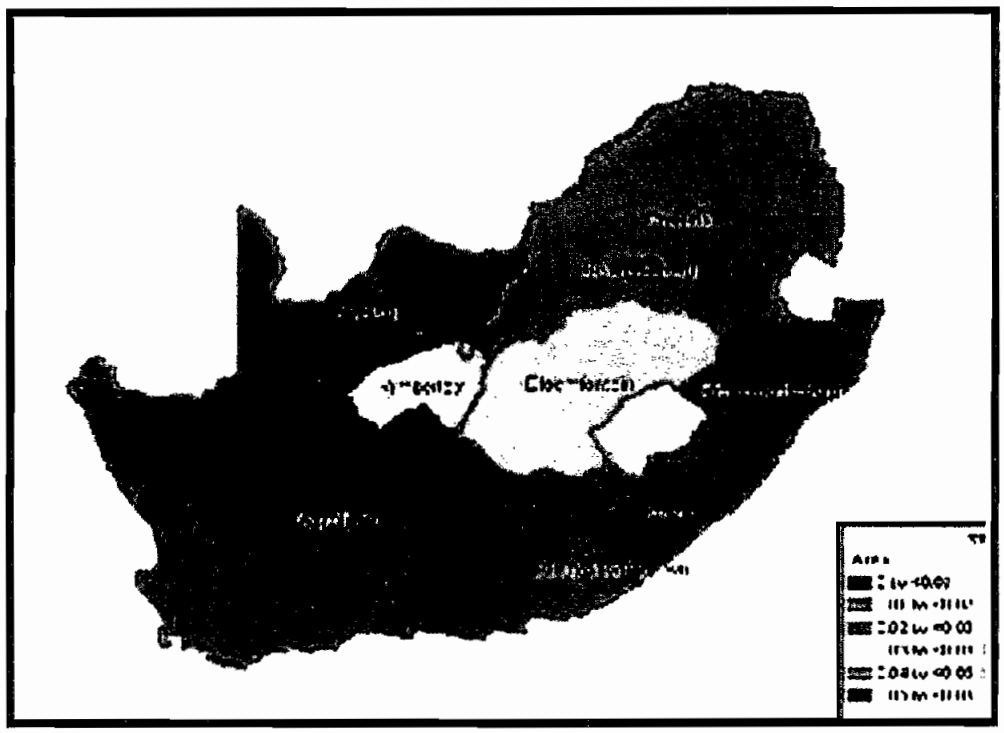




MAP 2: COUNT OF FOREIGN OWNERSHIP AS A PERCENTAGE OF TOTAL PROPERTIES



MAP 3: VALUE OF FOREIGN OWNERSHIP AS A PERCENTAGE OF TOTAL VALUE



MAP 4: AREA OF FOREIGN OWNERSHIP AS A PERCENTAGE OF TOTAL AREA

Section 2 Part 3:

International practices and policies: Regulation of ownership and use of land and property by foreigners in other countries

In order to conduct a proper consideration of landownership by foreigners, the Panel's recommendations should also be informed by comparable policies and practices in other countries. The Panel's Terms of Reference therefore also include, inter alia, the request to investigate "comparative international/foreign practices (laws, policies, impact, etc) on the issue of land ownership by non-citizens". The Panel interprets it as a task to look at what other states are doing in this respect and then to identify those approaches most suitable for consideration in South Africa also. Appendix 6 contains the detailed survey of international practices and policies in other parts of the world. In this section the most relevant aspects are emphasised.

The following countries were surveyed by the Panel:

Africa: Malawi, Nigeria, Zambia, Zimbabwe
Middle East: Jordan, Iran, Israel
Western Europe and Nordic countries: Austria, France, Norway, Switzerland, Turkey, United Kingdom (England, Scotland and Wales), Spain, Sweden, Denmark, Finland, Greece, Ireland, Portugal.
East and Central Europe: Lithuania, Slavokia, Poland, Czech Republic, Hungary
North America: Canada, United States of America
Asia and the Pacific: India, Japan, South Korea, Thailand, Singapore, Indonesia, Australia, New Zealand
Latin America: Colombia, Brazil, Mexica, Chile

In July and August 2005 members of the Panel and members of the technical support team conducted study tours to the following countries: Canada, Chile, Brazil, Indonesia, Singapore, England and Scotland. The information gathered has been analysed and appear in summary in Appendix 12 in full.

General tendencies identified in the international practices and policies

The following discussion identified five general tendencies extracted from the international examples which the Panel had investigated:

1 Strategic factors and national interest

National interest and national security, perhaps more than any other factors, are advanced as the main reason for the imposition of restrictions on foreign ownership of land or other land-based resources. What amounts to national and security interests are influenced by many factors, including the time of the decision and other geopolitical considerations. As such, what becomes a question of national security importance may fall away or may arise with time or by sudden changes in the geopolitical climate.

A couple of other motivations justifying foreign ownership restrictions are also defensible on grounds analogous to national interest or security. National interest therefore encompasses concerns around food security, protection of coastal and sensitive land and water protection, communal lands, national monuments, security or military installations, and other areas of national strategic importance. The Government of Australia (Summary of Australia's Foreign Investment Policy issued by the Treasury - May 2000) reports that:

> The Government determines what is 'contrary to the national interest' by having regard to the widely held community concerns of Australians. Reflecting community concerns, specific restrictions on foreign investment are in force in more sensitive sectors such as the media and developed residential real estate. The screening process provides a clear and simple mechanism for reviewing the operations of foreign investors in Australia whenever they seek to establish or acquire new business interests or purchase additional properties. In this way Government is able to put pressure on foreign investors to operate in Australia as good corporate citizens if they wish to extend their activities in Australia. By far the largest number of foreign investment proposals involve the purchase of real estate.
>
> The Government seeks to ensure that foreign investment in residential real estate increases the supply of residences and is not speculative in nature. The Government's foreign investment policy, therefore, seeks to channel foreign investment in the housing sector into activity that directly increases the supply of new housing (i.e. new developments – house and land, home units, townhouses, etc) and brings benefits to the local building industry and their suppliers.

2 Economic factors

Economic-related control measures seem quite prevalent in many countries since the very nature of foreign acquisitions and use of immovable property in a country is said to be influenced mainly by the relative financial superiority of the non-nationals against the local citizens. Measures are thus instituted to restrict or direct the flow of investment according to national interest considerations. The economic control justification includes the need to restrict land speculation which is a potential source for distortion of agricultural and housing land market prices.

It is vital that we search for answers to the hovering question of what are the determinants of FDI? Or rather more directly: will the regulation of land ownership by foreigners negatively influence FDI? Studies have revealed that while a liberal policy on investment is necessary to attract FDI, it is not sufficient. Other determinants for increased FDI flows are: the market size, growth, production costs, skills levels, adequate infrastructure, economic stability, and the clarity and stability of rules which can effectively rule out corruption and other forms of rent-seeking. This explains why countries with varying nationality restrictions on investment equity, like Thailand, Malaysia, Singapore and especially China are among the top 20 recipients of FDI worldwide. China, with the most stringent nationality requirement, is number one on the list of twenty.

The leading grouping of industrialized countries of the world, the Organisation for Economic Co-operation and Development (OECD)'s *Checklist for Foreign Direct Investment Incentive Policies* (OECD 2003) stated as "Guiding Principles for Policies Toward Attracting Foreign Direct Investment" that:

> The aim of policies for attracting FDI must necessarily be to provide investors with an environment in which they can conduct their business profitably and without incurring unnecessary risk. Experience shows that some of the most important factors considered by investors as they decide on investment location are:
> - A predictable and non-discriminatory regulatory environment and an absence of undue administrative impediments to business more generally.
> - A stable macroeconomic environment, including access to engaging in international trade.
> - Sufficient and accessible resources, including the presence of relevant infrastructure and human capital.

The most effective action by host country authorities to meet investors' expectations is:

- Safeguarding public sector transparency, including an impartial system of courts and law enforcement.
- Ensuring that rules and their implementation rest on the principle of non-discrimination between foreign and domestic enterprises and are in accordance with international law.
- Providing the right of free transfers related to an investment and protection against arbitrary expropriation.
- Putting in place adequate frameworks for a healthy competitive environment in the domestic business sector.
- Removing obstacles to international trade.
- Redress of those aspects of the tax system that constitute barriers to FDI.
- Ensuring that public spending is adequate and relevant.

Property tax, as an economic factor, is also sometimes moot as an instrument to draw a distinction in the land market between speculation and investment by foreigners. Several countries, including Namibia, France, the United States, and New Zealand, indeed utilize this, either solely or in conjunction with other measures as a balancing act. The US Foreign Investment Real Property Tax Act (FIRPTA) governs dispositions of United States real property interests by a foreign person or entity. A person who meets the substantial presence test (to be in the USA for at least 183 days) or is considered a resident alien for income tax purposes is however not considered to be a foreign person. The amount of tax required to be withheld and paid to the Inland Revenue Service (IRS) by the buyer is 10% of the amount realized on the transfer, or 35% of the gain recognized by a domestic corporation, domestic partnership, domestic trust or domestic estate. A foreign corporation that holds a U.S. real property interest, and under any treaty obligation, is entitled to non-discriminatory treatment with such interest, can elect to be treated as a domestic corporation for purposes of this section. If the real property interest is used by the foreign person or entity for the production of income during the taxable year, and it is located in the U.S. the law imposes a 30 percent tax rate (or tax treaty rate if lower). However, the foreign person or entity can make an election to treat the real property income as income effectively connected with a U.S. trade or business, thus making it subject to graduated tax rates.

3 Complete, compulsory prohibition

Debates on land ownership by foreigners are partly informed by proponents of a compulsory and complete prohibition of ownership by non-citizens. According to Stephen Hodgson, Cormac Cullinan, Karen Campbell[14], "relatively few countries surveyed have an outright ban on foreign ownership or use of land. Some countries such as China, Vietnam, Ethiopia and a number of others form a distinct category in that nationals are not permitted to own land outright either. China grants "equal treatment" to foreigners in that they too may be granted land use rights. In Zambia, the Land (Conversion of Titles) Act provides that all land vests absolutely in the President, "and shall be held by him in perpetuity for and on behalf of the people of Zambia", and that no person shall be granted land except for a specified term of up to 100 years. Such a provision, not unusual in the African context, does not in itself preclude foreigners from acquiring land rights as strong as any national might acquire. Such land rights may in practice be tantamount to ownership, though subject to a superior *de jure* right held by the state or the President".

Qualified forms of prohibition are more widespread throughout the world. Examples are Singapore (where foreigner ownership of landed property is prohibited), Mexico close to its international borders, or Switzerland.

4 Reporting and Restrictions

The majority of the countries in all the regions of the world have either or both restrictions on the ownership/acquisition of land, and reporting requirements of the ownership/acquisition of land by non-citizens. Various forms of restrictions exist including (a) leases or term restriction; (b) restrictions on coastal zones, and in sensitive, forbidden areas; (c) land quantity restrictions; (d) reciprocity or preferential national treatment; (d) pre-emption and right of first refusal; and (e) permit or authorization requirements. Reporting or disclosure measures enable countries to secure an accurate base of data on land-ownership by non-citizens or non- residents in a timeous manner as a basis for policy intervention. These reporting or disclosure measures are used for a range of planning and governance purposes, including taxation and security issues, by countries including Mexico, Canada, Australia, New Zealand, Thailand, and the United States of America.

5 Land Information Reporting, Monitoring or Disclosure Legislation

Tracking land ownership[15] (as applicable for example in Nova Scotia in Canada) provides a mechanism to gather and update information as properties change hands in a timely fashion. This ensures that an accurate and comprehensive database on non-citizenship and non-residency status is available upon which to base future decisions. Reliable data collected over time offers the information needed to address issues of societal concern when they arise.

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[14] Land Ownership and Foreigners: A Comparative Analysis of Regulatory Approaches to the Acquisition and Use of Land by Foreigners (FAO, December 1999, p31)

[15] see *Non-Resident Land Ownership in Nova Scotia* - Final Report of the Voluntary Planning's Task Force on Non-Resident Land Ownership, December 2001

A summary of the land regulations regarding foreign ownership in Chile, Indonesia, Singapore, England and Scotland.

Chile

The overwhelming characteristic of Chile's FDI environment is the very open climate that the country portrays. Land is no exception. There are virtually no regulations pertaining to the purchase of land by foreigners, except in respect of border and coastal areas. Nationals of Peru, Argentina, Bolivia cannot acquire land in a 10 km buffer zone between the boundaries of these countries. Furthermore, the very long western coast is not transferable but only granted under concession.

About 35% of the land surface of Chile is state-owned, of which 15% falls under the jurisdiction of the Ministry of Notional Property, and 20% is protected land and falls under the Forestry Department. About 65% is under private ownership. The Ministry of Nationol Property is charged with the responsibility of managing all of land under the various branches of government in respect of a coherent strategy of territorial development and regulating the different uses of state property. It takes care of the procurement of land by the stote for the purposes of good governance through purchases, tronsfers, donations or expropriation. The sale of public property is only allowed in the event thot the Ministry declares a piece of land as non-essential to the proper functioning the state. The tronsfer of state property is done by open and public tender.

The Ministry of National Property has two main lines of activity. It seeks to promote productive investments in state land and it attempts to ensure a model of sustainable protection of state assets.

Chile does not discriminate against foreigners in respect of investment in the country. There are two mechanisms for foreign investment. Firstly, Chapter 14 of the Compendium of Foreign Exchange Regulations of the Chilean Central Bank and secondly, the Foreign Investment Statute, Decree Law 600.

While Chapter 14 establishes a general mechanisms for the registration of foreign investment, it has no powers to screen or reject any foreign investment project. Instead, it is supposed to facilitate the free entry, use and exit of investment flaws. Decree Law 600, on the other hand, is an optional mechanism through which a foreign investor enters into an investment contract with the Chilean state. The decree provides special conditions for investars such as the right to transfer capital, to repatriate profits, guarantee of non-discrimination against foreigners, the right to participate in any farm of investment and to hold assets indefinitely and tax stability. These voluntary applications for such contracts can be rejected anly if they contradict public order, national security or general economic policy. The Foreign Investment Committee is charged with the responsibility of administering Decree Law 600. While the general climate tends to encourage foreign investment, there are some restrictions. Non-Chileans may not invest in Chilean fishing companies or in the media, unless their home country has a reciprocal arrangement with Chile. The European Union signed such an agreement in 2002 to caver commercial fishing companies. While there are no restriction on foreign investment in telecommunications, investors are required to acquire o licence and these are strictly limited. Chile entered into a Free Trade Agreement with the USA which came into farce on 1 January 2004.

This open investment climate has allowed one individual Douglas Tompkins to acquire vast tracts of land in Chile (estimates range between 400 000 and 500 000 hectares). Ostensibly purchased to create national parks to protect the country's temperate forests, Tompkins's vast awnership of Chilean land, effectively splitting the country in two, has stimulated intense debote aver whether a foreigner should have been allowed to acquire so much land. Chilean nationalists (from the left and right of the political spectrum) have publicly questioned his motives and have drafted a bill to curb this kind of foreign ownership on the bosis of the territorial integrity of the country.

Indonesia

All regulations in respect of ownership, occupation, use and utilisation of land apply to both Indonesian citizens and foreigners. Currently Indonesia belongs only to Indonesians and the right of land ownership is limited and regulated.

Generally, there is no differentiation between Indonesian citizens and foreigners who are resident in Indonesia except that foreigners cannot have freehold title. Foreigners domiciled in Indanesia can derive benefit from the land in the some way as citizens. However, access to lond can only be gained by foreigners who meet certain criteria as prescribed by law. Failure to do so disqualifies foreigners to hove any form of land right. The National Agrarian Law of 1960 allows foreigners the rights of use, which affords holders ownership of residential house or tenancy in Indonesia on the basis of Government regulation 41/1996. The regulation requires that foreigners should be domiciled in Indonesia and that their presence should benefit national development. Individuals owning this right can only own one house or one unit of mansions (condominium) not qualified as small. The rationale is only to allow them to take care of their investments in the country. Foreign legal entities founded according to Indonesian law and domiciled in Indonesio can acquire the right to cultivate land owned by the state. Indonesia restricts the size upon which this right can be exercised to five hectares in densely populated areas and seventy hectares in less densely populated areas.

Leasehold is onother type of land holding available to foreigners living in Indonesia. Leose agreements should be written and authenticated by o competent Indonesian authority. Long lease rights for large estates ond housing could be volid for not longer than 20 years and con be renewed for a further 25 to 30 years. A long lease con be renewed to a maximum cumulotive period of 65 years.

Restrictions in Indonesio do not deter foreign investment since holders of the right of use can engoge in legal octivities towards the land, the house or unit of apartment. Foreigners holding any form of right of use can sell, buy, mortgoge, posses, rent, donate ond use the right on land, house or apartment.

Acquisition of land rights by foreigners in Indonesia

Application to buy o right of use is lodged with the lond officials. In the case of privately owned land, the owner releases his/her ownership to the state. Once satisfied that the applicant meets the criteria for foreigners, the state authorises that the right can be registered. Registrotion of the right acquired then is finalized at the relevant registration office. In the case of a leose, a written lease agreement between the foreigner and owners should be drown by a competent authority. For such lease to be valid it should be registered in the regional land office. Land use change should be authorised by the land office. No direct transfer of right can take place between two private persons and change of ownership of rights on land should be reported within two weeks to the land office.

Singapore

About 90 percent of the land in Singapore is state-controlled and eight percent of housing stock is privately owned. For both citizens and foreigners land is held either in freehold or in leasehold. Land can be leased for up to 30 years renewable for industrial purposes, whilst state lond can be leased for 99 years. Ownership of land and property is regulated by the Residential Property Act (PRA) of 1973. The Act restricts foreign ownership of landed residential property such as detached houses, semidetached or terrace houses. Unrestricted residential properties and commercial or industrial property ore not restricted for foreign ownership. Therefore foreign persons can freely buy non-residential properties and non-restricted residential properties.

In order to buy restricted residential properties foreigners require prior opproval. Foreigners who wish to buy residential land for development must apply for a qualifying certificate under the PRA. A qualifying certificate imposes on the developer conditions such as completion and disposal of the developed properties within a specified period. The certificate further requires the developer to provide a bank guarantee as security for compliance with the conditions. Developers may apply for variation of the conditions and approval is granted on the merits of each case.

The Residential Property Act set criteria for qualification to purchase restricted residential properties. Foreign individuals who wish to buy such properties must be permanent residents. The criterion signifies the individual's intention to live and work in Singapore thereby making an adequate economic contribution to Singapore. This criterion can also be complied with in the form of professional or other qualifications or experience, which is of value to Singapore. Foreign companies must meet the economic contribution requirement. Singaporeans impose limitations on foreign ownership in terms of the size of land. The property purchased by foreigners may not exceed a land oreo of 1393 square metres. Foreigners can also goin access to land by means of a 30- or 99-years lease for industrial purposes.

Process of land acquisition by foreigners in Singapore

The following are steps followed when purchasing land or residential properties:

Information on the purchaser's identity, including citizenship, and the details of the property are disclosed by the conveyansor (solicitor) with the registrar of deeds (known as controller of residential property in Singapore) an lodgement. All conditions and limitations relating to foreign owners ore checked at this stage.

In the case of a foreigner purchasing restricted residential property, *approval by the Minister of Law is required*. The request for approval is first lodged with the SLA, which considers it in consultation with other relevant department such as Trade and Industry and Home Affairs. The SLA then submits the application with their recommendations to an interdepartmental committee comprising of the Ministries of Trade and Industry, Home Affairs and of Law. The committee is chaired by the permanent secretary form the Ministry of Law under which Land Affairs falls. The committee's decision making process is required to be transparent all times. Once considered by this committee an application for approval is open for objections for a specified period after which a recommendation for approval or otherwise will be made to the Minster of Law. Approval is granted at the Minister's discretion.

England and Scotland

At this stage ownership of land by foreigners in both countries of the United Kingdom is unrestricted and is, in fact, encouraged in order to attract direct foreign investment. Therefore lessons learnt from these countries were largely on their land registration systems. Scotland presents also a fascinating example of land reform in an economically-odvanced society.

Land Registration in England and Wales

Land registration in these countries takes place in terms of the Land Registration Act of 2002, which came into operation on 13 October 2003. It replaced all previous legislation on lond registration. It introduced a new system of conveyancing.

The Act envisages chonging the philosophy of registration. It creates o system whereby registration confers title rother thon merely capturing what has already being created. It is the outcome of a joint project between His Majesty's Land Registry and the Law Commission which started in 1995. The two bodies produced a report, which was in three parts.

The aim of the project was to introduce for the first time a conclusive register that would focilitate conveyoncing by reducing a number of enquiries that would have to be mode before registration could finally take place.

It also created o platform for the introduction of e-conveyancing in England and Wales. In the past the turn-around times for registration could take up to two months depending on the circumstances present in each transaction. It is envisoged that registration and titling will be done simultaneously once e-conveyancing is implemented.

Land Registration – Scotland

Scotland presents a anachronism in the modern age: on the one hand it is highly advanced in economic and political terms, while on the ather hand, until recently it still entertained a feudal system. Firstly, we shall look at their registrotion system of those who managed to become property owners.

Scotland is known for its successful deeds registration system until quite recently when the Scottish embroced titling. The Scottish and South African systems were similar until titling was introduced in Scotland. Registration of land in Scotland takes place in terms of the Land Registrotion (Scotland) 1979. The deeds registration system is still used in Scotland in respect of titles that remain unregistered.

Title registration consists of a tabular and not a genealogical record of ownership, where the title can be seen without further investigatian. It is not an index of traditional documents, but it creates a new form of record in the sense that anyone interested in a piece af land need not look behind the new record in order to check whether there are existing rights which attach to the title.

This system encapsulates three principles: the mirror, the curtain and the insurance principles. The mirror reflects the stote of the title, the curtain covers up other interests in land and the prospective buyer need not concern himself or herself with underlying interests in that land. Lastly, the insurance principle guorantees payment of damages in the event that an error occurred when registration of title took place.

The Scottish land tenure system had until recently a strong feudal character, which in some respects relate to the Swedish "torp" phenomenon. Scottish lond issues are intimately linked to the "Highland Clearances". When the Scattish clan system was destroyed after their defeat by the English in 1745, their clan chiefs were encouraged by the English to consider themselves as the owners of the land, and not the clans. Much of the land was converted into sheep pasture and therefore many clan members were dispossessed or had to provide their labour to the landlords without the possibility of owning the land. This feudal system continued until 1974 when legislation terminated the feu duties that the peasants had to pay to the land owners. Only after the Scottish Parliament was established in 1999 did it really address the issue. It adopted a set of legislation: the Abolition of Feudal Tenure (Scotland) Act 2000, which removed the feudal system of landholding; the Title Conditions (Scotland) Act 2003 for the use of land titles; and the Tenements (Scotland) Act 2004 to codify the laws relating to flatted property (condominium). The Land Reform (Scotland) Act 2003 created a framework for rural or croft communities to buy land in their areas.

Scotland provides therefore an example of a state generally considered to be economically advanced and part of the European Union, in which large-scale land reform is happening. They have to contend with the pressure and competition for prime land in the Scottish Highlands and ather areas, and balance it with the indigenous expectotions of persons dispossessed of land for generations.

ASSESSMENT

The Panel has discovered a wide range of policies and practices on an international scale with which states regulate their land. Regulation of land-ownership, as the examples indicate, is not a phenomenon of developing states only, but include also developed states (such as Canada, USA, Singapore, Australia and New Zealand). It is also not typical of states in the process of a political transition, but also a policy instrument for established democracies.

It is also not characteristic of a particular macro-economic orientation, but is used in all forms of economies. Evidence also made it clear that regulation of land-ownership does not undermine investor confidence. It is confirmed by the fact that states with high levels of FDI, such as Australia and Singapore, apply such policies.

Section 2 Part 4:

Revision, harmonization and rationalization of legislation about development planning and land use

The analysis of legislation applicable to development planning and land use (see Appendix 7) clearly demonstrates that there is a need for new comprehensive and overarching national legislation that can provide a standard framework for the regulation of development planning and land use at all the three spheres of government. The multiplicity of legislation at national and provincial levels, in addition to local government by-laws and ordinances, lead to very different, and sometimes contradictory and confusing, practices when it comes to development planning for residential, industrial, agricultural and recreational purposes. The situation lends itself to abuse and manipulation. It explains why land use can be changed without any centralised official notification or approval.

In the next sections the Report provides an overview of the most relevant legislation pertaining to development planning and land use. The Panel is not aware of any reference to foreign ownership in anyone of them. Their inclusion in the Report is motivated by the Panel's observation that regulation of foreign ownership of land or their land use will not be effective without also improving coordination of the legislative dimension in a common legislative framework.

Legislation by local authorities are not included here. They are too many to be listed. Municipalities do not have exclusive constitutional powers in this respect, and therefore can only legislated in terms of enabling national and provincial legislation, which are included here. Municipal autonomy is derived from the fact that municipal land is still categorized as "private land", otherwise it is subject to the legislative framework listed in this section.

Section 1: National legislation directly or indirectly applicable to land use and planning

Apart from Article 25 and Schedules 4 and 5 of the Constitution, the following statutes are important to development planning and land use:

- Physical Planning Act 88 of 1967
- Urban Transport Act 78 of 1977
- Physical Planning Act 125 of 1991
- Local Government Transition Act 209 of 1993
- Development Facilitation Act 67 of 1995
- Housing Act 107 of 1997
- Local Government: Municipal Demarcation Act 27 of 1998
- Local Government: Municipal Structures Act 117 of 1998
- Local Government: Municipal Systems Act 32 of 2000

Section 2: The tables below summarise the applicable provincial legislation

WESTERN CAPE

- Townships Ordinance 33 of 1934
- Land Use Planning Ordinance of 15 of 1985
- Proc R 1897 of 1986 *Regulations Relating to Township Establishment and Land Use*
- PN 733 of 1989 *Regulations Relating to the Estoblishment and Amendment of Town Planning Schemes for the Province of the Cape of Good Hope*
- GN 1886 of 1990 *Township Development Regulations for Towns*
- GN 1888 of 1990 *Land Use and Planning Regulations*
- Western Cape Planning and Development Act, 1999(Act no. 7 of 1999

EASTERN CAPE

- Townships Ordinance 33 of 1934
- Land Use Planning Ordinance of 15 of 1985
- Ciskei Land Use Regulations Act 15/1987
- Proc R 293 of 1962 *Regulations for the Administration and Control of Townships in Black Areas*
- Proc R 188 of 1969 *Black Areas Land Regulations*
- Proc R 1897 of 1986 *Regulations Relating to Township Establishment and Land Use*
- PN 733 of 1989 *Regulations Relating to the Establishment and Amendment of Town Planning Schemes for the Province of the Cape of Good Hope*
- GN 1886 of 1990 *Township Development Regulations for Towns*
- GN 1888 of 1990 *Land Use and Planning Regulations*

NORTHERN CAPE

- Townships Ordinance 33 of 1934
- Land Use Planning Ordinance of 15 of 1985
- Proc R 1897 of 1986 *Regulations Relating to Township Establishment and Land Use*
- N 733 of 1989 *Regulations Relating to the Establishment and Amendment of Town Planning Schemes for the Province of the Cape of Good Hope*
- GN 1886 of 1990 *Township Development Regulations for Towns*
- GN 1888 of 1990 *Land Use and Planning Regulations*
- Northern Cape Planning and Development Act | 1998

NORTH WEST PROVINCE

- Townships Ordinance 33 of 1934
- Land Use Planning Ordinance of 15 of 1985
- Town-planning and Townships Ordinance 15 of 1986 (T)
- Division of Land Ordinance 20/1985 (T)
- Bophuthatswana Township Regulation Amendment Act 21 of 1981
- Baphuthatswana Township Regulation Amendment Act 21 of 1981
- Proc R 293 of 1962 *Regulations for the Administration and Control of Townships in Black Areas*
- Proc R 188 of 1969 *Black Areas Land Regulations*
- Proc R 1897 of 1986 *Regulations Relating to Township Establishment and Land Use*
- PN 733 of 1989 *Regulations Relating to the Establishment and Amendment of Town Planning Schemes for the Province of the Cape of Good Hope*
- GN 1886 of 1990 *Township Development Regulations for Towns*
- GN 1888 of 1990 *Land Use and Planning Regulations*

MPUMALANGA PROVINCE

- Town-planning and Townships Ordinance 15 of 1986 (T)
- Division of Land Ordinance 20/1985 (T)
- Venda Land Affairs Proc 45 of 1990
- KwaNdebele Town Planning Act 10 of 1992
- Proc R 293 of 1962 *Regulations for the Administration and Control of Townships in Black Areas*
- Proc R 188 of 1969 *Black Areas Land Regulations*
- Proc R 1897 of 1986 *Regulations Relating to Township Establishment and Land Use*
- PN 733 of 1989 *Regulations Relating to the Establishment and Amendment of Town Planning Schemes for the Province of the Cape of Good Hope*
- GN 1886 of 1990 *Township Development Regulations for Towns*
- GN 1888 of 1990 *Land Use and Planning Regulations*

MPUMULANGA

- Town-planning and Townships Ordinance 15 of 1986 (T)
- Division of Land Ordinance 20/1985 (T)
- Bophuthatswana Township Regulation Amendment Act 21 of 1981
- Bophuthatswana Township Regulation Amendment Act 21 of 1981

- KwaNdebele Town Planning Act 11 of 1991
- KwaNdebele Town Planning Act 10 of 1992
- Proc R 293 of 1962 *Regulations for the Administration and Control of Townships in Black Areas*
- Proc R 188 of 1969 *Black Areas Land Regulations*
- Proc R 1897 of 1986 *Regulations Relating to Township Establishment and Land Use*
- GN 1886 of 1990 *Township Development Regulations for Towns*
- GN 1888 of 1990 *Land Use and Planning Regulations*

GAUTENG

- Town-planning and Townships Ordinance 15 of 1986 (T)
- Division of Land Ordinance 20/1985 (T)
- Proc R 1897 of 1986 *Regulations Relating to Township Establishment and Land Use*
- GN 1888 of 1990 *Land Use and Planning Regulations*

FREE STATE

- Townships Ordinance 9 of 1969 (O)
- Bophuthatswana Township Regulation Amendment Act 21 of 1981
- Bophuthatswana Township Regulation Amendment Act 21 of 1981

KWAZULU-NATAL

- Town Planning Ordinance 27 of 1949 (N)
- KwaZulu Land Affairs Act 11 of 1992
- Proc R 188 of 1969 *Black Areas Land Regulations*
- Proc R 1897 of 1986 *Regulations Relating to Township Establishment and Land Use*
- GN 1886 of 1990 *Township Development Regulations for Towns*
- GN 1888 of 1990 *Land Use and Planning Regulations*
- Kwazulu-Natal Planning and Development Act, 1998

ASSESSMENT AND CONCLUSION

The lack of minimum basic national standards has contributed to the disparate practices by the provinces and local authorities (municipalities). The latter, according to the Green Paper on Development and Planning, constitute the cutting edge of the spatial development planning system, especially in the form of the Integrated Development Plans (IDP)

The Panel identified the need for urgent rationalization and harmonization of the legislative framework for development planning. In this respect the idea of a new national framework law and requiring of provinces and local authorities to revise, rationalize and harmonise their legislation in order to bring them in tandem with the national legislative framework, is mooted. The constitutional basis for such an approach is Schedule 4 (parts A and B – functional areas of concurrent national and provincial legislative competence) and Schedule 5 (parts A and B – functional areas of exclusive provincial legislative competence).

The Panel is of the opinion that during the process of rationalization and harmonization the President might be able to invoke the presidential proclamation powers under Section 97 of the Constitution to assign (as a transitional measure while new legislation is prepared) the administration of the multitude of legislation that currently reside with different ministries, to the Minister of Agriculture and Land Affairs. The Minister would be required to work through the Inter-Ministerial/-Departmental Oversight Committee, which is recommended by the Panel.

Section 2 Part 5:

Recommendations

5. 1 Foreigners, non-citizens and foreign interest

The Panel noted the widespread local concern about the purchase and ownership of South African assets by foreigners and therefore considered it imperative to define very clearly who will be viewed as a foreigner and, in respect of juristic persons, how foreign interests should be defined. The Panel was guided by two legal frameworks in this regard: firstly, the manner in which a South African citizen is defined in the Constitution and secondly, in relation more specifically to the various categories of residents and non-residents in South Africa as defined by immigration legislation. In defining who is a foreigner or what is foreign interest the Panel furthermore differentiated between natural persons, corporations and trusts.

Recommendations

- In the case of corporations (businesses that are incorporated in terms of the Closed Corporations statute and other statutes) the Panel recommends that consideration be given to lowering the 50%+1 shareholding by a non-resident as constituting a foreign-owned entity or a foreign interest and should be treated as such in the regulatory framework developed[16].
- In the case of trusts, information on the citizenship and residence of both the trustees and the beneficiaries of such trusts needs to be obtained. The same goes for partnerships and joint ownership by individuals, some who may be non-citizens and/or non residents.
- Given some of the long-term objectives of SADC, the panel recommends that citizens from SADC countries or SADC corporations should either be exempted from the regulations or be given preferential treatment.
- Permanent residents should also enjoy preferential treatment.

5. 2 Compulsory Disclosure/Declaration Requirements

Under the current policy and practice, including the system of registration of deeds, it is impossible to ascertain the precise extent of foreign and/or non-resident ownership and use of land in South Africa, because the disclosure of nationality is not a prerequisite for the transfer of property. Anybody can buy land in South Africa without declaring their nationality. Consequently, the Deeds Registries Office has neither any record nor a register of the nationality of the land-owners in the country. The Panel is of the opinion that this is a very serious omission which requires immediate attention since it is clearly in the public interest to know the nationality of those who own land. The endeavour by the Panel to provide a provisional analysis of the available information and a spatial mapping of land ownership by citizens and non-citizens in this report is necessarily compromised by the nature of the information available in the Deeds Registries Office. The Panel is therefore strongly convinced that a system of compulsory disclosure/declaration of nationality should be introduced immediately.

[16] This has to be aligned with the Companies Bill that is under consideration

Purpose of disclosure

Such disclosure shall serve the following purposes:

- It will enable Government to establish at any given moment the extent of ownership of South Africa's land and landed property by South African citizens and non-citizens, women and men, different racial groups, state and private persons, and natural and juristic persons;
- It will enable Government to have basic, reliable and accurate data and information for informed development and other planning;
- It will enable Government to have basic, reliable and accurate data and information for monitoring progress in the implementation of land policies and the impact of these on critical sectors of society, especially women and all those who were excluded and disenfranchised by colonial and apartheid policies, laws and practices;
- It will contribute to transparent governance; and
- It will contribute to improving the system of land and property registration in the country.

Recommendations:
A two-pronged approach is recommended for existing and future disclosure by registered owners: (a) amending Regulation 18 of the Deeds Registries Act, No. 47 of 1937 and (b) amending the Act itself.

(a) Amendment to Regulation 18 can be effected immediately by the Deeds Registration Regulation Board which, subject to the approval by the Minister, is empowered under section 10(j) of the Act to make regulations prescribing "the manner and form of identity of persons". It is consequent to such authority that Regulation 18(2) in its present form provides for "The name of a person, the relevant identity number, date of birth or registered number as the case may be .... shall be recorded in the relevant records of the Deeds Registry". The Panel recommends that Regulation 18 be amended to have a comprehensive disclosure including:

- Citizenship (including dual citizenship)
- Nationality
- Permanent resident's status
- Gender
- Race
- South African national identification number
- Foreign passport number

In the case of juristic persons (businesses, corporations, etc) also –

- Company registration number
- Income tax registration number
- VAT registration number
- Nature of shareholders (name and place of ordinary residence of all substantial shareholders and their race, gender and citizenship and nationality)

In the case of trusts, also -

- Trust registration number
- Citizenship and nationalities of trustees
- Citizenship of beneficiaries
- The nature of beneficiaries (their race, gender and place of ordinary residence).

The object of Regulation 18 is for disclosure and statistical purposes and not for causing any unfair discrimination. A number of pieces of legislation providing for various types of distinctions and differentiations have been passed under the democratic constitutional regime. Examples include the Employment Equity Act, Promotion of Equality and Prevention of Unfair Discrimination Act, Preferential Procurement Policy Framework Act and the broad based Black Economic Empowerment Act.

(b) Amendments to the Deeds Registries Act will require an enactment by Parliament, because they will expect of the existing owners to make a Declaration/Disclosure similar to those required of all future owners under the amended Regulation 18 (see above). The thrust for the provisions of the envisaged amendment must, amongst other things, be:

a. Compulsory identification of land owners
b. A verification system of land owners
c. Accurate and reliable record keeping of land owners in S.A.
d. Admissibility of records for legal purposes.
e. Source of finance of land acquisition

f. Monitoring mechanism.
g. Prohibition of transfers that do not conform to the regulatory regime
h. Procedure for forfeiture of land to the state where there is non-compliance
i. Protection of confidential information
j. Records of current land use.

It is further recommended that the proposed disclosure by companies also be considered for the new Companies Bill, which is under consideration.

The Panel is of the view that the Financial Intelligence Centre Act (FICA) provides a comparable and effective mechanism for disclosures and declarations. It can serve as a model for implementing the proposed recommendations on disclosure.

Affected owners

The Panel recommends that the disclosure requirements should apply to all natural and juristic persons who currently own or have a registerable interest in land and landed property, as well as to the registration of all future acquisitions or disposals of land or landed property. In order to measure progress on the transformation of the South African land holding patterns, disclosure on the basis of race should apply only to South African citizens and permanent residents.

The Panel recommends that individual owners of property are individually responsible for complying with the regulations. The legal right of ceding power of attorney is applicable. Corporate or juristic persons must assign a person who is legally responsible to act on behalf of the juristic person in all respects of this regulation.

Phases and timeframes for disclosure, and penalties for failure to disclose

It is recommended that after the recommended legislative amendments have been made, disclosure should be implemented in the following two phases:

First phase

The Panel recommends that with immediate effect any new transfer of fixed property or any first-time registration of newly-developed fixed property should include all the recommended requirements for disclosure. In pursuance of this end, the Deeds Office must ensure that the relevant forms and documents are revised accordingly.

Second phase

The Panel recommends that the disclosure and declaration by existing owners or interest-holders should be in the second phase, starting in January 2008. Two options are proposed to implement this phase:

(a) a one-off process, like the initial disclosure procedure of FICA, based on a period of declaration of 18 or 24 months; or
(b) a staged process (such as the one for the driver's licences) by dividing the process in alphabetical blocs according to the surname or name of the juristic person. Such a process will take longer but can be managed better. For example: A-B: during March – May; C-D: during June – August, etc.

In respect of both options, two administrative considerations shall be borne in mind:
(1) decentralisation of the disclosure/declaration process to appointed agencies of the Deeds Registries Office, such as the local government offices, Post Office branches, Magistrate's Courts, police stations, etc., and
(2) disclosure done electronically (e-government) similar to the UIF registration of domestic workers and the IEC's use of it for its voters' roll.

Proposed penalties for failure to disclose

Four possible penalties are suggested:

(i) no transfer of property ownership may take place in the absence of the required information being disclosed, and the use of old registration documents without the required updated information will be immediately curtailed.
(ii) adaptation of some of the FICA penalties[17]
(iii) a compulsory fine for the defaulter of up to 20% of the value of the property in question.
(iv) an appropriate penalty for the official not complying with the requirements.

[17] To be developed further

Disclosure of changes in the owner's details

The Panel recommends that within three months after a change in any of the declared details, the individual or entity responsible for such a declaration or declarations must file amendments to the prescribed documentation in the Office of the Registrar of Deeds. Foilure to comply shall render the owner liable to a penalty as prescribed.

5. 3 Ministerial Approval

The Panel recommends that special Ministerial Approval (with or without conditions) be introduced far certain changes in land use in general and for disposol of certain categories of land to foreigners – especially where such change in use or disposal to fareigners have the potential to negatively impact on the state's constitutianal obligations of land refarm (land which is subject to restitution claims or which is earmarked for redistribution or integrated human settlement). Special Ministerial Approval shauld also apply to acquisition of land or changes to land use by South African citizens which may have the same negative impact. The decision whether land falls within such a category or categories should be determined by, amongst others, the mechanisms of the Inter-Ministerial/ -Departmental Oversight Committee (see below in 5.4).

It is recommended that the Minister of Agriculture and Lond Affairs should have the power of discretion and approval in the following instances:

i. Urban land

There shauld be guidelines on the size, value and the number af properties a foreigner can own. The guidelines shauld take into consideration the value of foreign direct investment represented by the prospective foreign purchaser. Ministerial approval should be necessary if a purchase goes beyond these guidelines.

ii. Agricultural and rural land

The acquisition of agricultural (rural) lond in excess of a certain value and /or a certain size by foreign individuals/ interest (as defined in 1 above) and/or non-residents should require ministerial approval. The Panel recommends that guidelines regarding size, value and intended land use should be developed.

iii. Land Earmarked for Restitution or Redistribution

Purchase af land (by foreigners or South African citizens) over which there is an established claim for the purposes of either restitution or redistribution, should require ministerial approval.

iv. Development of Golf Estates, Polo Estates and Game Farms

Bearing in mind the social, spotial and environmental consequences of these properties, the Panel recommends that the development of golf estates, polo fields and game farms shauld require the approval of the Minister in consultation with the relevant provincial and/ar local authorities.

5.4 Inter-Ministerial/-Departmental Oversight Committee

The Panel noted that there are many interested parties involved in the question of ownership and use of land by foreigners. It alsa considered that foreign direct investment is a crucial component of the development agenda af South Africa:

The Panel recommends effective, high-level inter-governmental coordination and co-operatian for implementation and oversight through the establishment of a permanent committee comprising the following Ministries/Departments: Agriculture, Land Affairs, Provincial and Local Government, Housing ond Environmental Affairs and Tourism. The Committee should be convened by the Minister af Agriculture and Land Affairs. Its responsibility should be to manitar trends in foreign ownership of land and changes in land use, ond to recommend to Government appropriate corrective interventions. The suggestian that the existing Cabinet Clusters should be used for this purpose is not supported, because the dedicated purpose of this Committee will then be lost.

5.5 Leaseholds

In line with the practice in some af the countries studied, the Government moy consider medium- and lang-term leases of public land as a viable alternative for foreigners in future to acquire land and interests in land. Leasehold rights have time-limits and may be an acceptable alternative for full ownership rights, though in practice they still exclude South Africans citizens from acquiring ownership and land use. At the same time leasehold rights pravide the type of security of tenure that would be acceptable for many genuine foreign investors.

5.6 Outright prohibition on foreign ownership in classified/protected areas

Policy is recommended regarding prohibition of private ownership of land by foreigners (and in some cases South African citizens) in certain areas (to be classified) within the territorial jurisdiction of the Republic on grounds of national interest, environmentol considerations and national security[18]. Examples of such land include the National Key Points[19], coastal areas[20], conservatian areas, areas of historical and culturol significance, land close to military installations, water catchment areas and land along borders/international boundaries.

5.7 Disposal of State Land

The State Land Disposal Committee and provincial committees have no jurisdiction over municipal lands which (in the view of the Panel) continue to be incorrectly and unconstitutionally categorized as "private land". This is a convention or practice inherited from the post. The three spheres of government are institutions and organs of ane sovereign democratic state ond Schedules 4 and 5 af the Constitution do not categorise state land ownership and disposal as an exclusive competence of municipalities (sections 1 read with Chapter 3 and Schedules 4 and 5 of the Constitution). It is therefore recommended that all the three spheres of government should be covered by all the recommendations in this Report. It is also recommended that all the provinces should become part of the system of land disposal committees. Government and all the organs of state ought to lead by example in implementing the regulatory regime on foreign landownership and should refrain from disposing ar changing land ownership which may undermine land reform and compromise the sovereignty of the state.

5.8 Limited temporary moratorium on the disposal of state land to foreigners

A limited temporary moratorium of (more or less) two years prohibiting the disposol of state land, including lond held by any organ of state, state-owned enterprises and any of the three spheres of government, to foreigners[21] - ond, in limited cases, to South African nationols who do not qualify for redress under the nationol land reform policies. This is not a blanket prohibition. It is meant to prevent certain spheres of government and organs of state from disposing land that may be used for land reform and human settlements for the dispossessed and marginalized individuals and communities. Naturally, special exemptions could be considered. The limited temporary moratorium could be lifted, once the Ministerial Approval process and the Inter-Ministerial/-Departmental Oversight Committee recommended above, have been established and are operational.

Since the recommendation is limited to broadly-defined state/public land (including municipal land), it should be expected that the entities that own the offected land would comply with national policy even in the obsence of a statutory prohibition.

5.9 Zoning, land use and planning legislation

The Panel recommends that there should be rationalisation and harmonisation of laws affecting land use planning ond zoning of land thraugh the enactment of overarching national legislation to provide some certainty, minimum standards and order. Approval for new developments or rezoning of land for other usages is currently not coordinated between the different spheres of government. A developer, for example, can approach one government (such os a province) for approval af a new development without the knowledge of another sphere of government (such as the local municipality where the development will happen). Alternatively, the local government can approve it without the province's knowledge. Therefore the current Land Use Management Bill should be revisited and activated. The obsence of overarching national standards leods to disparate and confusing practices in land use, especially at locol government level. Foreigners and powerful "developers" seem to exploit the situation, thus leading to public resentment and perceptions of corruption. A review of current practices in the zoning and rezoning procedures, especially with regard to the development of golf estates, lifestyle farming, polo estates and gome farming[22] ought to be brought under the purview of ministerial and intergovernmental oversight.

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[18] Reporting obligations on existing ownership by foreigners on the designated areas within a prescribed period should be imposed via the Full Disclosure Regulations. Thereafter, Government may exercise the constitutional power of expropriation, subject to the "just and equitable" compensation, of such land and either hold the same as state land or allocate the land to authorized nationals.

[19] National Key Points Act, No 102 of 1980

[20] The Coastal Management Bill covers aspects of this.

[21] The Constitutional Court may be approached for an order under section 167(5) of the Constitution asking for a declaration that any legislation or other law, including municipal by-laws and ordinances, is unconstitutional should it categorises land owned by any organ of state or sphere of government as "private land".

[22] The country is already sitting with a case of murder of a farm manager connected to the conversion of land use to game farming (see, W Hlongwa, "Make Way for Wild Animals" ***City Press***, 28 January 2007 at p. 21).

5.10 Fronting

Fronting has been identified as an issue that can undermine the Government's policy on land reform and regulotion of foreign land ownership. It is also a practice which can distort the statistics gained from the compulsory disclosures/ declarations recommended in 5.2. It is therefore recommended thot measures should be included in any new policy which will regulate foreign landownership. Measures already in place in other legislation regulating companies and broad-based Black Economic Empowerment, as well as taxation, should be considered for inclusion in this policy.

5.11 Enabling omnibus legislative amendments to give effect to some of the recommendations

The Panel recommends a comprehensive General Laws or Lond Matters Amendment Bill, similar to the Judicial Matters Amendment Bill, for enacting the recommendations which may require legislative amendments. It will avoid the need for entirely new legislation or subsidiary legislation (regulations), such as the recommended amendment to Regulation 18. The advantage of such an opproach is that the consequences of amendments to a specific Act(s) to other legislation are easily accommodated in a single Bill.

KENNISGEWING 1081 VAN 2007

DEPARTEMENT VAN GRONDSAKE

VERSLAG EN AANBEVELINGS DEUR DIE PANEEL VAN KUNDIGES OOR DIE ONTWIKKELING VAN BELEID AANGAANDE GRONDBESIT DEUR VREEMDELINGE IN SUID-AFRIKA

Die bovermelde Verslag word hierby gepubliseer vir algemene kommentaar deur belangstellende persone.

Kommentaar moet skriftelik ingedien word binne 60 dae van die datum van publikasie van hierdie Kennisgewing in die Staatskoerant en gestuur word aan :

Dr S M D Sibanda
Hoofdirekteur : Beleidsontwikkeling
Departement van Grondsake
Privaatsak X833
PRETORIA
0001

Kontakbesonderhede :

Telefoon (Kantoor) : (012) 312 9705
Sellulêr : 082 440 3078
Faks : (012) 312 9441
E-pos : smdsibanda@dla.gov.za

Nota : Die Afrikaanse weergawe is 'n vertaling van die oorspronklike Engelse Verslag.

DR S M D SIBANDA
vir DIREKTEUR-GENERAAL
TH3898(2)

VERSLAG EN AANBEVELINGS DEUR DIE PANEEL VAN KUNDIGES OP DIE ONTWIKKELLING VAN BELEID OOR GRONDBESIT DEUR VREEMDELINGE IN SUID-AFRIKA

VOORGELÊ AAN DIE MINISTER VAN LANDBOU EN GRONDSAKE, EDELE LULU XINGWANA

Paneellede :

Prof. Shadrack Gutto (Voorsitter), Dr. Joe Mathews (Adjunk-voorsitter), Prof. Fred Hendricks, Mnr. Bonile Jack, Prof. Dirk Kotzè, Mnr. Mandla Mabuza, Mev. Nothemba Rossette Mlozi, Mev. Mandisa Monokali, Mnr. Cecil Morden, Mev. Christine Qunta

Departementele tegniese ondersteuningspan:

Mnr. Jeff Sebape, Mev. Tumi Seboka, Mnr. Sunday Ogunronbi, Mnr. Sam Lefafa, Dr. Sipho M D Sibanda, Dr. Kwandi K M Kondlo, Mnr. Ndiphiwe Ngewu

Pretoria, Stad Tshwane, Augustus 2007

INHOUDSOPGAWE

9 - "Submission : Foreign Ownership of Land" deur Die Instituut van Eiendomsagente van Suid-Afrika
10 - TGIS Ontleding, Uitleg en Kartering van die inligting van die Landmeter-generaal in die Akteskantoor
11 - Prysneigings van plaasgrond in Suid-Afrika, 1994 – 2003 deur die WNNR, November 2004
12 - Verslae oor studiebesoeke aan uitgesoekte lande (Kanada, Chilli, Brazillië, Indonesië, Singapoer, Engeland en Skotland)
13 - Akteskantore "Township Registers" of eiendomme waarvan die eienaars nie op rekord is nie

ERKENNINGS

Die Paneel van deskundiges op die Ontwikkeling van Beleid oor Grondbesit deur Vreemdelinge in Suid-Afrika wil graag almal erken en bedank wat deelgeneem het aan, en gehelp het met, die ondersoek. In die besonder verdien die volgende spesiale vermelding :

In Suid-Afrika :

- Die persone wat geskrewe en mondelinge voorleggings aan die Paneel gemaak het
- Departement van Grondsake
- Departement van Provinsiale en Plaaslike Regering
- Instituut van Eiendomsagente, Suid-Afrika
- Parlementêre Komitee oor Landbou en Grondsake
- "Total Geo-spatial Information Solutions"
- Nasionale Grondberaad (2005)

Buite Suid-Afrika :

Singapoer : "Singapore Land Agency"

Indonisië : "National Land Agency"

Kanada : "Highlands Regulatory Appeals Commission
Ministry of Natural Resources and Environment
Foreign Ownership of Land Administration"

Chilli :	"Ministry of National Properties Ministry of Agriculture National Agricultural Society Chilean and South African Chamber of Commerce"
Skotland :	"Department of Environmental and Rural Affairs Crofting Law Group Scottish Land Court"
Engeland :	"Department of Constitutional Affairs Royal Institute of Chartered Surveyors Chartered Institute of Taxation"
Brazilië :	"Ministry of Agrarian Development"
VSA :	Ambassade in Pretoria

INLEIDING EN OPDRAG

Sedert die instelling van demokrasie in Suid-Afrika neem die Grondwet (artikel 25) in aanmerking dat die reg om eiendom te besit en die soeke na grondhervorming in 'n delikaat gebalanseerde verhouding teenoor mekaar staan. Grondbesit deur nie-Suid-Afrikaanse burgers (vreemdelinge) is 'n bykomende factor, en sy invloed op besitsmodelle en grondhervorming is nie duidelik aan beleidmakers bekend nie. In die eerste tien jaar sedert 1994 is die indruk geskep dat vreemdelinge al hoe meer grond in Suid-Afrika verkry. Die omvang daarvan bly onbekend en gevolglik bly ingeligte beleidmaking ontwykend.

As gevolg van hierdie onsekerheid is die Paneel van Deskundiges op die Ontwikkeling van Beleid oor Grondbesit deur Vreemdelinge in Suid-Afrika (hierna die Paneel genoem) deur die voormalige Minister van Landbou en Grondsake, Edele Mev Thoko Didiza, op 24 Augustus 2004 aangestel. Die Paneel was aangestel etlike maande voordat die Nasionale Grondberaad in Julie 2005 gehou is. Laasgenoemde het die Regering aangespoor om 'n moratorium te plaas op die verkryging deur vreemdelinge van grond in Suid-Afrika. Op 14 Augustus 2006 het die Minister van Landbou en Grondsake, Edele Mev. Lulu Xingwana, die mandaat van die Paneel verleng tot 15 Januarie 2007, en twee nuwe lede op die Paneel aangestel ter vervanging van twee van die oorspronklike lede wat versoek het om uit te tree.

Op 17 Februarie 2006 het die Paneel 'n tussentydse verslag aan Minister Didiza oorhandig. Die verslag is ook aan die publiek vrygestel vir oorweging en verdere insette. Dit het aansienlike dekking in die media gekry. Die Paneel het heelwat reaksie ontvang, veral vanaf die diplomatieke gemeenskap in Suid-Afrika.

'n Opgedateerde verslag is op 5 Desember 2006 aan Minister Xingwana voorgelê ten einde haar op die hoogte te bring van ontwikkelings in die Paneel se werk.

In die lig van die onsekerheid oor grondbesit deur vreemdelinge, en dus die tersaaklikheid daarvan vir beleidsbepaling, het die Minister besluit dat die Paneel se Opdrag is om ondersoek in te stel na, oorweging te skenk aan en aanbevelings te doen oor :

- Die aard, omvang, neigings en invloed van die verkryging en gebruik van, en belegging in, grond in Suid-Afrika deur nie-Suid-Afrikaanse burgers;
- Die mate waarin die huidige gebrek aan 'n omvattende beleids- en wetgewende raamwerk bydra tot die verkryging en gebruik van, en belegging in, grond deur nie-Suid-Afrikaanse burgers;
- Of die Regering deur middel van beleid, wetgewing en ander wyses behoort in te meng (en hoe), ten einde enige moontlike negatiewe gevolge van die verkryging of gebruik van grond deur nie-Suid-Afrikaanse burgers te monitor en te voorkom;

- Die invloed op die eiendomsmarkte van verkryging en gebruik van grond deur nie-Suid-Afrikaanse burgers, met onderskeiding tussen grondgebruik vir residensiële, kommersiële, landbou, eko-toerisme/toerisme/wildplaas en golfbaan doeleindes; en
- Vergelykende internasionale/vreemde praktyke (wette, beleidsrigtings, invloed, ens.) oor die kwessie van grondbesit deur nie-burgers.

Op grond van voormelde Opdrag het die Paneel sy taak soos volg verstaan :

Die Paneel moet antwoorde verskaf op die vrae "Wie besit Suid-Afrika?" en "Hoeveel besit hulle?" veral met betrekking tot nie-burgers. Die eerste taak is dus om die omvang en aard van grondbesit deur vreemdelinge te paal, Die Akteskantore teken nie sulke inligting aan nie. Die taak van die Paneel was dus om beskikbare maar onvolledige inligting te ontleed ten einde 'n gedeeltelike aanduiding te verskaf van die omvang en aard van grondbesit deur vreemdelinge. Terselfdertyd moet die Paneel verbeterings aan die openbaarmaking van inligting aanbeveel om die statistieke oor hierdie soort grondbesit te verbeter.

Ten einde 'n toepaslike beleidsraamwerk te ontwerp, het die Paneel die Opdrag beskou as 'n instruksie om internasionale beleidsrigtings en praktyke in hierdie verband te ondersoek, en om die mees toepaslike elemente daaruit te distilleer en te oorweeg vir Suid-Afrika.

Terselfdertyd het die Paneel sy taak verstaan as 'n ondersoek na die invloed wat die bestaande beleid van nie-regulering van die eiendomsmark ten opsigte van vreemdelinge so ver gehad het op besitmodelle en grondgebruik in Suid-Afrika. Die Paneel moet die opvatting en persepsies van die gemeenskap in ag neem en opweeg teenoor die argumente van die betrokke belangegroepe. Die vrae wat dan beantwoord moet word, is of beleidsingryping en –regulering toepaslik sal wees, wat behoort die aard van die ingryping te wees en wat sal die moontlike uitwerking en newe-effekte daarvan wees?

As al hierdie oorwegings in ag geneem word, verstaan die Paneel sy Opdrag as 'n instruksie om al sy ontledings en gevolgtrekkings te integreer in aanbevelings wat vir beleid tersaaklik is.

STRUKTUUR VAN DIE VERSLAG

Hierdie Verslag is die Produk van twee verslae wat reeds in 2005 en 2006 aan die Minister voorgelê was, sowel as van ondersoeke wat sedert daardie verslae gedoen is. Dit sluit ook die Paneel se reaksie op openbare en media kommentaar op die tussentydse verslag in. Die Verslag is in drie afdelings verdeel :

- **Afdeling 1** bestaan uit die Uitvoerende (Gesag-) Opsomming - wat 'n kort sintese is van die Paneel se metodologie en sy vernaamste bevindings, gevolgtrekkings en aanbevelings.
- **Afdeling 2** bestaan uit 'n ontleding van die openbare verhore en voorleggings aan die Paneel; 'n kwantifisering en ruimtelike/kartering van modelle van grondbesit in Suid-Afrika; 'n kort vergelykende bespreking van die regulering van besit en gebruik van grond en vaste eiendom deur nie-burgers in 'n aantal ander lande; 'n bespreking waarin die Suid-Afrikaanse wetgewing wat ontwikkelingsbeplanning en grondgebruik reël, ondersoek word met die oog daarop dat hulle moontlik hersien, geharmoniseer of gerasionaliseer moet word; en laastens die Paneel se aanbevelings.
- **Afdeling 3** is 'n afsonderlike samestelling wat bestaan uit aanhangsels 1 – 13, wat sommige aspekte in Afdeling 2 geopper, opklaar. Aanhangsels 1 – 12 was reeds ingesluit by die eerste tussentydse verslag, terwyl aanhangsel 13 'n byvoeging is wat statistieke bevat van "eiendomme sonder eienaars". (Die verduideliking van die Kantoor van die Hoofregistrateur van Aktes is dat hierdie hoofsaaklik eiendomme in "township registers"[1] is. Hulle inligting is dus onvolledig.)

1. Memorandum vanaf Aktekantore aan Sipho Sibanda gedateer 5 Februarie 2007

AFDELING EEN
UITVOERENDE OPSOMMING

1. Beleidsbepaling en die betekenis van "grond" en die grootte, waarde en belang van grond wat deur burgers van vreemde lande besit word

1 Inleiding

1.1 Om redes in hierdie verslag vervat, is grond 'n begrensde en onmisbare bate wat mense se identiteit omskryf en menswaardigheid verskaf. Dit is 'n integrerende deel van nasionale soewereiniteit en 'n basis vir nasionale samehorigheid. In die mate wat die Uitvoerende Gesag deur die Grondwet verplig word om nasionale beleid[2] te ontwikkel en te implementeer , het die Paneel tot die gevolgtrekking gekom dat die Kabinet 'n wye reeks faktore wat in die Verslag geopper word, behoort te oorweeg, en nie uitsluitlik op die grootte of persentasie van grond wat deur vreemdelinge besit word, kan konsentreer nie. Met ander woorde, by beantwoording van dreigemente behoort die voorsorgbeginsel voorkeur te geniet.[3]

Die panel is van oordeel dat die bepaling van die juiste grootte van grond wat deur vreemdelinge besit word en die doel waarvoor die grond gebruik word, inderdaad belangrik is en tersaaklik sal wees vir nasionale soewereiniteit, regering, veiligheid en ekonomiese beleidsoorwegings. Hulle moet dus dringend opgevolg word. Hierdie Verslag verskaf aanduidende statistieke en inligting oor grondbesit deur vreemde *persone*. Vir sover dit besit deur vreemde *korporasies en trusts* betref, is statistieke onvolledig en uiters moeilik om te versamel. Die Paneel het 'n proses begin om bestaande aantekeninge te ontleed wat deur die Akteskantore, Kantore van die Meesters van die Hoër Howe, die Registrasiekantoor van Maatskappye en Immateriële Goedere (CIPRO)[4] en handelsbanke bygehou word. Dit is een van die take waarmee die Departement van Grondsake sal moet voortgaan nadat die Paneel sy werksaamhede afgehandel het.

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[2] Artikel 85(2)(b) van die Grondwet

[3] G N Mandel en J J Gathi, "Cost-Benefit Analysis versus the Precautionary Principle : Beyond Cass Sunstein's *Laws of Fear" **University of Illinois Law Review***, Vol. 2006, Number 5 (2006) 1037-1079

[4] Die Paneel is bewus daarvan dat CIPRO in die media gekritiseer is oor die agterstand van sy aantekeninge (sien die Hoofartikel "Sorting out Cipro", ***Business Day,*** 10 November 2006)

Ten einde te help met die ontwikkeling van Suid-Afrikaanse beleid oor grondbesit deur nie-Suid-Afrikaanse burgers, is dit belangrik om internasionale vergelykings te tref. Dit is deurslaggewend om te bepaal of daar enige toepaslike lesse te leer is uit pogings in ander lande om grondbesit deur vreemdelinge te reguleer. Vir hierdie doel het die Paneel vergelykende buitelandse tendense taamlik breedvoerig ondersoek. Die Paneel het die beleidsrigtings en wette van verskeie lande ontleed en toe 'n paar gekies en besoek. Die keuse was gegrond op hul vlakke van ekonomiese ontwikkeling en die wyse waarop hulle regulering van grondbesit deur vreemdelinge bestuur het, terwyl hulle voortgegaan het om buitelandse belegging te lok. Die lande wat besoek was, is Kanada, Chilli, Brazilië, Indonesië, Singapoer, Engeland en Skotland.

1.2 By die uitvoering van sy mandaat, het die Paneel die benadering gevolg wat begin by 'n kritiese en holistiese begrip van die betekenis van grond en die grondkwessie in Suid-Afrika. In kort het dit beteken 'n bewaring van die enge betekenis van grond as slegs 'n ekonomiese hulpbron en 'n artikel in die mark, na die wye begrip van grond as 'n nasionale erfenis vir al die mense van Suid-Afrika. Dit is nagelaat deur die natuur en vorige geslagte (voorouers) aan diegene wat vandag leef, om te besit en te versorg tot voordeel van die huidige en toekomstige geslagte. In die breër Afrika-verband is grond nie slegs "'n saak" nie, soos verstaan in die oorgeplante Romeins-Hollandse Reg wat grond onder die regsindeling van "Sakereg" plaas nie. Soos 'n Nigeriese Hoofman voor die Wes Afrika Grond Kommissie in 1912 betoog het : "I conceive that land belongs to a vast family of which many are dead, few are living and countless yet unborn"[5] In Afrika, met inbegrip van Suid-Afrika, het grond historiese, politieke, ekonomiese, sosiale, kulturele en geestelike waarde en betekenis. Daar is inderdaad baie ander gemeenskappe, soos die Sjinese, wat grond as heilig beskou.

Daar moet uitgewys word dat, behalwe vir grond wat voorheen geressorteer het onder die berugte 13% wat vir die meerderheid "naturelle" gereserveer was deur die koloniale stelsels in Suid-Afrika sedert 1913, grond in Suid-Afrika al vir 'n lang tyd die onderwerp is van volgehoue kommersialisering. By die bepaling van die betekenis en beleidstersaaklikheid van grootte, waarde en invloed van grond wat deur buitelandse burgers besit word, moet 'n mens hierdie veelvuldige, maar onderling verbonde, betekenisse en verbande in ag neem.

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5 T.O. Elias, ***The Nature of African Customary Law*** (1970) at page 162. Sien ook Edwin A Gyasi and Juha I. Uitto, ***Environment, Biodiversity and Agricultural Change in West Africa: Perspectives from Ghana*** (United Nations University Press (1997), op bladsy 1.

1.3 Die Paneel het tot die slotsom gekom dat natuurlike persone van vreemde lande om en by 3% (en 'n merkbare hoër persentasie in kus- en wildboerdery gebiede) van grond in die kategorieë erwe (grond wat vir residensiële behuising gebruik word), landbou-hoewe, plaasgrond en deeltitels besit. Die grootte en waarde van grondbesit deur vreemdelinge sal sekerlik hoër wees sodra die proses van inligtingsontleding oor regspersone, trusts en artikel 21-maatskappye afgehandel is. Dit is egter belangrik om daarop te wys dat die juiste grootte en waarde van grond wat deur vreemde burgers besit word slegs finaal vasgestel kan word nadat al die bestaande en toekomstige geregistreerde eienaars (natuurlike en korporatiewe) verklarings en openbarings in die vorm en op die wyse wat hieronder aanbeveel word, gedoen het.

1.4 Uit die openbare verhore wat in die nege provinsies gehou is en geskrewe voorleggings aan die Paneel, is vasgestel dat die gewone burgers, beide swart en wit, baie sterk voel dat die verkryging van prima grond deur vreemdelinge hulle van bekostigbare toegang tot grond ontneem en hulle vreemdelinge in hul eie land maak (Sien Afdeling Een, Deel I hieronder). Gegewe dat vreemde besit neig om in sekere gebiede gekonsentreer te wees (volgens 'n voorlopige ontleding van beskikbare inligting by Akteskantore en inligting verkry van openbare verhore en geskrewe voorleggings), kan dit ernstige implikasies vir die dinamika en ontwikkeling in die land hê.

1.5 Die Paneel het vasgestel dat die gebrek aan 'n nasionale beleid oor die regulering van grondbesit deur vreemdelinge in Suid-Afrika sekerlik nie die norm in die wêreld is nie. Dit sluit in land met vergelykbare ekonomiese stelsels en vlakke van ontwikkeling en selfs lande met meer gevorderde ekonomieë.

2. Enkele Grondwetlike Verpligtinge

2.1 Die Grondwet van die Republiek van Suid-Afrika, 1996 (hieronder "die Grondwet" genoem) maak 'n belangrike en wesenlike onderskeid tussen die verlening van regte en vryhede aan burgers aan die een kant en aan nie-burgers of vreemdelinge aan die ander kant. As 'n algemene reël verleen die Handves van Regte (Hoofstuk 2 van die Grondwet) regte aan "elkeen" of "'n persoon". In sulke gevalle word vermoed dat die regte en vryhede aan alle persone, burgers en nie-burgers, verleen word. Waar die Grondwet egter regte en vryhede spesifiek aan burgers verleen, is dit duidelik dat daardie regte en vryhede nie in die algemeen op nie-burgers of vreemdelinge toegepas kan word nie. Voorbeelde van eersgenoemde sluit in die reg op lewe, menswaardigheid, gelykheid voor die reg en vryheid van assosiasie (artikels 11, 10, 9 en 18 onderskeidelik). Voorbeelde van laasgenoemde sluit in politieke regte, die reg op 'n paspoort en die reg om 'n ambag, beroep en professie vryelik te kies (artikels 19, 21(4) en 22, onderskeidelik).

Vir die onderhawige doeleindes is die bepalings van die Grondwet wat regte aan slegs burgers verleen, artikel 21(3) – *reg om die Republiek binne te kom, daarin te bly en op enige plek daarin te woon,* en artikel 25(5) - *staat se plig om bronne beskikbaar te stel en omstandighede te skep wat burgers in staat stel om op 'n billike basis toegang tot grond te verkry.*

Daar moet beklemtoon word dat die onderskeid wat die Grondwet tref tussen burgers en nie-burgers oor die kwessies van verblyf, toegang tot grond en deelneming aan die politiek, grondwetlike verwagtings skep en verpligtings op die regering plaas.

2.2 Uit die bogemelde is dit duidelik dat beleids- en wetgewende maatreëls getref kan word om betekenis te gee aan die spesifieke regte en vryhede van vurgers met betrekking tot verblyf en toegang tot grond. Sulke maatreëls kan positief teen nie-burgers diskrimineer, solank die maatreëls nie neerkom op arbitrêre ontneming van eiendom soos beoog in artikel 25(1) van die Grondwet nie.

2.3 Deur wisselwerking met die Openbare Grond Ondersteuningsdienste van die Department van Grondsake, het die Paneel verneem dat openbare grond binne die regsgebied van munisipaliteite by konvensie voortgaan om as "private grond", en nie as "staatsgrond" nie, geklassifiseer te word. Dit verklaar duidelik die ongelykhede waarvolgens munisipaliteite die toekenning van grond vir behuising en ander grondwetlike verpligtings behandel, en die vryheid wat hulle het om openbare grond aan private ontwikkelaars, met inbegrip van vreemdelinge, te verkoop. Dit spreek vanself dat munisipaliteite staatsorgane en 'n sfeer van regering is (artikels 140 en 239 van die Grondwet). Daarbenewens is grond 'n nasionale bevoegdheid. Regulering van grondbesit en –gebruik, veral deur vreemdelinge, kan nie behoorlik gedoen word nie indien munisipaliteite, wat die hele land dek ("wall-towall"), aan hul eie lot oorgelaat word in aangeleenthede rakende die beskikking oor 'n nasionale bate van die hoogste belang. Hierdie begrip moet nie gesien word as 'n ontkenning van die behoeftes van munisipaliteite om grond te gebruik as 'n ontwikkelingsbate en 'n inkomste-genererende bate nie.

3. Opsomming van afdwingbare aanbevelings

Die beleidsrelevante aanbevelings verskil namate hulle slegs op die beleidsvlak bly of vergesel is van voorgestelde regsstrategieë vir implementering. Die Paneel is van oordeel dat sodra die Regering 'n beleidskeuse aanvaar het, moet besonderhede oor meganismes vir implementering deur die Departement van Grondsake ontwikkel word.

Die aanbevelings is die volgende :

3.1 Verpligte Openbaring van Burgerskap, Ras, Geslag en ander inligting

(i) Om die inligting en statistieke in die Akteskantore te verbeter, word aanbeveel dat alle eienaars van eiendom – nie slegs vreemdelinge nie – onderworpe moet wees aan Verpligte Openbaringsvereistes van alle registrasies van aktes in die verlede, die hede en die toekoms op die grondslag van die Wet op die Finansiële Intelligensie Sentrum (FICA). 'n Tweeledige benadering word voorgestel vir bestaande en toekomstige openbaring deur geregistreerde eienaars :

(a) om Regulasie 18 kragtens die Wet op die Registrasie van Aktes, No 47 van 1937 te wysig; en
(b) om die Wet self te wysig.

(ii) Die wysiging van Regulasie 18 kan dadelik gedoen word deur die Registrasie van Aktes Regulasieraad wat, onderworpe aan die goedkeuring van die Minister, gemagtig is kragtens artikel 10(j) van die Wet om regulasies te maak wat voorskryf *"die wyse en vorm van identiteit van persone"*. As gevolg van hierdie magtiging bepaal Regulasie 18(2) in sy huidige vorm dat *"Die naam van 'n persoon, die betrokke identiteitsnommer, geboortedatum of gereigstreerde nommer, na gelang van die geval, aangeteken moet word in die betrokke aantekeninge van die Akteskantoor"*. Die Paneel beveel aan dat Regulasie 18 gewysig word om 'n omvattende openbaring te vereis, met inbegrip van :

- Burgerskap (asook dubbele burgerskap)
- Nasionaliteit
- Permanente verblyfstatus
- Geslag
- Ras
- Suid-Afrikaanse nasionale identiteitsnommer
- Vreemde paspoortnommer
- Maatskappy-registrasienommer
- Inkomstebelasting registrasienommer
- Belasting op toegevoegde waarde registrasienommer
- Aard van aandeelhouers (naam en plek van gewone verblyf van alle wesenlike aandeelhouers en elkeen se ras, geslag en burgerskap)
- Trust-registrasienommer en die aard van bevoordeeldes (en elkeen se ras, geslag, burgerskap en plek van gewone verblyf).

Die oogmerk van Regulasie 18 is om voorsiening te maak vir openbaarmaking vir statistiese doeleindes en nie om onbillike diskriminasie te veroorsaak nie. 'n Aantal wetsbepalings wat voorsiening maak vir verskeie tipes onderskeidings en verskille is reeds onder die demokratiese bewind aangeneem. Voorbeelde sluit in die Wet op Gelyke Indiensneming, die Wet op die Bevordering van Gelykheid en die

Voorkoming van onbillike Diskriminasie, die Wet op die Beleidsraamwerk vir Voorkeurverkryging en die Wet op Wydgebaseerde Swart Ekonomiese Bemagtiging.

(iii) Wysigings aan die Wet op die Registrasie van Aktes sal deur die Parlement verorden moet word. Dit sal vereis dat *bestaande eienaars* soortgelyke Verklarings/Openbarings moet maak as wat van alle *toekomstige eienaars* ingevolge die gewysigde Regulasie 18 (sien hierbo) verwag word. Die kern van die beoogde wysigings moet onder andere vereis :

- Verpligte identifikasie van grondeienaars
- 'n Verifikasie stelsel van grondeienaars
- Akkurate en betroubare aantekeninge van grondeienaars in S.A.
- Toelaatbaarheid van aantekeninge vir regsdoeleindes.
- Bron van finansiering vir verkryging van grond
- Meganisme vir monitering
- Verbod op oordragte wat nie aan die reguleringstelsel voldoen nie
- Prosedure vir verbeurdverklaring van grond aan die staat waar daar nie-nakoming is
- Beskerming van betroubare inligting
- Aantekeninge van huidige grondgebruik

Daar word verder aanbeveel dat die voorgestelde openbaarmakingsklousules ook oorweeg word vir die Wetsontwerp op Maatskappye wat tans onder bespreking is.

Die Paneel is van oordeel dat die Wet op die Finansiële Intelligensie Sentrun (FICA) 'n vergelykbare en effektiewe meganisme vir openbarings en verklarings bevat wat belangrike riglyne kan verskaf vir die voorgestelde aanbevelings.

3.2 Spesiale Ministeriële Goedkeuring

Die Paneel beveel aan dat Spesiale Ministeriële Goedkeuring (met of sonder voorwaardes) vereis word vir sekere veranderings in grondgebruik in die algemeen en vir beskikking oor sekere kategorieë grond aan vreemdelinge. Dit is nodig veral waar die verandering in grondgebruik of beskikking aan vreemdelinge die potensiaal het om die staat se grondwetlike verpligtings om grondhervorming te bewerkstellig negatief te beïnvloed (hier word verwys na grond wat onderworpe is aan restitusie eise of wat bestem is vir herverdeling of geïntegreerde menslike vestiging). Spesiale Ministeriële Goedkeuring behoort ook van toepassing te wees op verkryging van grond of veranderings aan

grondgebruik deur Suid-Afrikaanse burgers wat dieselfde negatiewe invloed kan hê. Die besluit of grond in so 'n kategorie val, kan bepaal word deur onder andere die meganismes van die Inter-Ministeriële of -Departementele Oorsigkomitee (sien hieronder in 3.3). Tans bestaan daar 'n Staatsgrond Beskikkingskomitee, en daar is bepalings wat die instelling van Provinsiale Staatsgrond Beskikkingskomitees toelaat. Hierdie komitees het geen regsbevoegdheid oor munisipale grond nie, aangesien dit verkeerdelik en ongrondwetlik steeds as "private" grond geklassifiseer word. Daarbenewens het nie alle provinsies komitees wat werk[6] of met die Staatsgrond Beskikkingskomitee saamwerk nie.

3.3 Inter-Ministeriële/-Departementele Oorsigkomitees

'n Permanente Inter-Ministeriële/-Departementele Oorsigkomitee behoort ingestel te word, wat bestaan uit minstens Landbou, Grondsake, Provinsiale en Plaaslike Regering, Behuising en Omgewingsake en Toerisme. Dit moet tendense in vreemde grondbesit en veranderings in grondgebruik monitor en aan die Regering toepaslike regstellende ingrypings aanbeveel. Die voorstel dat die bestaande Kabinetsgroepe vir hierdie doel gebruik word, word nie ondersteun nie, aangesien die aangewese doel van die Komitee dan verlore sal gaan.

3.4 Totale verbod op vreemde besit in geklassifiseerde of beskermde gebiede

Daar word aanbeveel dat beleid neergelê word oor 'n verbod op private grondbesit deur vreemdelinge (en in sommige gevalle ook Suid-Afrikaanse burgers) in sekere gebiede (wat geklassifiseer moet word) binne die territoriale jurisdiksie van die Republiek. Dit kan gedoen word op gronde van nasionale belang, omgewingsoorwegings, gebied van historiese en kulturele belang en nasionale veiligheid.[7] Voorbeelde van sulke grond sluit in Nasionale Sleutelpunte [8], kusgebiede [9], bewaringsgebiede, grond naby militêre instellasies, wateropvangsgebiede en langs grense/internasionale grense.

3.5 Beperkte tydelike moratorium op die beskikking oor staatsgrond aan vreemdelinge

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[6] Sien Aanbeveling 3.7 hieronder

[7] Rapporteringsverpligtinge op bestaande besit deur vreemdelinge in aangewese gebiede binne 'n voorgeskrewe tydperk behoort opgelê te word deur die Volle Openbaarmakingsregulasies. Daarna kan die Regering die Grondwetlike mag van onteiening uitoefen, onderworpe aan "regverdige en billike" vergoeding, ten opsigte van die grond en die grond behou as staatsgrond of die grond aan gemagtigde burgers toewys.

[8] Wet op Nasionale Sleutelpunte, No. 102 van 1980

[9] Die Wetsontwerp op Kusbestuur dek aspekte hiervan.

Die Paneel beveel aan dat 'n Beperkte Tydelike Moratorium van ongeveel twee jaar ingestel word, waartydens die beskikking oor staatsgrond, met inbegrip van grond wat deur 'n staatsorgaan of enige van die regeringssfere (ook munisipale regering) besit word, aan vreemdelinge [10] verbied word. In beperkte gevalle kan dit ook van toepassing gemaak word op Suid-Afrikaanse burgers wat nie kragtens die nasionale beleid en wetgewing oor grondhervorming vir vergoeding kwalifiseer nie. Hierdie is nie 'n totale verbod nie. Die bedoeling is om te voorkom dat sekere sfere van regering en staatsorgane beskik oor grond wat vir grondhervorming en menslike nedersettings vir die ontneemde en gemarginaliseerde persone en gemeenskappe gebruik kan word. Natuurlik kan spesiale uitsonderings oorweeg word. Die beperkte tydelike moratorium kan opgehef word sodra die Ministeriële Goedkeuringsproses en die Inter-Ministeriële/-Departementele Oorsigkomitee wat hierbo voorgestel is, ingestel is en in werking is.

Die Paneel het die mening van 'n senior advokaat ingewin oor die kwessie van 'n moratorium [11]. Die Paneel is geadviseer dat so 'n moratorium nie ongrondwetlik is nie solank dit nie lei tot arbitrêre ontneming van eiendom nie en opgelê word deur 'n wet wat algemeen geld (sien aanbeveling in paragraaf 3.9 hieronder).

Aangesien die aanbeveling beperk is tot wyd-omskrewe staatsgrond of openbare grond (met inbegrip van munisipale grond), kan verwag word dat die entiteite wat die betrokke grond besit in elkgeval aan die nasionale beleid sal voldoen, selfs in die afwesigheid van 'n statutêre verbod.

3.6 Sonering, grondgebruik en beplanningswetgewing

Die Paneel bevel aan dat daar rasionalisering en harmonisering moet wees van wette wat grondgebruiksbeplanning en sonering raak. Dit moet gedoen word deur die verordening van oorkoepelende nasionale wetgewing wat 'n mate van sekerheid, minimum standaarde en orde verskaf. Die huidige Wetsontwerp op die Bestuur van Grondgebruik behoort weer na gekyk en geaktiveer te word. Die gebrek aan oorkoepelende nasionale standaarde lei tot ongelyke en verwarrende praktyke in gondgebruik, veral op plaaslike regeringsvlak. Vreemdelinge en

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[10] Indien vasgestel word dat enige wetgewing met inbegrip van munisipale verorderinge en ordonnansies, grond wat aan 'n staatsorgaan of sfeer van regering behoort as "private grond" klassifiseer, sal dit ongrondwetlik wees en kan die Konstitusionele Hof genader word vir 'n bevel kragtens artikel 167(5) van die Grondwet en 'n toepaslike verklaring.

[11] Beskikbaar by die Departement van Grondsake.

sterk "ontwikkelaars" blyk die situasie uit te buit, en dit lei tot openbare afkeer en persepsies van korrupsie. Die huidige praktyke in die sonerings- en hersoneringsprosedures, die ontwikkeling van golf-eiendomme, lewensstylboerdery, polo-eiendomme en wildboerdery [12] moet hersien word en binne die omvang van Ministeriële en inter-regerings toesig gebring word.

3.7 Beskikking oor Staatsgrond

Soos uitgewys in die aanbevelings in paragraaf 3.2 hierbo, het die Staatsgrond Beskikkingskomitee en provinsiale komitees geen jurisdiksie oor munisipale grond nie. Na die oordeel van die Paneel word hierdie grond nog steeds verkeerdelik en ongrondwetlik as "private grond" geklassifiseer. Dit is 'n konvensie of praktyk wat uit die verlede oorgeërf is. Die drie sfere van regering is instellings en organe van een soewereine demokratiese staat, en Bylaes 4 en 5 by die Grondwet bepaal nie dat besit van en beskikking oor staatsgrond 'n uitsluitlike bevoegdheid van munisipaliteite is nie (artikel 1 gelees met Hoofstuk 3 van, en Bylaes 4 en 5 by, die Grondwet). Daar word dus aanbeveel dat aldrie sfere van regering deur al die aanbevelings in hierdie Verslag gedek behoort te word. Die Regering en alle staatsorgane behoort die voorbeeld te stel deur die reguleringstelsel van vreemde grondbesit te implementer, sowel as 'n algemene verbod op die beskikking oor, of verandering van, grondbesit wat grondhervorming kan ondermyn en die soewereiniteit van die staat in die gevaar kan stel.

3.8 Huurpag

In ooreenstemming met die praktyk in sommige lande wat bestudeer is, kan die Regering medium- en langtermyn verhurings van openbare grond oorweeg as 'n lewensvatbare stelsel vir die verkryging deur vreemdelinge van grondgebruik in die toekoms. Huurpag het tydsbeperkings en kan minder aanvegbaar wees as volle besitregte, hoewel dit nog steeds burgers van besit en gebruik uitsluit. Dit verskaf die soort sekerheid van besit wat baie opregte buitelandse beleggers werklik mag verkies.

3.9 Algemene magtigende wetswysigings om aan sommige aanbevelings uitvoering te gee

Die Paneel beveel aan dat 'n omvattende Algemene Regswysigingswetsontwerp of 'n Wysigingswetsontwerpop Grondsake opgestel word, soortgelyk aan Wysigingswetsontwerpe oor Geregtelike Aangeleenthede. Dit sal nodig wees vir die aanbevelings wat

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[12] Die land sit reeds met 'n saak van moord op 'n plaasbestuurder wat verbind word met die omskepping van grondgebruik na wildboerdery (sien W Hlongwa, "Make Way for Wild Animals" **City Press**, 28 Januarie 2007 op bl, 21).

magtigende wetswysigings vereis en nie heeltemal nuwe wetgewing of ondergeskikte wetgewing (regulasies), soos vir die aanbevole wysiging van Regulasie 18 nie. Die voordeel van so 'n benadering is dat die gevolge vir ander wetgewing wat kan ontstaan uit die wysigings van 'n spesifieke Wet of Wette, maklik in 'n enkele Wetsontwerp geakkommodeer word.

3.10 Voordoening (bv Front-maatskappye)

Voordoening is geïdentifiseer as 'n vraagstuk wat die beleid van die Regering oor grondhervorming en regulering van vreemde grondbesit kan ondermyn. Gevolglik word aanbeveel dat maatreëls om hierdie probleem op te los in enige beleidsformulering ingesluit behoort te word. Voordoening is 'n baie ingewikkelde beleidsvraagstuk. Dit is dus nodig om dwarssnydende beleids- en reguleringsinstrumente te gebruik wat ook in ander nasionale Departemente gebruik word. Die Paneel beveel noue samewerking op inter-ministeriële vlak aan om die probleem op te los. Oorweging kan geskenk word aan verskeie sanksies, met inbegrip van verbeurdverklaring.

In die volgende afdeling bied die Paneel sy ontleding aan van die faktore wat in die Opdrag vermeld word. Die afdeling sluit af met aanbevelings.

AFDELING TWEE

ONTLEDING VAN AANBEVELINGS

Hierdie afdeling bestaan uit vyf dele. In die eerste deel verskaf die Paneel ontledings van die geskrewe openbare voorleggings en mondelinge aanbiedings in die openbare verhore, van die aanbevelings wat deur die parlementêre portefeuljekomitee oor Grondwake gemaak is, en van die betrokke resolusies wat deur die Nasionale Grondberaad (2005) aanvaar is. In die tweede deel is die fokus op die modelle van grondbesit in Suid-Afrika. Die Paneel verskaf 'n kwantifisering en ruimtelike kartering daarvan. In die derde deel word 'n internasionale vergelyking aangebied. Die regulering van besit en gebruik deur nie-burgers van grond en landelike eiendom in 'n aantal lande word bespreek. In die vierde deel word die wetgewende dimensie voorgestel. Moontlike hersiening, harmonisering en nasionalisering van wetgewing wat ontwikkelingsbeplanning en grondgebruik reël, word bespreek. In die laaste deel maak die Paneel sy aanbevelings.

Afdeling 2 Deel 1

Ontleding van geskrewe voorleggins, mondelinge aanbiedings, die aanbevelings deur die Parlementêre portefeulje komitee en die betrokke resolusies wat deur die Nasionale Grondberaad (2005) [13] aanvaar is.

Die Paneel het ongeveer 60 mondelinge voorleggings en 10 geskrewe voorleggings van verskillende organisasies en persone ontvang. Hulle verteenwoordig 'n wye reeks menings, met inbegrip van die georganiseerde landbou, georganiseerde eiendomsagente, NGO's, georganiseerde sakewêreld, plaaslike gemeenskappe, munisipale raadslede, tradisionele leiers, vakbonde en politieke partye.

Vir die doeleindes van hierdie Verslag sal die wye reeks menings in twee breë kategorieë opgesom word. Die eerste kategorie benader die vrae uit die oogpunt van die invloed op beleggersvertroue, buitelandse direkte beleggings ("FDI") die vrye mark en die deursyfer-effek van ekonomiese groei na werksgeleenthede. Die tweede kategorie benader dit uit die oogpunt van grondhervorming en gemeenskapsontwikkeling. Hulle is nie in alle opsigte wedersyds uitsluitend nie.

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[13] Op 25 Februarie 2007 was 'n openbare debat oor die kwessie van vreemde grondbesit, asook behuising, in die die Stad Kaapstad, oor SABC 2 uitgesaai onder die title : "The Big Question Property Show". Die voorsitter van die Paneel het aan die program deelgeneem en beskou die uiteenlopende en geesdriftige sienings wat in die debat aangebied is as soortgelyk aan daardie wat by die Paneel se provinsiale openbare verhore uitgespreek is en wat in hierdie Verslag aangebied en ontleed word.

Die eerste vraag wat deur beide kategorieë geopper is, is die tersaaklikheid van vreemde grondbesit vir die algemene bekommernisse oor grondbesit uitgespreek deur voorstanders van beide perspektiewe. Die eerste kategorie sien nie vreemde grondbesit as 'n groot probleem nie, behalwe die georganiseerde landbousektor. Die tweede kategorie sluit 'n kombinasie van sienings in. Sommige is oortuig daarvan dat vreemde grondbesitters 'n hindernis vir grondhervorming is en dat hulle meer ongevoelig is teenoor die belange van gemeenskapsontwikkeling as Suid-Afrikaanse besitters. Ander - veral gemeenskapsorganisasies in die Suid-Kaap – skryf nie hul grondprobleme toe aan vreemdelinge nie maar aan ongevoelige plaaslike owerhede, Suid-Afrikaanse ontwikkelaars en afwesige grondeienaars.

Die tweede vraag wat in die voorleggings geopper is, is dat vreemde grondbesit nie noodwendig 'n probleem regdeur Suid-Afrika is nie, maar dat dit streeksgebonde is. Die aantal voorleggings aan die Paneel is nie 'n wetenskaplike metode om die streke te bepaal nie, maar dit is noemenswaardig dat die hoogste aantal uit die Suid-Kaap en Noord-Kaap kom. Hulle verteenwoordig probleme ten opsigte van die tweede kategorie, en is hoofsaaklik uitgespreek deur gemeenskapsorganisasies. Die Kaapse Skiereiland is sekerlik nog 'n konsentrasiepunt, hoofsaaklik vanuit die oogppunt van die eerste kategorie. Gevolglik het die belangrikste voorleggings wat daar gedoen is van die eiendomsagente en die Demokratiese Alliansie gekom.

Die derde vraag wat deur beide kategorieë geopper is, is die **omvang** van vreemde besit in die land, en die **invloed** daarvan op eiendomspryse en grondhervorming. Die Paneel se dilemma is dat byna geen empiriese getuienis of data aan hom voorgelê is om die onderskeie argumente te staaf nie. 'n Aantal voorleggings het dieselfde data gebruik wat deur eiendomsagente beskikbaar gestel is. Daarvolgnes was 0.5% van die totale waarde van transaksies tussen 1997 en 2002 van 'n vreemde aard. Pam Golding het beweer dat vreemdelinge by 5 – 8% van al die maatskappy se verkope betrokke was. Behalwe hierdie vae inligting het daar niks verder gekom nie.

Meeste van die voorleggings wat vir en teen die invloed van vreemde besit argumenteer, het op openbare *persepsies* staatgemaak. Persepsies kan nie as irrelevant vir beleidmaking verwerp word as die beleidsomgewing demokraties is nie. Maar dit moet gekomplementeer word deur empiriese data, en dit is blykbaar tans nie beskikbaar nie.

Daarbenewens het die Paneel nie enige voorleggings of ander inligting van die publiek ontvang oor die ekonomiese invloed van vreemde besit nie. Geen ekonomiese ontleding is nog beskikbaar oor die invloed van vreemde besit op die eiendomsmark (pryse en veranderings in grondgebruik) en "FDI" of beleggersvertroue nie. Netso vaag is die invloed van die omskepping van kommersiële landbougrond in wildplase op werksgeleenthede, voedselproduksie, inkomste-generasie, ens.

Binne die konteks van voormelde oorwegings word die argumente in die twee kategorieë, soos in die voorleggings aangebied, nou opgesom :

1) Vrye mark, beleggersvertroue, werkskepping en geen regeringsinmenging

Die hoof-argument is dat die Suid-Afrikaanse regering sedert 1994 makro-ekonomiese beleidsrigtings aanvaar het wat die ekonomie oopgestel en geliberaliseer het en buitelandse direkte beleggings (FDI) aangemoedig het. Dit is dus afhanklik van onbeperkte mededinging en beleggersvertroue. Dit aanvaar ook dat ("FDI") ekonomiese groei sal bevorder wat sal "deursyfer" en meer werksgeleenthede sal skep. Prysverhogings in die eiendomsmark sedert 1994 word toegeskryf aan betreklik lae rentekoerse, goeie en aanloklike ekonomiese beleidsrigtings en verhoogde konstruksiekostes.

Volgens hierdie argument sal Regeringsinmenging beleggersvertroue benadeel en dus sal die "deursyfer" volg (met laer werkskepping). Daarbenewens word aangevoer dat die omvang van vreemde besit in die mark as geheel betreklik klein is en dat beleidsinmenging dus nie vereis word nie. Die Paneel verlang nog 'n opheldering van die argument in die lig van die feit dat enersyds word verklaar dat die deel van vreemde besitters betreklik klein of selfs nietig is, maar andersyds word aangevoer dat hulle "FDI" bydrae 'n belangrike regverdiging is teen enige beleidsinmenging, Georganiseerde eiendomsagente en die Demokratiese Alliansie is die belangrikste voorstanders van hierdie siening. Agri SA gebruik dit ook op 'n gekwalifiseerde wyse.

2) Grondhervorming en gemeenskapsontwikkeling

Die hoof-argument is dat 'n nuwe regeringsbeleid dringend nodig is om grondbesit te reël, want die beginsel van "gewillige koper, gewillige verkoper" bevorder 'n vrye mark maar nie noodwendig grondhervorming nie. Ongereguleerde eiendomsontwikkeling het ook nadelige gevolge op gevestigde gemeenskappe. In hierdie kategorie is daar geen konsensus oor die blaam wat vreemde besit moet dra vir die probleme wat in grondbesit ondervind word nie.

Ontwikkeling word ondersteun deur byna al die voorstanders van hierdie kategorie, maar sy voorkeur-aard word aangeval. Plaaslike gemeenskappe in die besonder, beskou ontwikkeling dikwels as 'n bedreiging vir hul gevestigde lewensmiddele. In die Suid-Kaap, byvoorbeeld, het nuwe ontwikkelings (vreemde en plaaslike) grond ingepalm wat gebruik was deur die gemeenskappe wat hul lewensomstandighede gedeeltelik onderhou het deur bronne van die see te gebruik.

Ontwikkelaars betaal huiseienaars 'n aansienlik bedrag geld om hulle te verplaas na 'n huis in 'n dorp, waar hulle nie hul gevestigde lewensstyl kan voortsit nie. Nuwe ontwikkelings vereis ook ander soorte vaardighede van werkers, en gevolglik kan plaaswerkers selde weer by die nuwe ontwikkelings in diens geneem word. Selfs as gemeenskappe op hul grond kan aanbly, word nuwe ontwikkelings langs die kuslyn (soos

golf-eiendomme) afgekamp, en dus word mense dikwels toegang geweier tot strande en die see om kos en vuurmaakhout te versamel.

Georganiseerde landbou, soos NAFU en Agri-SA, en individuele boere ondersteun ook op hul eie maniere hierdie kategorie. Hulle voer aan dat die Rand-geldeenheid nie met vreemde geldeenhede in die ope mark op die basis van gewillige koper, gewillige verkoper kan meeding nie. Gevolglik word prima landbougrond deur vreemdelinge gekoop. Selfs in die afwesigheid van vreemde mededinging is dieselfde beginsel teenproduktief vir opkomende NAFU-boere. Agri-SA het 'n nuwe dimensie daarby gevoeg deur aan te dring op beleidsinmenging om prima landbougrond te beskerm teen omskepping in ander gebruike, en om gespesifiseerde strategiese gebiede te beskerm.

Boere en plaaslike gemeenskappe vra ook nasionale regeringsingryping in antwoord op die plaaslike owerhede se onvoldoende visie en ondersteuning, sowel as onvoldoende samewerking tussen die drie sfere van regering. Hulle is van mening dat plaaslike owerhede kop in een mus met ontwikkelaars werk, sonder om gevoelig teenoor gevestigde gemeenskappe te wees. Sommige voorstaanders van hierdie beskouing glo dat plaaslike owerhede oorweldig word met aansoeke om ontwikkeling, dat hulle nie aandag aan die aansoeke bestee nie en meer bekommerd is oor die inkomste (diensgelde en belastings) wat die ontwikkelings kan inbring as oor hul sosiale- en omgewingsinvloed. Aansoek-prosedure is so uiteenlopend (sommige word by plaaslike owerhede ingedien; ander by tribunale, ens.) dat geko¬rdineerde ruimtelike ontwikkeling byna onmoontlik is.

Spesiale gebiede van verskil

Verskeie voorleggings in beide kategorieë het drie aanvegbare areas van grondbesit na vore gebring : golf-eiendomme, wildplase en jaghuise en hoë potensiaal landbougrond.

Golf-eiendomme word hoofsaaklik ontwikkel in Suid-Afrika se oostelike en suidelike kusgebied en in Gauteng. Voorleggings van die Suid-Kaap het daarna verwys in die besonder. Dit het uit daardie voorleggings geblyk dat die sowat 34 eiendomme hoofsaaklik deur Suid-Afrikaners ontwikkel word, maar oorsee bemark word. Huise word dus deur vreemdelinge besit maar nie die eiendom self nie. Die openbare debat oor golf-eiendomme fokus op hul invloed op die omgewing, soos waterverbruik, maar nie net soveel op hul sosiale invloed op plaaslike gemeenskappe wat deur hierdie ontwikkelings ontwrig word nie.

Wildplase en jaghuise is ook 'n omstrede saak. Die vrye mark-argument is dat hulle "FDI" lok wat werkgeleenthede en ekonomiese groei skep. Daar word ook aangevoer dat onproduktiewe en ondergebruikte landbougrond produktief sal word en toerisme en eko-toerisme bevorder sal word. Die twispunt is of wildboerdery meer arbeidsintensief

as kommersiële boerdery is. Die ingrypingsargument is dat omskepping van kommersiële boerdery na wildboerdery Suid-Afrika se voedselvoorsiening negatief affekteer, dat dit spekulasie in grond aanmoedig, dat dit nie noodwendig so baie meer nuwe werksgeleenthede skep nie en dat dit lei tot werkloosheid onder plaaswerkers. Laasgenoemde punt is dat werkers op kommersiële plase dikwels nie geleerd is nie en slegs vaardig is in kommersiële boerderytake, terwyl wildboerdery hoër opgeleide werkers met ander vaardighede vereis.

Die omvang van vreemde besit van wildplase en jaghuise, en van die omskeppings vanaf kommersiële na wildboerdery, is nie aan die Paneel bekend nie, en geen voorlegging kon meer duidelikheid oor die saak bring nie.

Beide georganiseerde landbou en plaaslike gemeenskappe het aangevoer dat hoë potensiaal landbougrond deur die regering beskerm moet word. Die oorwig van menings is ten gunste van die argument dat dit van vreemde besit uitgesluit behoort te word.

In die lig van die argumente wat in die voorleggings aangevoer is, is die volgende voorstelle gemaak :

Voorstelle van die publiek

Die voorgestelde aanbevelings wat uit die voorleggings gehaal is, word ook volgens die twee hoofkategorieë opgesom:

1) Vrye mark, beleggersvertroue, werkskepping en geen regeringsingryping

Die voorstaanders van hierdie kategorie het nie enige aanbevelings gedoen nie behalwe om die vrye mark in die eiendomsomgewing aan te moedig. Regeringsingryping sou beleggersvertroue ontmoedig en mag ook bilaterale beleggingsooreenkomste tussen Suid-Afrika en haar handels- en beleggingsvennote verbreek. Die huidige belastingstelsel word as toepaslik beskou en behoort nie verander te word nie. Die voorstaanders het ook die beginsel van "gewillige koper, gewillige verkoper" onderskryf.

Een van die provinsiale, georganiseerde landbou-verenigings (maar nie die nasionale liggaam nie) het aangevoer dat die geleentheidskoste van grond, wat vir landbou-doeleindes gebruik word, kan dikteer dat dit vir ander doeleindes as landbou gebruik moet word. Volgens hierdie argument kan hierdie koste slegs effektief bepaal word ndien die skaarsheidswaarde van grond deur markkragte bepaal word.

2) Grondhervorming en gemeenskapsontwikkeling

Die volgende voorstelle is nie in enige besondere orde van belangrikheid gelys nie, en is ook nie ontwerp as 'n innerlik-konsekwente verpakking nie :

i) Huurpag

Titelakte-besit deur vreemdelinge behoort omskep te word in huurpagregte. Alternatiewelik moet nuwe grondverkrygings deur vreemdelinge slegs in die vorm van huurpagregte wees. Dit verbeter nie noodwendig toegang tot grond vir Suid-Afrikaanse burgers nie, maar dit sal voorkom dat grond vervreem word. Die openbare voorstel is gekoppel aan die ander voorstel dat vreemde beleggers vennootskappe behoort te stig met Suid-Afrikaners. Dis 'n model wat in verskeie lande gebruik word.

ii) Beperkings op hoeveelheid grond

'n Maksimum grootte of waarde van grond vir besit deur vreemdelinge en Suid-Afrikaners moet oorweeg word. So 'n ingryping sal die aard van boerdery (ekstensiewe of intensiewe) en eiendomgebruik in die verskillende streke van die land in ag moet neem

iii) Impakstudies

Omgewingsimpakstudies is reeds 'n statutêre vereiste en 'n gevestigde praktyk. Dieselfde beginsel behoort uitgebrei te word om ook 'n sosiale impakstudie in te sluit. Dit sluit in die uitwerking wat 'n voorgestelde ontwikkeling sal hê op gemeenskappe wat daardeur geraak word : hul verblyf- en vestigingspatrone, hul ekonomiese en volhoubaarheidsmodelle en die moontlike uitwerking op plekke van historiese, kulturele en erfenis belang.

iv) Indaba van belanghebbende persone

Verskeie voorleggings het beklemtoon dat gemeenskappe geïsoleer voel van besluitneming in groot stede, en het aangedring op meer kommunikasie met hulle en ook tussen hulle. Daarom het hulle 'n grondgebruik indaba voorgestel, eers op plaaslike vlak en wat kan ontwikkel tot provinsiale of 'n nasionale indaba.

v) Hersiening van beleggingsooreenkomste

'n Spesiale komitee behoort ingestel te word om beleggingsooreenkomste te hersien in die lig van kriteria soos grondhervormingsbehoeftes, grondgebruik, sensitiewe erfenis plekke en die voordele vir die armes en grondloses.

vi) Eerste opsie-koper ("keuse om eerste te weier")

Wanneer landbougrond in die mark beskikbaar word (die tersaaklikheid van nasionaliteit word nie hier genoem nie), behoort die Suid-Afrikaanse regering die reg van eerste opsie te hê om dit te koop.

vii) Swart ekonomiese bemagtigingsraamwerk ("BEE")

BEE behoort ingesluit te word by die grondvraagstuk en op beide plaaslike en vreemde beleggers toegepas te word.

viii) Plaaslike owerhede en ontwikkeling

Plaaslike owerhede moet nasionale ruimtelike ontwikkeling en beplanningsraamwerke nakom. Deur hul Geïntegreerde Ontwikkelingsplanne moet hulle beleidsrigtings implementer om integrasie en herverdeling van grond te bevorder.

ix) Regulering deur die regering van gebruik en besit van grond

Spesiale goedkeuringsprosedures behoort van toepassing te wees wanneer grond van meer as 'n sekere waarde of grootte van besit verander. Dit moet op alle kopers en verkopers van toepassing wees, ongeag hul nasionaliteit. Die landbougemeenskap is ook ten gunste van regulasies om Suid-Afrikaanse besit van sekere strategiese gebiede te beskerm, terwyl ander gebiede deur minder beperkings gereël kan word.

x) Beperkings op vreemde besit

Sommige voorleggings het 'n onmiddellike moratorium op vreemde besit voorgestel, en ander het 'n arbitrêre afsnydatum vir transaksies met vreemdelinge voorgestel. Die meerderheid voorleggings het egter nie so 'n drastiese stap ondersteun nie.

xi) Permanenete inwoners

Die Paneel onderskei hoofsaaklik tussen Suid-Afrikaners en vreemdelinge op die grondslag van burgerskap. Een voorlegging het ook voorgestel dat "permanente inwoners" as 'n ander tussenkategorie behandel word, en behoort onderskei te word van seisoenale vreemde besoekers.

xii) Belasting/grond-geld

Belasting as 'n alternatief vir beperkings op vreemde grondbesit het na vore gekom as 'n gewilde voorstel in 'n aantal voorleggins. Een groep het voorgestel :

- vreemdelinge behoort volgens 'n aparte skaal belasting en oordraggelde te betaal wanneer hulle eiendom koop
- verskillende tariewe moet aan plaaslike owerhede betaal word ten opsigte van onontwikkelde erwe; eiendomme wat deur vreemde, permanente inwoners besit word; en deur vreemde, seisoenale besoekers.

xiii) Nog 'n voorstel van die publiek is die volgende:

'n Onderskeid word gemaak tussen "rou grond" (die waarde van die eiendom ontstaan onafhanklik van die eienaar se pogings, soos deur die natuur, goeie bestuur, openbare infrastruktuur, geriewe, ens) en "verbeterings". Die waarde van rou grond bestaan tot "in ewigheid", terwyl verbeterings 'n korter ekonomiese leeftyd het as gevolg van waardevermindering en veroudering. Vervreemding van rou grond aan vreemdelinge beteken dat sy huurinkomste Suid-Afrika verlaat solank die vreemdeling eiendomsreg behou. Verbeterings, selfs deur vreemdelinge, aan die ander kant, is goed vir die ekonomie en kan werksgeleenthede skep. Gevolglik is die voorstel 'n beleid om vervreemding van grond te verbied, maar belegging deur vreemdelinge in verbeterings aan te moedig. Dit kan bereik word deur 'n grondgebruikersheffing of grond-geld in te stel, wat soortgelyk is aan die "onderskeidende" belasting wat as 'n opsie in die nuwe Wet of Dienstegelde beskikbaar is. Afhangende van die koers wat gebruik word om die grond-geld te bereken, kan dit afwesige besit (vreemd en plaaslik) afskrik, en dit kan verseker dat beide stedelike en landelike grond ontwikkel word en nie onbeset gelaat word nie. Dit kan ook verseker dat meer verbeterings aangebring word en dat grondpryse dwarsoor Suid-Afrika afgebring word, aangesien dit spekulasie met grond ontmoedig.

Konsultasie met, en spesiale voorleggings deur, die Eiendomsagente van Suid-Afrika

Die Paneel het geskrewe voorleggings en aanbiedings gedurende openbare verhore ontvang waarin eiendomsagente in die algemeen krities was oor beoogde ingrypings deur die regering in vreemde grondbesit. Ter erkenning van die belangrike rol wat eiendomsagente speel in die aangeleenthede wat by die Paneel se Opdrag ingesluit is, is raadplegende vergaderings in Pretoria/Tshwane en Kaapstad belê met verteenwoordigers van die Instituut van Eiendomsagente van Suid-Afrika (hieronder die "Eiendomsagente" genoem). Die geskrewe voorlegging wat deur die Eiendomsagente aangebied is, het sommige van die inligting in besit van die Paneel bevestig, maar het ook nog nuwe inligting en menings geopper. Die volgende was in die besonder tersaaklik vir die werk van die Paneel :

- Bevestiging van administratiewe knelpunte en soms onvoldoende bevoegdheid op die vlak van plaaslike regering;

- Bevestiging van vinnige styging in huispryse wat lei tot onbekostigbaarheid vir nuwelinge;

- Bevestiging dat tussen 1999 en 2004 die verkope van huise aan vreemdelinge in Kaapstad gemiddeld tussen 6% en 7% van die totale verkope was. (Addendum A gee statistieke oor die residensiële eiendomsmark in die Wes-Kaap.)

- Bevestiging dat vreemde kopers aansienlike beleggings in wynplase het;

- Argument dat verkope aan vreemdelinge (nie kummulatiewe besit deur vreemdelinge nie) nie 1% van residensiële eiendomsverkope oorskry nie, behalwe vir 'n paar kusgebiede in die Wes-Kaap en KwaZulu-Natal waar vreemdelinge 'n aansienlike persentasie uitmaak. Die persentasie korporatiewe eiendomverkope is nie bekend nie.

Die eiendomsagente het onder andere aanbeveel dat :
- 'n Algemene omskrywing van 'n vreemde koper nodig is; en

- Die Akteskantoor opdrag behoort te kry om openbaarmakings van vreemde besit met betrekking tot oordrag van residensiële eiendom aan te teken.

ADDENDUM A

VOORLEGGING AAN DIE DEPARTEMENT VAN GRONDSAKE DEUR DIE INSTITUUT VAN EIENDOMSAGENTE VAN SUID-AFRIKA OOR DIE OMVANG EN INVLOED OP DIE RESIDENSIëLE EIENDOMSMARK VAN VERKRYGINGS DEUR NIE-SUID-AFRIKAANSE BURGERS

BRON : Residential Property Price Ranger (RPPR) per maand vir die Wes-Kaap & South African Property Transfer Guide (SAPTG) totale vir die Wes-Kaap

RPPR - TOTALE VERKOPE IN EENHEDE

JAAR	Des/Jan	Februarie	Maart	April	Mei	Junie
1999	1133	778	1033	922	920	910
2000	1685	1412	1389	908	1165	1004
2001	1785	1217	1241	1017	1135	1109
2002	2245	1527	1356	1294	1650	1191
2003	2346	1458	1325	1266	1297	1372
2004	2538	1597	1631	1423	1405	1508

SAPTG – TOTALE VERKOPE IN EENHEDE

JAAR	Julie	Augustus	September	Oktober	November	TOTAAL
1999	873	1023	978	1138	1130	37 258
2000	962	1152	1002	1286	1139	37 734
2001	991	1165	1014	1298	1290	38 890
2002	1134	1347	1265	1397	1309	47 033
2003	1480	1306	1575	1815	1578	50 103
2004	1232	1373	1485	1492	1435	45 782

RPPR - TOTALE VERKOPE AAN VREEMDELINGE IN EENHEDE

JAAR	Des/Jan	Februarie	Maart	April	Mei	Junie
1999	101	57	56	55	39	31
2000	90	82	68	42	56	37
2001	112	68	76	53	46	45
2002	226	146	145	143	118	71
2003	273	158	149	145	104	79
2004	219	142	141	124	88	83

JAAR	Julie	Augustus	September	Oktober	November	TOTAAL
1999	25	24	27	49	60	528
2000	26	42	38	30	40	549
2001	40	34	34	44	66	618
2002	59	91	86	88	130	1 304
2003	140	100	86	116	92	1 442
2004	59	68	61	87	54	1 126

RPPR - PERSENTASIE EENHEDE DEUR VREEMDELINGE GEKOOP

JAAR	Des/Jan	Februarie	Maart	April	Mei	Junie	Julie
1999	8.9 %	7.35%	5.71%	5.97%	4.24%	3.41%	2.86%
2000	5.34%	5.81%	4.90%	4.63%	4.81%	3.69%	2.70%
2001	6.35%	5.59%	6.12%	5.21%	4.05%	4.06%	4.04%
2002	10.07%	9.56%	10.77%	11.05%	7.15%	5.96%	5.20%
2003	11.64%	10.85%	11.25%	11.45%	8.02%	5.76%	9.46%
2004	8.63%	8.89%	8.65%	8.71%	6.26%	5.51%	4.79%

SPTG – PERSENTASIE EENHEDE GEKOOP DEUR VREEMDELINGE

JAAR	Augustus	September	Oktober	November	TOTAAL	TOTAAL
1999	2.35%	2.74%	4.31%	5.40%	4.87%	1.42%
2000	3.85%	3.59%	2.33%	3.51%	4.19%	1.45%
2001	2.92%	3.35%	3.39%	5.12%	4.67%	1.59%
2002	6.76%	6.80%	6.30%	9.93%	8.30%	2.77%
2003	7.66%	5.48%	4.85%	5.83%	8.58%	2.88%
2004	4.95%	4.11%	5.83%	3.76%	6.58%	2.45%

RPPR - TOTALE WAARDE VAN VERKOPE VIR DIE JAAR (In Rande)

JAAR	Des/Jan	Februarie	Maart	April	Mei	Junie	Julie
1999	459,532,643	329,113,817	388,528,841	367,725,500	385,321,204	433,189,287	335,517,534
2000	716,444,914	588,142,784	624,948,091	422,913,961	475,245,212	398,955,466	389,122,010
2001	821,837,321	801,195,130	604,560,018	483,303,959	578,982,255	528,725,451	457,851,191
2002	1,233,604,975	969,764,035	877,414,060	853,935,238	970,069,200	756,264,428	655,624,514
2003	1,664,478,810	1,057,967,442	983,408,343	926,839,148	947,788,816	1,008,477,683	1,022,759,450
2004	2,220,684,273	1,443,107,950	1,417,127,314	1,272,145,314	1,331,295,877	1,356,129,244	1,191,618,206

SAPTG – TOTALE WAARDE VAN VERKOPE VIR DIE JAAR

JAAR	Augustus	September	Oktober	November	TOTAAL	TOTAAL
1999	330,330,982	406,722,385	458,493,789	215,867,070	4,049,343,062	16,069,816,600
2000	514,106,800	418,367,541	556,119,048	311,008,308	5,411,374,155	16,050,619,569
2001	541,139,964	438,304,295	602,557,533	619,132,609	6,275,599,724	15,180,963,243
2002	781,687,678	789,980,180	850,455,457	915,494,611	9,654,294,356	17,398,475,492
2003	931,867,328	1,203,671,289	1,292,467,414	1,137,589,508	12,177,315,276	23,491,649,609
2004	1,252,299,242	1,434,732,891	1,516,005,447	1,519,000,765	15,954,146,620	30,286,719,634

[redacted]

SOUTH AFRICAN PROPERTY TRANSFER GUIDE (SAPTG)

SAPTG sluit verkope aan Maatskappye en Beslote Korporasies uit

Inligting verkry van die Akteskantoor

SAPTG data gee datum van verkope weer en nie datum van oordrag nie

[redacted]

RESIDENTAIL PROPERTY PRICE RANGER (RPPR)

RPPR verslag kriteria : Verkope bevestig gedurende die maand soos aangeteken soos per datum van verkope, om later oorgedra te word.

Die RPPR verslag sluit verkope aan Maatskappye, Beslote Korporasies en Trusts in.

Die gebiede waaroor verslag gedoen word in die Addendum gelys.

Nota : Die uitleg deur individuele eiendomsagente is subjektief en gebaseer op klem, kapitaalbron ens.

Aanbevelings deur die Parlementêre komitee, en die betrokke resolusies van die Nasionale Grondberaad

Die Paneel het kennis geneem van drie van die aanbevelings van die Portefeuljekomitee oor Landbou en Grondsake wat op 7 Junie 2005 geformuleer is en tersaaklik is vir sy Opdrag. Die drie aanbevelings is die volgende :

- Die regering moet oorweeg om 'n moratorium te plaas op die verkoop van landbougrond aan vreemdelinge totdat die Ministeriële Paneel oor grondbesit deur Vreemdelinge aan die Minister verslag gedoen het;
- Die kantoor van die Registrateur van Aktes behoort grond te registreer volgens ras sodat die vordering met grondhervorming of die oordrag van grond aan swartes voldoende gemonitor kan word; en
- Die regering behoort meganismes te ontwikkel, veral binne die huidige grondbeleid, om die misplaaste opblaas van grondpryse te ontmoedig.

Die Paneel het ook kennis geneem dat voor die Nasionale Grondberaad provinsiale grondopmarse en berade in al die nege provinsies sterk aanbeveel het dat 'n moratorium op die verkryging van grond deur vreemdelinge en korporasies geplaas word. Daar is ook uitgewys dat daar 'n behoefte is aan regeringsregulering van grondpryse om bekostigbaarheid te verseker, sodat restitusie en redistribusie van grond versnel kan word.

Spesiale aandag is gewy aan die aanbevelings van die Nasionale Grondberaad dat

- die staat aktief moet ingryp in die grondmark, onder andere deur die regulering van vreemde besit;

- vreemdelinge slegs toegelaat behoort te word om grond te koop as daar 'n duidelike aanduiding is van produktiewe belegging en volhoubare werkskepping; en

- 'n grondbelasting ingestel moet word.

In haar afsluitingsrede by die Beraad het die Minister van Landbou en Grondsake soos volg opgemerk:

> "Simultaneously, the issue of foreign land ownership was raised sharply, with almost unanimity that a policy on this matter must be developed. I am happy that this summit had three members on the Ministerial panel that is attending to the matter.".

Afdeling 2 Deel 2

Patrone van grondbesit in Suid-Afrika - kwantifisering en ruimtelike kartering

1. Die algemene Oorsig

Hierdie afdeling konsentreer op 'n kwantifisering van grondbesit, die gebruik van grond en pryse van grond en eiendom. Die nasionale verdeling van grondbesit in Suid-Afrika toon dat 76.2% van die totale grondoppervlakte in private besit is en dat die res aan die Staat (20.4%) behoort of in trust namens die staat gehou word (3.4%). Daar moet beklemtoon word dat grond wat deur die munisipale owerhede besit word nog nie by "staatsgrond" ingesluit is nie, maar nog steeds onder "private grond" gelys word. Die volgende tabel verskaf 'n meer volledige uiteensetting van besit in Suid-Afrika.

TABEL 1 : VERDELING VAN GRONDBESIT

	Hektaar	**Hektaar**	**%**
Staatsgrond:		24,919,290	20,4%
Departement van Openbare Werke	6,845,916		
Departement van Grondsake	13,759,968		
Provinsiaal	4,313,406		
Trust:		4,103,096	3.4%
Ingonyama	2,893,232		
Kleurling Landelik	277,926		
Tradisioneel	931,938		
Privaat		92,885,406	76.2%
Totaal		121,907,792	100%

1.1 Die gebruik van grond in Suid-Afrika

Wat grondgebruik betref, is die grootste deel van Suid-Afrika onder natuurlike weiding (73,2%), ongeveer 12% is bewerkbare produktiewe landbougrond, en ongeveer dieselfde deel is toegedeel aan natuurbewaring, terwyl slegs sowat 1% van die grond tans gebruik word vir stedelike en residensiële doeleindes.

Tabel 2 verskaf 'n volledige voorstelling van grondgebruik in Suid-Afrika.

TABEL 2: GRONDGEBRUIK IN PATRONE

Grondgebruik	**Hektaar**	**%**
Bewerkbaar/Landbou	14,753,249	12.1%
Natuurbewaring	14,549,797	11.9%
Bosbou	1,790,270	1.5%
Natuurlike Weiding	89,240,143	73.2%
Industrieel/Kommersieel	274,549	0.2%
Stedelik Residensieel	1,299,784	1.1%
TOTAAL	**121,907,792**	**100%**

Hierdie tabel dui nog nie die deel van vreemde besit aan in elk van hierdie kategorieë nie. Drie kategorieë sal meer aandag kry in hierdie verband, te wete stedelik residensieel, industrieel/kommersieel en bewerkbaar/landbou.

1.2 Grondpryse

Die Paneel se Opdrag sluit in 'n versoek om te kyk na eiendomspryse en die moontlike invloed van vreemde besit op die pryse. Betreffende patrone van eiendomspryse, sonder om te onderskei tussen binnelandse en vreemde besit, sal toegespits word op die drie kategorieë wat die tersaaklikste is vir vreemde besit.

i) Stedelik residensieel

Stedelik residensiële gebruik van grond maak een van die kleinste dele (1.1%) van grondgebruik uit. Die aantal grondbesitters in hierdie kategorie is egter baie meer betekenisvol. Residensiële eiendomme kan verdeel word in drie onderskeibare kategorieë, te wete lae (onder 80m²), middel (tussen 80m² en 440m² of met 'n waarde onder R2 miljoen) en hoë/luukse (groter as 440m² of met 'n waarde oor R2 miljoen). Sedert 1998 het eiendomspryse in die lae segment van die mark gestyg teen 'n koers van onder die gemiddelde inflasiekoers, terwyl pryse aan die hoë kant van die mark min of meer gelyk aan inflasie gestyg het. Residensiële eiendomspryse in die middel-mark het wesenlike stygings in reële terme aangeteken.

Die volgende tabel is 'n opsomming van prysbewegings in die middelkategorie van die residensiële mark.

TABEL 3: PRYS MODELLE : **Nuutgeboude huise (160m²)**

Jaar	**Grond (in Rand)**	**Gebou (in Rand)**	**Totaal (in Rand)**	**Grond as % van totale waarde**	**Gebou as % van totale waarde**
Junie 1998	65,776	208,138	273,914	24.0%	76.0%
Junie 1999	80,562	238,775	319,337	25.2%	74.8%
Junie 2000	92,335	258,335	350,670	26.3%	73.7%
Junie 2001	101,825	288,314	390,140	26.1%	73.9%
Junie 2002	120,695	337,243	457,938	26.4%	73.6%
Junie 2003	154,575	414,872	569,447	27.1%	72.9%
Junie 2004	178,639	445,460	624,099	28.6%	71.4%
% verande-ring per jaar	**18.1%**	**13.5%**	**14.7%**	**3.0%**	**-1.0%**

Bron: *Finance Week* - 27 September 2004 : ABSA

Hierdie table toon dat oor 'n tydperk van ses jaar die styging in pryse 14.7% was. Dit is duidelik dat die grondpryse aansienlik meer as die gebou/konstruksie-komponent van stedelike residensiële eiendomme gestyg het. Dit beteken dat in vergelykende terme grond toenemend duurder word (24% van totale koste in 1998 in vergelyking met 28.6% in 2004), terwyl die gebou/konstruksie-pryse minder word (76% van die totale koste in 1998 teenoor 71.4% in 2004).

Sommige van die faktore wat bygedra het tot die opmerklike stygings in eiendomspryse van middle-kategorie huise is : betreklik lae rentekoerse, hoër beskikbare inkomste van middel-inkomste verdieners (gedeeltelik as gevolg van belastingverligting), verhoogde vraag deur 'n groeiende swart middelklas en verhoogde vraag deur vreemde kopers (gedeeltelik as gevolg van die verswakking van die Rand in 2000 en 2001).

ii) Kommersiële en industriële eiendomme

Prysverhogings van kommersiële en industriële eiendomme was sowat 10 persent per jaar.

iii) Landbou

Prysstygings van landbou-eiendomme was tussen 10 en 25 persent in 2002 en 2003.

Ofskoon aansienlik meer werk vereis word om die invloed van vreemde kopers op die pryse van eiendomme in alle sektore van die eiendomsmark (residensieel, landbou, kommersieel en industreel) te kwantifiseer, is daar duidelike tekens dat die verhoogde vraag deur vreemdelinge opwaartse druk op eiendomspryse geplaas het, veral by residensiële eiendomme in Kaapstad en gebiede soos Umhlanga naby Durban (Sien Aanhangsel 9). Verdere ondersoek van die beskikbare inligting is nodig voordat 'n definitiewe mening deur die Paneel verstrek kan word oor die presiese invloed van vreemde grondbesit op die verhoging van grondpryse in die algemeen.

2. Data van Registrateur van Aktes : ruimtelike kartering, ontleding, uitleg

Die Paneel moes ondersoek instel na die aard en omvang van die inligting wat in die Kantoor van die Registrateur van Aktes beskikbaar is en hoe dit kan help met die ontleding van vreemde grondbesit in Suid-Afrika. Die inligting wat deur die Akteskantoor verskaf word in die algemeen-

(i) is nie ontwerp om te onderskei tussen burgers en nie-burgers (of vreemdelinge) in die algemeen nie;
(ii) is swak saamgestel;
(iii) bevat opvallende foute in die inskrywings; en
(iv) sluit opmerklike duplikasies in.

'n Belangrike verskynsel van die data en inligting verskaf op registrasie-dokumentasie is dat hulle na die registrasie van die akte nooit bygewerk word nie. Die pryse van grond gee die prys weer soos op die tyd van registrasie en weerspiëel nie noodwendig die huidige waarde nie. Volgens die Hoof-Registrateur van Aktes vind data-opneming en aantekening slegs plaas wanneer 'n transaksie vir registrasie aangebied word. Aangesien die totale vreemde aankope sedert 1994 gestyg het, en veral gedurende die verswakking van die Rand, is dit redelik om af te lei dat die waarde van die meeste grond wat deur vreemdelinge besit word waardes weerspiëel wat naby aan 2005 pryse is.

2.1 Kategorieë Vreemdelinge

Registrasie van aktes vereis slegs 'n Suid-Afrikaanse identiteitsnommer of paspoortnommer. Die afwesigheid van 'n identiteitsnommer en die aanwesigheid van 'n vreemde paspoortnommer word aanvaar as aanduidend van vreemde besit. Hierdie aanname is meer betroubaar vir die ontleding van die identiteite van individuele besitters as van korporatiewe besitters. Vir die doeleindes van ontleding aanvaar die Paneel dat vreemde besit uit die volgende kategorieë bestaan :

i. Buitelandse Publiek : Vreemde openbare maatskappye
ii. Vreemd – Permanente Inwoners
iii. Vreemde Vlugtelinge

Daar behoort opgelet te word dat die Akteskantore persone wat burgers van die voormalige TBVC-state was ten tyde van die registrasie van hulle titelaktes, as "vreemdelinge" beskou. Gevolglik word die ontleding van die beskikbare inligting daardeur verwring.

Betreffende vreemde grondbesit, by die ontleding van die Akteskantore se inligting sal korporatiewe besit van eiendom heelwaarskynlik onder die volgende kategorieë gevind word :

i. Botsende/Ongeïdentifiseerde/Blanko
ii. Verskillende nommers/tekste : Registrasie-inskrywings wat nie voldoen aan 'n bekende patroon
iii. Edms. Bpk. (Private maatskappye)
iv. Openbare Maatskappy (publieke maatskappye)
v. BK (Beslote Korporasies)
vi. Artikel 21 (Artikel 21, maatskappy sonder winsbejag)
vii. Trust (geregistreerde trusts)

2.2 Gekonsolideerde statistieke oor grondbesit in Suid-Afrika

Die volgende drie tabelle gee 'n gekonsolideerde oorsig weer van die verskillende persentasies van besit vir elk van die vyf grootste besittersgroepe en vier vorms van grondgebruik.

Die vyf besittersgroepe is eerstens onvolledige of gebrekkige Registrateursdata waar die kategorie besit onduidelik is (die kategorie "Gebrekkige Data"), tweedens, Suid-Afrikaanse private individuele besitters ("Suid-Afrikaners"), derdens, grond wat deur die Suid-Afrikaanse Staat besit word ("SA Staat), vierdens, vreemde grondbesit deur individue ("Vreemdelinge") en laastens, eiendomme wat deur regspersone besit word, beide Suid-Afrikaanse en vreemde ("Regspersone"). Die kategorieë van grondgebruik is residensiële gebruik ("ERWE"), kommersiële landbou gebruik ("PLASE"), landbou hoewe gebruik ("HOEWES") en deeltitel gebruik ("DEELTITELS"). Tabel 4 bevat 'n opsomming van die getal besitters in elkeen van die kategorieë.

TABEL 4 : GETALLE

BESITTER	**ERWE**	**PLASE**	**HOEWES**	**DEELTITELS**
Gebrekkige data	11.15%	16.40%	10.52%	5.28%
Suid-Afrikaners	71.06%	49.80%	69.95%	74.33%
S A Staat	12.19%	5.80%	6.17%	1.11%
Vreemdelinge	0.93%	0.55%	1.79%	3.02%
Regspersone	4.67%	27.45%	11.57%	16.26%
TOTAAL	**100.00%**	**100.00%**	**100.00%**	**100.00%**

Tabel 5 gee 'n opsomming van die waarde van eiendomme in al die kategorieë.

TABEL 5 : WAARDE VAN EIENDOMME

BESITTER	ERWE	PLASE	HOEWES	DEELTITELS
Gebrekkige data	17.66%	15.70%	4.10%	11.40%
Suid-Afrikaners	17.73%	5.69%	43.19%	48.03%
S A Staat	0.26%	0.37%	0.14%	0.14%
Vreemdelinge	0.74%	0.15%	1.75%	2.46%
Regspersone	63.61%	78.09%	50.82%	37.97%
TOTAAL	**100.00%**	**100.00%**	**100.00%**	**100.00%**

Tabel 6 gee 'n opsomming van die gebied of grootte van die grond wat deur die verskillende kategorieë besitters besit word.

TABEL 6 : GEBIED/GROOTTE VAN GROND

BESITTER	ERWE	PLASE	HOEWES	DEELTITELS
Gebrekkige data	8.27%	11.97%	18.48%	1.17%
Suid-Afrikaners	6.53%	48.60%	49.34%	22.27%
S A Staat	81.00%	5.73%	21.97%	0.11%
Vreemdelinge	0.07%	0.07%	1.98%	0.52%
Regspersone	4.13%	33.63%	8.23%	75.93%
TOTAAL	**100.00%**	**100.00%**	**100.00%**	**100.00%**

In die lig van die streeksverskille in grondgebruik moet hierdie tabel nie op sy eie ontleed word nie. Dit is duidelik uit die tabelle dat korporatiewe besit van plase hoog in waarde (78.09%) is, maar baie kleiner in grootte (33.63%). Dit beteken dat hulle plase is met hoë waarde soos wynplase. Plase wat deur Suid-Afrikaanse individue besit word, is groot (48.60%), maar baie laer in waarde (5.69%). Besit deur vreemde individue is deurgaans betreklik klein in grootte en waarde.

TABEL 7 : GEKOMBINEERDE DATA VAN BESIT DEUR VREEMDELINGE

Afmeting	**Erwe**	**Plase**	**Hoewes**	**Deeltitels**
Getalle	0.93	0.55	1.79	3.02
Waarde	0.74	0.15	1.75	2.46
Grootte	0.07	0.07	1.98	0.52

Die enigste afleiding wat hieruit gemaak kan word, is dat vreemde individue blykbaar meer in stedelike residensiële grond belangstel. Hul sterkste aanwesigheid is in die kategorie van deeltitel besitters.

TABEL 8 : PATRONE VAN BESIT ONDER VREEMDELINGE

Tipe grond	**Getal**	**% van Getal**	**Waarde in R**	**% van Waarde**	**Grootte(km²)**	**% van Grond**
Erwe	52,786	65.66%	13,992,479,496	61.99%	945.488	31.99%
Plase	2,540	3.16%	1,009,916,956	4.47%	1 724.143	58.33%
Hoewes	1,049	1.30%	258,657,755	1.15%	283.800	9.60%
Deeltitels	24,013	29.87%	7,312,556,270	32.39%	2.316	0.08%
TOTAAL	**80,388**	**100.00%**	**22,573,610,477**	**100-00%**	**2 955.804**	**100.00%**

Die verskil tussen tabelle 7 en 8 is dat 7 besit deur vreemdelinge opsom as 'n deel van die ander kategorieë besitters. Tabel 8 konsentreer slegs of vreemde individue en som neigings en verspreiding van besit op van daardie individue alleen.

Tabel 8 toon duidelik aan dat vreemdelinge hoofsaaklik in stedelike residensiële eiendomme belangstel, met erwe en deeltitels wat meer as 90% van die getalle en waarde van vreemde eiendomme in Suid-Afrika uitmaak Die fisiese grootte van hul deeltitel-eiendomme kan geïgnoreer word, in die lig van die inherente klein grootte van al sulke eenhede in vergelyking met erwe, plase en landbou-hoewes. Hierdie tabel bevestig die interne konsekwentheid wat ook in Tabelle 5 tot 7 voorkom. Tabel 8 beklemtoon stedelike, residensiële besit meer as tabelle 5 tot 7, hoewel die prominensie van deeltitel-eiendomme deur table 8 bevestig word.

Tendense met betrekking tot erwe en plase is die volgende :

Erwe

Volgens table 7 besit vreemde individue in getalle .93% van die residensiële erwe in Suid-Afrika. Die waarde en grootte van hierdie eiendomme as persentasies van die totaal is onderskeidelik 0.74% en 0.07%.

Volgens table 8 maak stedelike residensiële erwe ongeveer 65% uit van al die eiendomme wat deur vreemde individue in Suid-Afrika besit word.

Die meeste vreemdelinge wat die 0.93% eiendomme besit, is persone met permanente verblyfstatus (52,529). Vreemde vlugtelinge (153) is die tweede grootste groep, met vreemde Openbare Maatskappye (104) wat die kleinste groep uitmaak. Geen inligting oor vreemde individue wat nie permanente inwoners is nie, is beskikbaar nie. Hulle kan wel onder die Onbekende kategorie val. Die totale persentasie van 0.93% residensiële besitters kan aansienlik verander sodra die kategorie van gebrekkige inligting oor besitters reggestel is.

Plase

Besit van plase deur vreemde individue gee rekenskap van ongeveer 0.55% (tabel 4), wat beduidend laer is as die getal en waarde van Erwe. Hierdie plase word omtrent geheel en al besit deur vreemdelinge met permanente verblyfstatus.

Gevolgtrekking

Vreemde individue met permanente verblyfstatus het sowat 1% van die stedelike residensiële grond in Suid-Afrika verkry. Hulle het ook 'n waarskynlik geringe persentasie (0.5%) van landelike grond in Suid-Afrika bekom. Nietemin, is hulle egter baie meer opmerklik in die stedelike residensiële (veral deeltitel-eiendomme) kategorie. Geen gevolgtrekking kon bereik word oor vreemdelinge wat nie permanente inwoners is nie, want geen betroubare statistieke is beskikbaar nie.

2.3 Vreemde Korporatiewe besit

Een van die ernstigste tekortkomings in die huidige registrasie-vereistes by die Akteskantore is dat korporatiewe persone of regspersone nie hul nasionaliteit hoef te openbaar nie. Die aktes-statistieke is dus nie van enige hulp om die omvang van vreemde besit deur korporatiewe entiteite in Suid-Afirka te bepaal nie. Die aard van korporatiewe (Suid-Afrikaanse en vreemde) besit is reeds gedemonstreer in tabelle 4 tot 6, en dit kan soos volg opgesom word :

TABEL 9: GEKOMBINEERDE DATA OOR BESIT DEUR KORPORATIEWE ENTITEITE

Afmeting	**Erwe**	**Plase**	**Hoewes**	**Deeltitels**
Waarde	63.61%	78.09%	50.82%	37.97%
Getalle	4.67%	27.45%	11.57%	16.26%
Grootte	4.13%	33.63%	8.23%	75.93%

'n Opvallende kenmerk van hierdie statistieke is dat, hoewel die getal en fisiese grootte van die eiendomme betreklik klein is, hul waarde buite verhouding hoog is. Dit beteken dat hulle hoofsaaklik eiendomme in die prima mark is, wat dus 'n hoë spekulatiewe waarde sal hê. Die invloed van korporatiewe besit op die Suid-Afrikaanse ekonomie kan dus nie geïgnoreer word nie en vereis fyn monitering.

Anekdotiese getuienis (soos diè wat deur eiendomsagente en by openbare verhore aan die Paneel verskaf is), sowel as getuienis wat deur kommersiële banke, veral ABSA-bank, voorgelê is, gee te kenne dat vreemde korporatiewe besit aansienlik is. Die volgende is 'n paar voorbeelde :

Die Paneel het vasgestel dat daar gevalle is waar vreemde korporasies volle filiale stig wat as Suid-Afrikaanse maatskappye geregistreer word. 'n Voorbeeld is die Utrechtse Beheer Maatskappij "Catherine" B.V. wat die Marakele Park (Edms) Bpk, CCG 088 Beleggings (Edms)Bpk en CCG 108 Beleggings (Edms) Bpk besit. Hierdie korporasies het aansienlike hoewes binne en rondom Marakele Nasionale Park in Limpopo.

Vreemde korporatiewe besitters het ook in aansienlike getalle in wynplase belê. Onlangse opvallende vreemde beleggings sluit in :

- Die Franse besitter van Anne Cointreau-Huchon van die likeur en Cognac familie het groot beleggings in die Morgenhof Eiendom gemaak.
- Die Italiaanse Graaf Ricardo Agusta het sowat R17miljoen belê in die opknapping van die Agusta Wynkelder in Franschoek.
- 'n Bahamaans-Amerikaase-SA wyn vennootskap het in 2001 die BoweJoubert Wingerd en Wynmakery gestig.
- Dornier Wines verteenwoordig 'n R100 miljoen belegging deur sy Switserse eienaar. Chateau Pichon-Longueville-Lalande het onlangs 'n 310 akker eiendom, Glen Elly, in Simonsberg gekoop.

Transnet se verkope van die Kaapse Waterfront is nog 'n voorbeeld waarby aansienlike vreemde kapitaal betrokke is.

Die volgende is hindernisse om 'n meer akkurate ontleding van die huidige situasie te maak :

Beslote korporasies word by die Registrasie kantoor vir Maatskappye en Intellektuele Eiendom (CIPRO) geregistreer. Die Registrateur se lêer van die registrasie maak nie voorsiening vir 'n aangewese plek vir nasionaliteit nie. Dit vereis die besitter se Suid-Afrikaanse identiteitsnommer. In die afwesigheid daarvan word die besitter se geboortedatum ingevul. Vreemde besit van 'n beslote korporasie kan derhalwe slegs opgespoor word deur te aanvaar dat die afwesigheid van 'n identiteitsnommer op 'n vreemde besitter dui.

Ten opsigte van maatskappye word geen nasionaliteitsverklarings vir registrasie vereis nie. Gevolglik moet die nasionaliteit van elke aandeelhouer afsonderlik bepaal word. Dit wil voorkom asof meeste maatskappye 'n mengsel van individuele en juridiese aandeelhouers het. Maatskappye moet aandeelhouers bekendmaak ingevolge regulasies, wat hulle 30 dae toelaat om te antwoord. Dit is dus arbeids-intensief en 'n moeisame proses.

Die Kantoor van die Meester van die Hoë Hof in elkeen van die veertien provinsiale afdelings is verantwoordelik vir die registrasie van trusts. Aangesien 'n akte van registrasie nie inligting bevat oor die nasionaliteite van trustees nie, moet die Meesterskantoor vir daardie inligting genader word.

In die lig van bogemelde, is die volgende beleidsoorwegings van belang :

1. Die tekortkomings in die registrasie van aktes regverdig 'n wysiging van die statutêre vereistes met betrekking tot nasionaliteit en burgerskap, nie net vir vreemde individuele besitters nie maar ook vir korporatiewe besitters.
2. Moontlike skuiwergate in die vereistes van openbaarmaking, soos voordoening, moet toegemaak word.
3. Die omskrywing van "vreemde besit" het meer aandag nodig, soos die persentasie-drempel vir sy besitters, trustees of aandeelhouers van 'n korporatiewe entiteit om as hetsy Suid-Afrikaans of vreemd te kwalifiseer. Nog 'n probleem is hoe om wisselende besit, soos aandeelhouding in genoteerde maatskappye, te hanteer.

3. Die omvang van grond in staatsbesit

Die argument word dikwels aangevoer dat grondhervorming bereik kan word deur grond in staatsbesit te gebruik, en dat aandag wat aan ander vorms van grondbesit (ook vreemde besit) geskenk word, nie geregverdig is nie. Gevolglik behoort aandag gegee te word aan die beskikbaarheid en gebruik van staatsgrond. In die lig van die verband tussen die beskikbaarheid van grond vir betekenisvolle grondhervorming en die Paneel se Opdrag, is konkrete getuienis aan die Paneel voorgelê wat die siening weerlê dat die Staat groot dele van grond besit wat geskik is vir grondhervorming (sien ook tabelle 1 en 4 tot 6). Die statistieke wat hieronder gegee word, spreek boekdele oor hierdie geskil. Selfs as dit waar was dat sulke grond bestaan, sal die Opdrag van die Paneel nog steeds tersaaklik wees.

Die grootste gedeelte van staatsgrond is reeds geokkupeer en word gebruik deur Swartes en Gekleurdes. Hulle was voorheen bloot "huurders" van die staat en sal nou kragtens CLARA (sowat 19 miljoen hektaar) en ander wetgewing titel verkry op die grond wat hulle okkupeer. Staatsgrond sal dus dramaties verminder word. Ander staatsgrond wat deur die Departement Openbare Werke, en in sommige gevalle deur Grondsake (voormalige tuislande), besit word, word deur die verdedigingsmag, openbare werke ondernemings in staatsbesit en bewaringsorganisasies bestuur. Bowendien is groot gebiede staatsgrond in swak ekologiese streke en nie geskik vir onmiddellike lae-koste volhoubare en produktiewe ontwikkeling nie.

Die Paneel is van oordeel dat die Regering die openbare persepsie dat groot gebiede staatsgrond nie gebruik word nie en vir grondhervorming aangewys kan word, moet regstel. Ingevolge die Paneel se Opdrag word die behoefde om vreemde besit en grondgebruik te monitor en te reguleer, verhoog deur die feit dat private grond, en nie staatsgrond nie, krities belangrik is vir grondhervorming en transformasie. Die antwoord op billike toegang tot grond kan nie verkry word deur die verdeling van staatsgrond alleen nie.

Die volgende is 'n voorstelling van die omvang van staatsgrond in Suid-Afrika (in hektaar).

In die volgende vier kaarte word 'n visuele voorstelling gemaak van die aard en omvang van vreemde grondbesit in Suid-Afrika.

ADDENDUM B

KAART 1 : KATEGORIEë VAN BESIT - VRYSTAAT

KAART 2 : TELLING VAN VREEMDE BESIT AS 'N PERSENTASIE VAN TOTALE EIENDOMME

KAART 3 : WAARDE VAN VREEMDE BESIT AS 'N PERSENTASIE VAN TOTALE WAARDE

KAART 4 : GEBIED VAN VREEMDE BESIT AS 'N PERSENTASIE VAN TOTALE GEBIED

Afdeling 2 Deel 3

Internasionale praktyke en beleidsrigtings : Regulering van besit en gebruik van grond en eiendom deur vreemdelinge in ander lande

Ten einde behoorlik oorweging te skenk aan grondbesit deur vreemdelinge, moet die Paneel se aanbevelings ook gebaseer word op vergelykbare beleidsrigtings en praktyke in ander lande. Die Paneel se Opdrag sluit dus ook in, onder andere, die versoek om "vergelykbare internasionale/vreemde praktyke (wette, beleid, invloed, ens) oor die geskil van grondbesit deur vreemdelinge" te ondersoek. Die Paneel lê dit uit as 'n taak om te kyk wat ander state doen in die verband, en om dan die benaderings wat die geskikste is vir oorweging in Suid-Afrika ook te identifiseer. Aanhangsel 6 bevat die gedetailleerde opname van internasionale praktyke en beleidsrigtings in ander dele van die wêreld. In hierdie afdeling word die mees tersaaklike aspekte beklemtoon. Die Paneel het opnames in die volgende lande gemaak :

Afrika : Malawi, Nigerië, Zambië, Zimbabwe

Midde-Ooste: Jordanië, Iran, Israel

Wes-Europa: Oostenryk, Frankryk, Noorweë, Switserland, Turkye, Spanje, Swede, Denemarke,

Finland, Griekeland, Ierland, Portugal

Oos en Sentraal Europa: Lithuanië, Slovakye, Pole, Tjegiese Republiek, Hongarye

Noord-Amerika: Kanada, Verenigde State van Amerika

Asië en die Stille Oseaan: Indië, Japan, Suid-Korea, Thailand, Singapoer, Indoniesië, Australië,

New Zealand

Latyns Amerika: Columbië, Brazilië, Mexiko, Chilli

Gedurende Julie en Augustus 2005 het lede van die Paneel en lede van die tegniese ondersteuningspan studiereise onderneem na die volgende lande : Kanada, Chilli, Brazilië, Indonesië, Singapoer, Engeland en Skotland. Die inligting wat versamel is, is ontleed en verskyn ten volle in Aanhangsel 12.

Algemene tendense geïdentifiseer in die internasionale praktyke en beleidsrigtings

In die volgende bespreking word vyf algemene tendense afgelei uit die internasionale voorbeelde wat die Paneel ondersoek het.

1. Strategiese faktore en nasionale belang

Nasionale belang en nasionale veiligheid word miskien meer as enige ander faktore aangevoer as die hoofredes vir die oplegging van beperkings op vreemde grondbesit of ander grondgebaseerde hulpbronne. Wat neerkom op nasionale belang en veiligheid word deur baie faktore beïnvloed, ook die tyd van die besluit en ander geo-politieke oorwegings. Wat dus 'n belangrike vraag van nasionale veiligheid is, kan verval of ontstaan soos die tyd verloop of deur skielike veranderings in die geo-politieke klimaat.

'n Paar ander motiverings wat beperkings op vreemde besit regverdig, is ook regverdigbaar op gronde wat analoog is aan nasionale belang en veiligheid. Nasionale belang omvat dus bekommernisse soos voedselveiligheid, beskerming van die kus en sensitiewe grond en water, kommunale grond, nasionale monumente, veiligheids- of militêre instellasies en ander gebiede van nasionale strategiese belang. Die Regering van Australië (Opsomming van Australiese Buitelandse Beleggingsbeleid uitgereik deur die Teourie – Mei 2000), doen soos volg verslag:

> Die Regering bepaal wat "teen die nasionale belang" is deur die algemeen aanvaarde bekommernisse van die gemeenskap in Australië in ag te neem. Die gemeenskap se bekommernisse word dus weerspiëel in spesifieke beperkings op vreemde belegging wat in meer sensitiewe sektore soos die media en ontwikkelde residensiële vaste eiendom geld. Die siftingsproses verskaf 'n duidelike en eenvoudige meganisme vir die hersiening van die optrede van vreemde beleggers in Australië wanneer hulle probeer om nuwe besigheidsbelange te vestig of te verkry of om addisionele eiendomme te koop. Op hierdie wyse kan die Regering druk plaas op vreemde beleggers om in Australië op te tree soos goeie korporatiewe burgers as hulle hul aktiwiteite in Australië wil uitbrei. Verreweg die meeste vreemde beleggingsvoorstelle het betrekking op die aankoop van vaste eiendom.
>
> Die Regering probeer verseker dat vreemde belegging in residensiële vaste eiendom die aanbod van woonplekke verhoog en nie spekulatief van aard is nie. Die Regering se vreemde beleggingsbeleid probeer dus om vreemde belegging in die behuisingsektor te kanaliseer na aktiwiteite wat regstreeks die aanbod van nuwe behuising verhoog (i.e. nuwe ontwikkelings – huise en grond, verblyfeenhede, stadshuise, ens) en voordele bring vir die plaaslike boubedryf en hul verskaffers.

2. Ekonomiese faktore

Ekonomies-verwante beheermaatreëls blyk heersend te wees in baie lande, aangesien die ware aard van vreemde verkrygings en gebruik van onroerende goed in 'n land na bewering hoofsaaklik beïnvloed word deur die betreklike finansiële superioriteit van nie-burgers teenoor die plaaslike burgers. Maatreëls word dus ingestel om die vloei van belegging te beperk of te stuur ooreenkomstig oorwegings van nasionale belang. Die regverdiging vir ekonomiese beheer sluit in die behoefte om grondspekulasie te beperk wat 'n potensiële bron van verwringing van die markpryse van landbou- en behuisingsgrond is.

Dit is van kardinale belang dat ons antwoorde soek op die swewende vraag van wat die determinante van direkte vreemde belegging (FDI) is. Of liewer meer direk : sal die regulering van grondbesit deur vreemdelinge die FDI negatief beïnvloed? Studies het openbaar dat hoewel 'n liberale beleid van belegging nodig is om FDI te lok, dit nie voldoende is nie. Ander beslissende faktore vir verhoogde vloei van FDI is : die grootte van die mark, groei, produksiekoste, vaardigheidsvlakke, voldoende infrastruktuur, ekonomiese stabiliteit en die duidelikheid en stabiliteit van reëls wat korrupsie en ander vorms van huur-aanvraag effektief kan uitskakel. Dit verduidelik waarom lande met uiteenlopende burgerskapbeperkings of beleggings-billikheid, soos Thailand, Maleisië, Singapoer en veral Sjina, tussen die top 20 ontvangers van FDI oor die hele wêreld is. Sjina wat die strengste nasionaliteitsvereiste het, is nommer een op die lys van twintig.

Die voorste groep geïndustrialiseerde lande in die wêreld van die "Organisation for Economic Co-operation and Development (OECD)" se *Checklist for Foreign Direct Investment Incentive Policies"* (OECD 2003), verklaar as "Guiding Principles for Policies Toward Attracting Foreign Direct Investment" dat :

> Die doel van beleidsrigtings om FDI to lok, moet noodwendig wees om beleggers te voorsien van 'n omgewing waarin hulle hul besigheid winsgewend kan bedryf sonder om onnodige risiko aan te gaan. Ondervinding wys dat sommige van die belangrikste faktore wat deur beleggers oorweeg word as hulle op ' n plek vir belegging besluit, is :

- 'n Voorspelbare en nie-diskriminerende reguleringsomgewing en 'n afwesigheid van onnodige administratiewe beletsels teen sake in die algemeen.
- 'n Stabiele makro-ekonomiese omgewing, met inbegrip van toegang tot deelneming aan internasionale handel.
- Voldoende en toeganklike hulpbronne, met inbegrip van die teenwoordigheid van tersaaklike infrastruktuur en menslike hulpbronne.

Die mees effektiewe optrede deur owerhede van gasheerlande om aan beleggers se verwagtings te voldoen, is :

- Waarborg van deursigtigheid in die openbare sector, asook 'n onpartydige stelsel van howe en wetstoepassing.
- Versekering dat reëls en hul implementering berus op die beginsel van nie-diskriminasie tussen vreemde en huishoudelike ondernemings, en in ooreenstemming met die volkereg is.
- Voorsiening van die reg van gratis oordragte met betrekking tot 'n belegging en beskerming teen willekeurige onteiening.
- Instelling van voldoende raamwerke vir 'n gesonder en mededingende omgewing in die huishoudelike sakesektor.
- Verwydering van struikelblokke in die weg van internasionale handel.
- Herstel van die aspekte van die belastingstelsel wat versperrings vir FDI is.
- Versekering dat openbare besteding voldoende en tersaaklik is.

Eiendomsbelasting as 'n ekonomiese faktor word ook soms geopper as 'n instrument om 'n onderskeid in die grondmark te maak tussen spekulasie en belegging deur vreemdelinge. Verskeie lande, insluitend Namibië, Frankryk, die Verenigde State en New Zealand, gebruik dit inderdaad, hetsy alleen of saam met ander maatreëls vir balansering. In die VSA beheers die Foreign Investment Real Property Tax Act (FIRPTA) beskikkings oor belange in vaste eiendom in Amerika deur 'n vreemde persoon of entiteit. 'n Persoon wat voldoen aan die wesenlike aanwesigheidstoets (om vir minstens 183 dae in die VSA te wees) of wat vir belastingdoeleindes as 'n inwonende vreemdeling kwalifiseer, word nie as 'n vreemde persoon beskou nie. Die bedrag wat weerhou moet word en deur die koper aan die "Inland Revenue Service" (IRS) betaal moet word, is 10% van die bedrag wat op die oordrag gerealiseer is, of 35% van die wins wat deur 'n huishoudelike korporasie, vennootskap, trust of boedel gemaak is. 'n Vreemde korporasie wat 'n VSA-vaste eiendom belang het wat onder enige verdragsverpligting is, is geregtig op nie-diskriminerende behandeling met betrekking tot daardie belang en kan kies om vir die doeleindes van daardie bepaling as 'n huishoudelike korporasie behandel te word. As die belang in vaste eiendom deur die vreemde persoon of entiteit gebruik word om gedurende die belastingjaar inkomste te genereer, en die eiendom is in die VSA geleë, bepaal die wet 'n 30% belastingkoers (of die koers van die belastingverdrag, indien laer). Die vreemde persoon of entiteit kan egter kies om die inkomste van die vaste eiendom te behandel as inkomste wat effektief verband hou met 'n VSA-bedryf of besigheid en dit sodoende onderworpe maak aan progressiewe belastingkoerse.

3. Totale verpligte verbod

Debatte oor grondbesit deur vreemdelinge word deels gelei deur voorstanders van 'n verpligte en totale verbod op besit deur vreemdelinge. Volgens Stephen Hodgson, Cormac Cullinan, Karem Campbell[14], het betreklik min lande waar opnames gedoen is 'n totale verbod op vreemde besit of gebruik van grond. Sommige lande soos China, Viëtnam, Ethiopië en 'n aantal ander maak 'n onderskeibare kategorie uit waar burgers ook nie toegelaat word om grond volkome te besit nie. Sjina verleen gelyke behandeling aan vreemdelinge deurdat grondgebruiksregte ook aan hulle verleen kan word. In Zambië bepaal die "Land (Conversion of Titles) Act" dat alle grond absoluut in die President vestig, "and shall be held by him in perpetuity for and on behalf of the people of Zambia". Verder word bepaal dat grond aan geen persoon toegestaan sal word nie behalwe vir 'n gespesifiseerde termyn van tot 100 jaar. So 'n bepaling, wat nie ongewoon in die Afrika-verband is nie, sluit egter nie op sigself vreemdelinge uit van die verkryging van grondregte wat netso sterk is as wat enige burger kan verkry nie. Sulke grondregte kan in die praktyk gelyk wees aan eiendomsreg, ofskoon dit onderworpe is aan 'n hoër juridiese reg van die staat of the President.

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14 "Landowners and Foreigners : A Comparative Analysis of Regulatory Approaches to the Acquisition and Use of Land by Foreigners" (FAO, Desember 1999, bl 31)

Gekwalifiseerde vorms van verbod is meer verspreid regdeur die wêreld. Voorbeelde is Singapoer (waar besit van grond deur vreemdelinge verbode is), Mexico naby sy internasionale grense, en Switserland.

4. Aanmelding en Beperkings

Die meerderheid lande in al die streke van die wêreld het een of beide beperkings op die besit/verkryging van grond, en aanmeldingsvereistes vir besit/verkryging van grond deur nie-burgers. Verskeie vorms van beperkings bestaan met inbegrip van (a) huurtydperke of termyn-beperkings; (b) beperkings op kus-sones, en in sensitiewe of verbode gebiede; (c) beperkings op hoeveelheid grond; (d) wederkerigheid of voorkeurbehandeling vir burgers; (e) voorkoopreg en reg op eerste weiering; en (f) permit of magtigingsvereistes. Aanmelding- of openbaringsmaatreëls stel lande in staat om 'n akkurate databasis oor grondbesit deur nie-burgers of nie-inwoners betyds te verseker as 'n basis vir beleidsingryping. Hierdie aanmelding- en openbaarmakingsmaatreëls word vir 'n reeks beplannings- en regeringsdoeleindes (soos belasting- en veiligheidsvrae) gebruik deur lande soos Mexico, Kanada, Australië, New Zealand, Thailand en die Verenigde State van Amerika.

5. Wetgewing oor aanmelding, Monitor of Openbaring van grondinligting

Opspoor van grondbesit [15] (soos van toepassing byvoorbeeld in Nova Scotia in Kanada) verskaf 'n stelsel om betyds inligting te versamel en by te werk soos die eiendomme verkoop word. Dit verseker dat 'n akkurate en omvattende databasis oor nie-burgerskap en nie-verblyfstatus beskikbaar is waarop toekomstige besluite gebaseer kan word. Betroubare data wat oor 'n tydperk versamel word, verskaf die inligting wat nodig is om vrae waaroor die gemeenskap bekommerd is, te beantwoord wanneer hulle ontstaan.

'n Opsomming van die grondregulasies oor vreemde besit in Chili, Indonisië, Singapoer, Engeland en Skotland

Chili

Die oorheersende eienskap van Chili se FDI omgewing is die baie oop klimaat wat die land weergee. Grond is geen uitsondering nie. Daar is so te sê geen regulasies oor die aankoop van grond deur vreemdelinge nie, behalwe ten opsigte van grens- en kusgebiede. Burgers van Peru, Argentinië en Bolivië kan nie grond binne 'n 10km buffer-sone tussen die grense van hierdie lande verkry nie. Daarbenewens is die baie lang weskus nie oordraagbaar nie en word slegs onder konsessie toegestaan.

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15 sien "Non-resident Land Ownership in Nova Scotia" – Finale verslag van die Vrywillige Beplanningstaakmag oor Nie-inwoner Grondbesit, Desember 2001

Ongeveer 35% van die grondoppervlakte van Chili is staatsgrond, waarvan 15% onder die jurisdiksie van die Ministerie van Nasionale Eiendom val, en 20% beskermde grond is wat onder die Departement van Bosbou val. Sowat 65% is in private besit. Die Ministerie van Nasionale Eiendom is belas met die verantwoordelikheid om al die grond onder die verskillende regeringstakke te bestuur ooreenkomstig 'n duidelike strategie van gebiedsontwikkeling en regulering van die onderskeie gebruike van staatseiendom. Dit sien om na die verkryging van grond deur die staat vir doeleindes van goeie regering deur aankope, oordragte, donasies en onteiening. Die verkoop van staatseiendom word slegs toegelaat indien die Ministerie 'n stuk grond as nie-noodsaaklik vir die behoorlike funksionering van die staat verklaar. Die oordrag van staatseiendom word gedoen deur ope en openbare tender.

Die Ministerie van Nasionale Eiendom het twee hooftakke van aktiwiteit. Dit probeer om produktiewe beleggings in staatsgrond te bevorder en om 'n model vir volhoubare beskerming van staatsbates te verseker.

Chili diskrimineer nie teen vreemdelinge ten opsigte van belegging in die land nie. Daar is twee tegnieke vir vreemde belegging. Eerstens, Hoofstuk 14 van die "Compendium of Foreign Exchange Regulations of the Chilean Central Bank", en tweedens, die "Foreign Investment Statute, Decree Law 600".

Hoofstuk 14 stel 'n algemene tegniek in vir die registrasie van vreemde belegging en dit het geen magte om 'n vreemde beleggingsprojek te keur of te verwerp nie. Inteendeel is dit veronderstel om die vrye toegang, gebruik en uitgaan van beleggingsvloei te vergemaklik. "Decree Law 600", aan die ander kant is 'n opsionele tegniek waardeur 'n vreemde belegger 'n beleggingskontrak aangaan met die Chileense staat. Die "Decree" bepaal spesiale voorwaardes vir beleggers soos die reg om kapitaal oor te dra, om winste te repatrieer, waarborg van nie-diskriminasie teen vreemdelinge, die reg om aan enige vorm van belegging deel te neem, om bates onbepaald te behou en belastingstabiliteit. Hierdie vrywillige toepassing van sulke kontrakte kan slegs verwerp word as hulle openbare orde, nasionale veiligheid of algemene ekonomiese beleid weerspreek. Die Foreign Investment Committee is belas met die verantwoordelikheid om die "Decree Law 600" te administreer. Ofskoon die algemene klimaat neig om vreemde belegging aan te moedig, is daar tog sommige beperkings. Nie-Chilene mag nie 'n Chileense vismaatskappye of in die media belê nie, tensy hul tuisland 'n wederkerige reeling met Chili het. Die Europese Unie het in 2002 so 'n ooreenkoms onderteken om kommersiële vismaatskappye te dek. Hoewel daar geen beperkings is op vreemde belegging in telekommunikasie nie, word van beleggers vereis om 'n lisensie te bekom en hulle is streng beperk. Chili het 'n Vrye Handelsooreenkoms met die VSA aangegaan wat op 1 Januarie 2004 in werking getree het.

Hierdie oop beleggingsklimaat het een persoon, Douglas Tompkins, toegelaat om groot stukke grond in Chili (skattings wissel tussen 400,000 en 500,000 hektaar) te bekom. Hoewel die grond skynbaar gekoop is om nasionale parke te skep om die land se gematigde woude te beskerm, het Tompkins se reusagtige besit van Chileense grond die land prakties in twee verdeel. Dit het 'n intense debat aangespoor oor die vraag of 'n vreemdeling toegelaat moes word om soveel grond te bekom. Chileense burgers (van links en regs van die politieke spektrum) het openlik sy

motiewe bevraagteken en hulle het 'n wetsontwerp opgestel om hierdie soort vreemde besit te beperk op grond van die territoriale integriteit van die land.

Indonesië

Alle regulasies oor besit, okkupasie en gebruik van grond is op beide Indonesiese burgers en vreemdelinge van toepassing. Indonesië behoort tans slegs aan Indonesiërs en die reg op grondbesit is beperk en gereguleerd.

Oor die algemeen is daar geen onderskeiding tussen Indonesiese burgers en vreemdelinge wat in Indonesië woon nie, behalwe dat vreemdelinge nie onbeperkte titel kan kry nie. Vreemdelinge wat in Indonesië gedomisilieerd is, kan voordele uit die grond verkry op dieselfde wyse as burgers. Maar toegang tot grond kan slegs deur vreemdelinge verkry word indien hulle aan sekere vereistes voldoen wat by wet voorgeskryf is. Nie-voldoening aan daardie vereistes diskwalifiseer vreemdelinge om enige soort grondreg te hê. Die "National Agrarian Law" van 1960 laat vreemdelinge die regte van gebruik toe. Dit verleen eiendomsreg van residensiële huise of huurpag in Indonesië op grond van Regeringsregulasie 41/1996. Die regulasie vereis dat vreemdelinge in Indonesië gedomisilieerd moet wees en dat hul teenwoordigheid nasionale ontwikkeling moet bevoordeel. Persone wat so 'n reg het, kan slegs een huis of een eenheid van 'n woning (deelhuis) wat nie klein is nie besit. Die grondrede is slegs om hulle toe te laat om na hul beleggings in die land om te sien. Vreemde regsentiteite wat ooreenkomstig Indonesiese reg gestig is en in Indonesië gedomisilieerd, is kan die reg verkry om grond wat aan die staat behoort, te bewerk. Indonesië beperk die grootte waarop hierdie reg uitgeoefen kan word tot vyf hektaat in digbewoonde gebiede en sewentig hektaar in minder digbewoonde gebiede.

Huur is nog 'n soort grondbesit wat vir vreemdelinge wat in Indonesië woon, beskikbaar is. Die huurooreenkomste moet op skrif wees en gewaarmerk word deur 'n bevoegde Indonesiese gesag. Langtermyn huurregte vir groot eiendomme en behuising kan geldig wees vir nie langer nie as 20 jaar, en kan hernu word vir 'n verdere 25 tot 30 jaar. 'n Langhuur kan hernu word tot maksimum kummulatiewe tydperk van 65 jaar.

Beperkings in Indonesië skrik nie vreemde belegging af nie, aangesien die houers van gebruiksregte aan regsaktiwiteite ten opsigte van die grond, die huis of eenheid van 'n deelhuis kan deelneem. Vreemdelinge wat enige soort gebruiksreg het, kan die reg op grond, huis of deelhuis verkoop, koop, met verband beswaar, besit, verhuur, skenk of gebruik.

Verkryging van grondregte deur vreemdelinge in Indonesië

Aansoek om 'n gebruiksreg te koop, word ingedien by die grondbeamptes. In die geval van private grond, stel die eienaar sy/haar eiendomsreg aan die staat beskikbaar. Sodra dit duidelik is dat die aansoeker voldoen aan die criteria vir vreemdelinge, magtig die staat die registrasie van die reg. Registrasie van die reg wat verkry is, word dan gefinaliseer by die betrokke registrasiekantoor. In die geval van huur moet die geskrewe huurooreenkoms tussen die vreemdeling en die eienaars

deur 'n bevoegde gesag opgestel word. Om geldig te wees, moet die huur in die streeksgrondkantoor geregistreer word. Verandering van grondgebruik moet deur die grondkantoor gemagtig word. Geen direkte oordrag van regte tussen twee private persone kan plaasvind nie, en verandering in besit van grondregte moet binne twee weke by die grondkantoor aangemeld word.

Singapoer

Ongeveer 90% van die grond in Singapoer is onder staatsbeheer, en 8% van huise is in private besit. Vir beide burgers en vreemdelinge word grond besit onder volle titel of huur. Grond kan vir nywerheidsdoeleindes tot 30 jaar gehuur word en dis hernubaar, terwyl staatsgrond vir 99 jaar gehuur kan word. Besit van grond en eiendom word gereël deur die "Residential Property Act" (RPA) van 1973. Die wet beperk vreemde besit van residensiële grond soos los huise, koppelhuise of terrashuise. Onbeperkte residensiële eiendomme en kommersiële of industriële eiendom is nie beperk vir vreemde besit nie. Gevolglik kan vreemdelinge nie-residensiële eiendomme en nie-beperkte residensiële eiendomme vryelik aankoop.

Ten einde beperkte residensiële eiendome te koop, het vreemdelinge vooraf goedkeuring nodig. Vreemdelinge wat residensiële grond wil koop vir ontwikkeling, moet om 'n kwalifiserings-sertifikaat ingevolge RPA aansoek doen. 'n Kwalifiserings-sertifikaat lê 'n ontwikkelaar voorwaardes op soos voltooiing van en beskikking oor die ontwikkelde eiendomme binne 'n gespesifiseerde tydperk. Die sertifikaat vereis verder van die ontwikkelaar om 'n bankwaarborg as sekuriteit vir nakoming van die voorwaardes te voorsien. Ontwikkelaars kan aansoek doen om verandering van die voorwaardes, en toestemming word op die meriete van elke geval verleen.

Die "Residential Property Act" lê criteria neer vir kwalifisering om beperkte residensiële eiendomme te koop. Vreemde persone wat sulke eiendomme wil koop, moet permanente inwoners wees. Die maatstaf dui op die persoon se bedoeling om in Singapoer te bly en te werk en daardeur 'n voldoende ekonomiese bydrae tot Singapoer te maak. Daar kan ook aan hierdie maatstaf voldoen word deur professionele en ander kwalifikasies of ondervinding wat van waarde vir Singapoer is. Vreemde maatskappye moet aan die vereiste van ekonomiese bydrae voldoen. Singapoer plaas ook beperkings op vreemde besit in die vorm van die grootte van die grond. Die eiendom wat deur vreemdelinge gekoop word, mag nie 'n grondgebied van 1393 vierkante meters oorskry nie. Vreemdelinge kan ook toegang tot grond verkry deur middel van 'n 30- of 90-jaar huur vir industriële doeleindes.

Proses van grondverkryging deur vreemdelinge in Singapoer

Die volgende stappe word gevolg wanneer grond of residensiële eiendomme gekoop word.

Inligting oor die koper se identiteit, asook burgerskap, en die besonderhede van die eiendom word deur die aktevervaardiger (prokureur) aan die registrateur van aktes (in Singapoer bekend as "controller of residential property") tydens indiening verstrek. Alle voorwaardes en beperkings op vreemde besitters word in hierdie stadium nagegaan.

In die geval waar 'n vreemdeling beperkte residensiële eiendom koop, word goedkeuring van die "Minister of Law" vereis. Die versoek om goedkeuring word eers by die "SLA" ingedien, wat dit in oorleg met ander betrokke departemente soos Handel en Nywerheid en Binnelandse Sake oorweeg. Die "SLA" lê dan die aansoek met hul aanbevelings voor aan 'n interdepartementele komitee wat uit die Ministers van Handel en Nywerheid, Binnelandse Sake en van "Law" bestaan. Die komitee vergader onder voorsitterskap van die permanente sekretaris van die Ministerie van "Law", waaronder Grondsake val. Die besluitnemingsproses van die komitee moet te alle tye deursigtig wees. Sodra 'n aansoek om goedkeuring deur hierdie komitee oorweeg is, is dit oop vir besware vir 'n gespesifiseerde tydperk, waarna 'n aanbeveling vir goedkeuring of andersins deur die Minister van "Law" gemaak sal word. Goedkeuring word in die diskresie van die Minister verleen.

Engeland en Skotland

In hierdie stadium is grondbesit in beide lande van die Verenigde Koninkryk onbeperk, en word inderdaad aangemoedig om direkte vreemde-belegging te lok. Lesse wat dus van hierdie lande geleer word, handel dus grootliks oor hul grondregistrasiestelsels. Skotland bied ook 'n boeiende voorbeeld van grondhervorming in 'n ekonomies-gevorderde gemeenskap.

Grondregistrasie in Engeland en Wallis

Grondregistrasie in hierdie lande vind plaas ingevolge die "Land Registration Act" van 2002, wat op 13 Oktober 2003 in werking getree het. Dit het alle vorige wetgewing oor grond vervang en 'n nuwe stelsel van aktevervaardiging ingelui. Die Wet beoog om die filosofie van registrasie te verander. Dit skep 'n stelsel waardeur registrasie titel verleen eerder as om bloot dit op te neem wat reeds geskep is. Dit is die resultaat van 'n gesamentlike projek tussen "His majesty's Land Registry" en die "Law Commission", wat in 1995 begin het. Die twee liggame het 'n verslag opgestel wat bestaan het uit drie dele.

Die oogmerk van die projek was om vir die eerste keer 'n afdoende register op te stel wat aktevervaardiging vergemaklik deur die aantal navrae wat gedoen moet word voordat registrasie finaal kan plaasvind, te verminder. Dit het ook 'n platvorm geskep vir die instelling van e-aktevervaardiging in Engeland en Wallis. In die verlede kon al die tye vir registrasie tot twee maande neem, afhangende van die omstandighede van alke transaksie. Daar word beoog dat registrasie en betiteling gelyktydig gedoen sal word sodra e-aktevervaardiging geïmplimenteer is.

Grondregistrasie – Skotland

Skotland bied 'n anachronisme in die moderne tyd : enersyds is dit ver gevorderd op ekonomiese en politieke gebied, terwyl dit andersyds tot onlangs nog 'n feudale stelsel gehad het. Ons sal eerstens kyk na hul registrasiestelsel vir diegene wat daarin geslaag het om grondeienaars te word.

Skotland is bekend vir sy suksesvolle registrasiestelsel tot onlangs toe die Skotte betiteling aangeneem het. Die Skotse en Suid-Afrikaanse stelsels was soortgelyk totdat betiteling in Skotland ingestel is. Registrasie van grond in Skotland vind plaas ingevolge die "Land Registration Act (Scotland) 1979." Die akteregistrasiestelsel word nog in Skotland gebruik ten opsigte van titels wat ongeregistreerd is.

Titelregistrasie bestaan uit 'n tabelariese (en nie 'n geslagkundige nie) rekord van besit, waar die title sonder verdere ondersoek gesien kan word. Dit is nie 'n indeks van tradisionele dokumente nie, maar dit skep 'n nuwe vorm van aantekening in die sin dat enigeen wat in 'n stuk grond belangstel, nie verder as die nuwe aantekening hoef te kyk nie om vas te stel of daar ander bestaande regte is wat aan die title kleef.

Die stelsel sluit drie beginsels in : die spieël, die gordyn en die versekeringsbeginsels. Die spieël gee die status van die titel weer, die gordyn bedek ander belange in die grond, en die voorgenome koper hoef hom of haar nie te bekommer oor onderliggende belange in daardie grond nie. Laastens waarborg die versekeringsbeginsel betaling vir skade ingeval 'n fout opduik wanneer registrasaie van titel plaasvind.

Die Skotse grondbesitstelsel het tot onlangs 'n sterk feudale karakter gehad, wat in sekere opsigte verwant is aan die Sweedse "torp" verskynsel. Skotse grondkwessies is intiem geskakel met die "Highland Clearances". Toe die Skotse stamselsel vernietig was na hul nederlaag deur die Engelse van 1745, is hul stamhoofde deur die Engelse aangemoedig om hulself en nie die stamme nie as eienaars van die grond te beskou. Baie van die grond was omskep in skaapweiding en baie stamlede is dus van grondbesit ontneem en moes hul arbeid aan grondeienaars verskaf sonder enige moontlikheid om die grond te besit. Hierdie feudale stelsel het voortgeduur tot 1974, toe wetgewing die leenbelasting wat plaasarbeiders aan grondeienaars moes betaal, afgeskaf het. Eers nadat die Skotse Parlement in 1999 ingestel was, is die geskil opgelos. Dit het 'n stel wette aanvaar : "the Abolition of Feudal Tenure (Scotland) Act, 2000", wat die feudale stelsel van grondbesit verwyder het; "the Title Conditions (Scotland) Act, 2003", vir die gebruik van grondtitels; en "the Tenements (Scotland) Act, 2004", om die wette oor woonstel-eiendom (deelgebou) te kodifiseer. "The Land Reform (Scotland) Act, 2003, het 'n raamwerk geskep vir landelike of plaas-gemeenskappe om grond in hul eie gebiede te koop.

Skotland verskaf dus 'n voorbeeld van 'n staat wat oor die algemeen beskou word as ekonomies gevorderd en deel van die Europese Unie, waarin grootskaalse grondhervorming plaasvind. Hulle moet worstel met die druk en mededinging vir prima grond in die Skotse Hooglande en ander gebiede, en dit balanseer met die inheemse verwagtings van persone wat vir geslagte van grond ontneem is.

BEOORDELING

Die Paneel het 'n wye reeks beleidsrigtings en praktyke op 'n internasionale skaal ontdek waarmee state hul grond reguleer. Regulering van grondbesit, soos die voorbeelde aandui, is nie 'n verskynsel van ontwikkelende lande alleen nie, maar sluit ook ontwikkelde state in (soos Kanada,

VSA, Singapoer, Australië en New Zealand). Dit is ook nie tipies van state in die proses van politieke oorgang nie maar ook 'n beleidsinstrument vir gevestigde demokrasieë.

Dit is ook nie 'n eienskap van 'n besondere makro-ekonomiese oriëntasie nie, maar word gebruik in alle vorms van ekonomieë. Getuienis het dit ook duidelik gemaak dat regulering van grondbesit nie beleggersvertroue ondermyn nie. Dit word bevestig deur die feit dat state met hoë vlakke van FDI, soos Australië en Singapoer sulke beleidsrigtings toepas.

Afdeling 2 Deel 4

Hersiening, harmonisering en rasionalisering van wetgewing oor ontwikkelingsbeplanning en grondgebruik

Die ontleding van wetgewing wat op ontwikkelingsbeplanning en grondgebruik van toepassing is (sien Aanhangsel 7), demonstreer duidelik dat daar 'n behoefte is aan nuwe omvattende en oorkoepelende nasionale wetgewing wat 'n standaard raamwerk vir die regulering van ontwikkelingsbeplanning en grondgebruik in al drie regeringsfere kan voorsien. Die veelvuldigheid van wetgewing op nasionale en provinsiale vlakke, tesame met bywette van plaaslike regering lei tot baie verskillende, en soms teenstrydige en verwarrende, praktyke wanneer dit kom by ontwikkelingsbeplanning vir residensiële, industriële, landbou en ontspanningsdoeleindes. Die situasie leen himself tot misbruik en manipulasie. Dit verduidelik waarom grondgebruik verander word sonder enige gesentraliseerde amptelike kennisgewing of goedkeurng.

In die volgende afdelings verskaf die Verslag 'n oorsig van die mees tersaaklike wetgewing oor ontwikkelingsbeplanning en grondgebruik. Die Paneel is nie bewus van enige verwysing in enige van die wette na vreemde besit nie. Hul insluiting in die Verslag is gemotiveer deur die Paneel se opmerking dat regulering van vreemde grondbesit en grondgebruik nie effektief sal wees nie, tensy die koördinering van die wetgewende dimensie in 'n gemeenskaplike wetgewende raamwerk ook verbeter word.

Wetgewing deur plaaslike owerhede is nie hier ingesluit nie. Hulle is te veel om te lys. Munisipaliteite het nie uitsluitlike grondwetlike magte in hierdie verband nie, en kan dus slegs wetgeef ingevolge magtigende nasionale en provinsiale wetgewing, wat wel hier ingesluit is. Munisipale outonomie word afgelei van die feit dat munisipale grond nog steeds as private grond gekategoriseer word, andersins is dit onderworpe aan die wetgewende raamwerk wat in hierdie afdeling gelys word.

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Afdeling 1 : Nasionale wetgewing regstreeks of onregstreeks van toepassing op grondgebruik en ontwikkelingsbeplanning

Behalwe Artikel 25 van, en Bylaes 4 en 5 by van die Grondwet is die volgende wette belangrik vir ontwikkelingsbeplanning en grondgebruik :

Afdeling 2 : Die tabelle hieronder som die provinsiale wetgewing op wat van toepassing is

WES-KAAP

- Ordonnansie op Dorpe, 33 van 1934
- Ordonnansie op Grondgebruiksbeplanning, 15 van 1985
- Prok R1897 van 1986, *Regulasies oor Dorpstigting en Grondgebruik*
- PK 733 van 1989, *Regulasies oor die Stigting en Wysiging van Stadsbeplanningskemas vir die Provinsie van die Kaap van Goeie Hoop*
- GK 1886 van 1990, *Dorpsontwikkelingsregulasies vir Dorpe*
- GK 1888 van 1990, *Grondgebruik en Beplanningsregulasies*
- Wes-Kaap Beplanning en Ontwikkelingswet, 7 van 1999

OOS-KAAP

- Ordonnansie op Dorpe, 33 van 1934
- Ordonnansie op Grondgebruiksbeplanning, 15 van 1985
- Ciskei Wet op Grondgebruiksregulasies, 15 van 1987

- Prok R293 van 1962, *Regulasies vir die Administrasie en beheer van Dorpe in Swart Gebiede*
- Prok 188 van 1969, *Swart Gebiede Grondregulasies*
- Prok 1897 van 1986, *Regulasies oor Dorpstigting en Grondbesit*
- PK 733 van 1989, *Regulasies oor die Stigting en Wysiging van Stadsbeplanning vir die Provinsie van die Kaap van Goeie Hoop*
- GK 1886 van 1990, *Dorpsontwikkelingsregulasies vir dorpe*
- GK 1888 van 1990, *Grondgebruik en Beplanningsregulasies*

NOORD-KAAP

- Ordonnansie op Dorpe, 33 van 1934
- Ordonnansie op Grondgebruiksbeplanning, 15 van 1985
- Prok R1897 van 1986, *Regulasies oor Dorpstigting en Grondgebruik*
- PK 733 van 1989, *Regulasies oor die Stigting en Wysiging van Dorpsbeplanningskemas vir die Provinsie van die Kaap van Goeie Hoop*
- GK 1886 van 1990, *Dorpsontwikkelingsregulasies vir Dorpe*
- GK 1888 van 1990, *Grondgebruik en Beplanningsregulasies*
- Noord-Kaap Beplanning en Ontwikkelingswet, 1 van 1998

NOORD-WES PROVINSIE

- Ordonnansie op Dorpe, 33 van 1934
- Ordonnansie op Grondgebruiksbeplanning, 15 van 1985
- Ordonnansie op Dorpsbeplanning en Dorpe, 15 van 1986(T)
- Ordonnansie op Onderverdeling van Grond, 20 van 1985(T)
- Bophuthatswana Dorpsregulering Wysigingswet, 21 van 1981
- Prok R293 van 1962, *Regulasies vir die Adminstrasie en Beheer van Dorpe in Swart Gebiede*
- Prok R 188 van 1969, *Swart Gebiede Grondregulasies*
- Prok R 1897 van 1986, *Regulasies oor Dorpstigting en Grondgebruik*
- PK 733 van 1989, *Regulasies oor die Stigting en Wysiging van Dorpsbeplanningskemas vir die Provinsie van die Kaap van Goeie Hoop*
- GK 1886 van 1990, *Dorpsontwikkelingsregulasies vir Dorpe*
- GK 1888 van 1990, *Grondgebruik en Beplanningsregulasies*

LIMPOPO

- Ordonnansie op Dorpsbeplanning en Dorpe, 15 van 1986(T)
- Ordonnansie op Onderverdeling van Grond, 20 van 1985(T)
- Venda Grondsake Prok, 45 van 1990

- Kwa Ndebele Dorpsbeplanningswet, 10 van 1992
- Prok R293 van 1962, *Regulasies vir die Adminstrasie en Beheer van Dorpe in Swart Gebiede*
- Prok R 188 van 1969, *Swart Gebiede Grondregulasies*
- Prok R 1897 van 1986, *Regulasies oor Dorpstigting en Grondgebruik*
- PK 733 van 1989, *Reglasies oor die Stigting en Wysiging van Dorpsbeplanningskemas vir die Provinsie van die Kaap van Goeie Hoop*
- GK 1886 van 1990, *Dorpsontwikkelingsregulasies vir Dorpe*
- GK 1888 van 1990, *Grondgebruik en Beplanningsregulasies*

MPUMULANGA

- Ordonnansie op Dorpsbeplanning en Dorpe, 15 van 1986(T)
- Ordonnansie op Onderverdeling van Grond, 20 van 1985(T)
- Bophuthatswana Dorpsregulering Wysingswet, 21 van 1981
- KwaNdebele Dorpsbeplanningswet, 11 van 1991
- KwaNdebele Dorpsbeplanningswet, 10 van 1992
- Prok R293 van 1962, *Regulasies vir die Adminstrasie en Beheer van Dorpe in Swart Gebiede*
- Prok R 188 van 1969, *Swart Gebiede Grondregulasies*
- Prok R 1897 van 1986, *Regulasies oor Dorpstigting en Grondgebruik*
- GK 1886 van 1990, *Dorpsontwikkelingsregulasies vir Dorpe*
- GK 1888 van 1990, *Grondgebruik en Beplanningsregulasies*

GAUTENG

- Ordonnansie op Dorpsbeplanning en Dorpe, 15 van 1986(T)
- Ordonnansie op Onderverdeling van Grond, 20 van 1985(T)
- Prok R1897 van 1986, *Regulasies oor Dorpstigting en Grondgebruik*
- GK 1888 van 1990, *Grondgebruik en Beplanningsregulasies*

VRYSTAAT

- Ordonnansie op Dorpe, 9 van 1969(O)
- Bophuthatswana Dorpsregulering Wysigingswet, 21 van 1981

KWAZULU-NATAL

- Ordonnansie op Dorpsbeplanning, 27 van 1949(N)

- KwaZulu Grondsakewet, 11 van 1992
- Prok R188 van 1969, *Swart Gebiede Grondregulasies*
- Prok R 1897 van 1986, *Regulasies oor Dorpstigting en Grondgebruik*
- GK 1886 van 1990, *Dorpsontwikkelingsregulasies vir Dorpe*
- GK 1888 van 1990, *Grondgebruik en Beplanningsregulasies*
- KwaZulu-Natal Beplannings en Ontwikkelingswet, 1998

BEOORDELING EN SLOTSOM

Die gebrek aan basiese minimum standaarde het bygedra tot die ongelyke praktyke by provinsies en plaaslike owerhede (munisipaliteite). Volgens die *Groenskrif oor Ontwikkeling en Beplanning*, maak laasgenoemde die snykant uit van die beplanningstelsel van ruimtelike ontwikkeling, veral in die vorm van die Geïntegreerde Ontwikkelingsplanne (IDP). Die Paneel het die behoefte aan dringende rasionalisering en harmonisering van die wetgewende raamwerk vir ontwikkelingsbeplanning geïdentifiseer. In hierdie verband word die idee van 'n nuwe nasionale raamwerkwet geopper. Dit vereis van provinsies en plaaslike owerhede om hul wetgewing te hersien, te rasionaliseer en te harmoniseer ten einde dit in ooreenstemming te bring met die nuwe nasionale wetgewende raamwerk. Die Grondwetlike basis vir so 'n benadering is Bylae 4 (Dele A en B – funksionele gebiede van gelyklopende nasionale en provinsiale wetgewende bevoegdheid) en Bylae 5 (Dele A en B – funksionele gebiede van uitsluitlike provinsiale wetgewende bevoegdheid).

Die Paneel is van oordeel dat gedurende die proses van rasionalisering en harmonisering die President die Presidensiële proklamasiebevoegdheid kragtens artikel 97 van die Grondwet kan gebruik om (as 'n oorgangsmaatreël terwyl nuwe wetgewing voorberei word) die administrasie van die massa wette wat tans by verskillende ministeries berus, aan die Minister van Landbou en Grondsake op te dra. Dit sou vereis dat die Minister deur die Inter-Ministeriële/Departementele Oorsigkomitee werk, wat deur die Paneel aanbeveel word.

Afdeling 2 Deel 5

Aanbevelings

5.1 Vreemdelinge, nie-burgers en vreemde belang

Die Paneel het wyd-verspreide bekommernis opgemerk oor die aankoop en besit van Suid-Afrikaanse bates deur vreemdelinge. Gevolglik is dit as noodsaaklik beskou om baie duidelik te omskryf wie as 'n vreemdeling beskou sal word, en ten opsigte van regspersone, hoe vreemde belange omskryf behoort te word. Die Paneel was in hierdie verband deur twee regsraamwerke gelei : eerstens, die wyse waarop 'n Suid-Afrikaanse burger in die Grondwet omskryf is,en tweedens, meer spesifiek met betrekking tot die verskillende kategorieë inwoners en nie-inwoners in Suid-Afrika soos in immigrasie-wetgewing omskryf. By die omskrywing van wie 'n vreemdeling is of wat vreemde belang is, het die Paneel daarbenewens onderskei tussen natuurlike persone, korporasies en trusts.

Aanbevelings

- In die geval van korporasies (besighede wat geïnkoporeer is ingevolge die Wet op Beslote Korporasies en ander wette), beveel die Paneel aan dat oorweeg word om die 50% + 1 aandeelhouding deur 'n nie-inwoner te verlaag om 'n entiteit onder vreemde besit of 'n vreemde belang daar te stel, en as sulks behandel te word in die reguleringsraamwerk [16] wat ontwikkel word.
- In die geval van trusts, moet inligting oor beide die trustees en die bevoordeeldes ingewin word. Dieselfde geld vennootskappe en gesamentlike besit deur individue waarvan sommige nie-burgers of nie-inwoners kan wees.
- In die lig van die langtermyn doelwitte van SAOK, beveel die Paneel aan dat burgers vanaf SAOK-lande of SAOK-korporasies hetsy van die regulasies vrygestel moet word of voorkeurbehandeling gegee behoort te word.
- Permanente inwoners behoort ook voorkeurbehandeling te geniet.

5.2 Verpligte Vereistes oor Openbaarmaking/Verklaring

Ingevolge die huidige beleid en praktyk, asook die stelsel van registrasie van aktes, is dit onmoontlik om die juiste omvang van vreemde en/of nie-inwoner besit en gebruik van grond in Suid-Afrika te bepaal, omdat die openbaring van burgerskap nie 'n voorvereiste vir die oordrag van eiendom is nie. Enigiemand kan grond in Suid-Afrika koop sonder om sy of haar burgerskap te verklaar. Gevolglik het die Akteskantoor nóg enige aantekening, nóg 'n register, van die burgerskap van grondeienaars in die land. Die Paneel is van oordeel dat dit 'n ernstige late is wat onmiddellik aandag vereis aangesien dit klaarblyklik in die openbare belang is om die burgerskap van diegene wat grond besit, te ken. *Die poging van die Paneel*

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[16] Dit moet in ooreenstemming gebring word met die Maatskappy-wetsontwerp wat onder oorweging is.

om 'n voorlopige ontleding van die beskikbare inligting en 'n ruimtelike kartering van grondbesit deur burgers en nie-burgers in hierdie verslag te verskaf, is noodwendig in die gevaar gestel deur die aard van die inligting wat in die Akteskantoor beskikbaar is. Die Paneel is dus sterk oortuig daarvan dat 'n stelsel van verpligte openbaarmaking/verklaaring van burgerskap onmiddellik ingestel behoort te word.

Doel van openbaarmaking

Sodanige openbaarmaking sal die volgende doeleindes dien :

- Dit sal die Regering in staat stel om op enige gegewe oomblik die omvang van besit van Suid-Afrikaanse grond of eiendom deur Suid-Afrikaanse burgers en nie-burgers, vroue, mans, verskillende bevolkingsgroepe, staat en private persone en natuurlike- en regspersone te bepaal;
- Dit sal basiese, betroubare en akkurate inligting aan die Regering beskikbaar stel vir ingeligte ontwikkeling en ander beplanning;
- Dit sal die Regering in staat stel om basiese, betroubare en akkurate data en inligting te hê om die vordering te monitor van die implementering van grondbeleidsrigtings en die invloed daarvan op kritieke sektore van die samelewing, veral vroue en diegene wat deur koloniale en apartheidsbeleidsrigtings, wette en praktyke uitgesluit en ontkieser is;
- Dit sal bydra tot deursigtige regering; en
- Dit sal bydra om die stelsel van registrasie van grond en eiendom in die land te verbeter.

Aanbevelings

'n Tweeledige benadering word aanbeveel vir bestaande en toekomstige openbaarmakings deur geregistreerde eienaars : (a) wysiging van Regulasie 18 kragtens die Wet op die Registrasie van Aktes, No. 47 van 1937, en (b) wysiging van die Wet self.

(a) Die wysiging van Regulasie 18 kan dadelik deur die Regulasieraad van Akteregistrasies gedoen word. Die Raad is, behoudens goedkeuring deur die Minister, kragtens artikel 10(j) van die Wet gemagtig om regulasies te maak wat voorskryf *"die wyse en vorm van identiteit van persone"*. Op grond van hierdie magtiging maak Regulasie 18 in sy huidige vorm soos volg voorsiening: *"Die naam van 'n persoon, die betrokke identiteitsnommer, geboortedatum of registrasienommer, na gelang van die geval .....moet in die betrokke boeke van die Akteskantoor aangeteken word."* Die Paneel beveel aan dat Regulasie 18 gewysig word om 'n omvattende openbaarmaking te vereis, met inbegrip van :

- Burgerskap
- Nasionaliteit
- Permanente verblyfstatus
- Geslag

- Ras
- Suid-Afrikaanse nasionale identiteitsnommer
- Vreemde paspoortnommer

In die geval van regspersone (besighede, korporasies, ens), ook :

- Maatskappy-registrasienommer
- Inkomstebelasting -registrasienommer
- BTW registrasienommer
- Aard van aandeelhouers (naam en plek van gewone verblyf van alle wesenlike aandeelhouers en hul ras, geslag, burgerskap en nasionaliteit).

In die geval van trusts, ook :

- Trust-registrasienommer
- Burgerskappe en nasionaliteite van trustees
- Burgerskappe van bevoordeeldes
- Die aard van bevoordeeldes (hul ras, geslag en plek van gewone verblyf)

Die oogmerk van Regulasie 18 is vir openbaarmaking en statistiese doeleindes, en nie om onregverdige diskriminasie te veroorsaak nie. Onder die nuwe demokratiese bewind is reeds 'n aantal wette aangeneem wat vir onderskeidings en differensiasies voorsiening maak. Voorbeelde sluit in die Wet op Gelyke Indiensneming, die Wet op die Bevordering van Gelykheid en Voorkoming van Diskriminasie, die Wet op die Beleidsraamwerk vir Voorkeurverkryging en die Wet op Swart Ekonomiese Bemagtiging.

(b) Wysigings aan die Wet op die Registrasie van Aktes sal 'n wet deur die Parlement vereis. Daar sal van bestaande eienaars verwag word om 'n Verklaring/Openbaring te maak soortgelyk aan diè wat van alle toekomstige eienaars vereis gaan word ingevolge die gewysigde Regulasie 18 (sien hierbo). Die kern van die bepalings van die beoogde wysiging moet, onder andere, insluit :

a. Verpligte identifikasie van grondeienaars
b. 'n Verifikasie-stelsel van grondeienaars
c. Akkurate en betroubare byhou van aantekeninge oor grondeienaars in SA
d. Toelaatbaarheid van aantekeninge vir regsdoeleindes
e. Bron van finansiering vir grondverkryging
f. Moniteringstelsel
g. Verbod op oordragte wat nie aan die reguleringsmaatreëls voldoen nie
h. Prosedure vir verbeurdverklaring van grond aan die staat waar daar nie-nakoming is
i. Beskerming van vertroulike inligting
j. Aantekeninge van huidige grondverbruik

Daar word verder aanbeveel dat die voorgestelde openbaarmakings deur maatskappye ook oorweeg word vir die nuwe Wetsontwerp op Maatskappye wat onder oorweging is.

Die Paneel is van oordeel dat die Wet op die Finansiële Intelligensie Sentrum (FICA) 'n vergelykbare en effektiewe tegniek bevat vir openbarings en verklarings. Dit kan dien as 'n model om die voorgestelde aanbevelings oor openbaarmaking te implementeer.

Eienaars wat geraak word

Die Paneel beveel aan dat die openbaringsvereistes toegepas moet word op alle natuurlike persone en regspersone wat tans grond of vaste eiendom besit of 'n registreerde belang daarin het, sowel as op die registrasie van alle toekomstige verkrygings van, of beskikkings oor, grond of vaste eiendom. Ten einde die vordering met transformasie van die Suid-Afrikaanse grondbesitpatrone te meet, behoort die openbaring op grond van ras slegs op Suid-Afrikaanse burgers en permanente inwoners van toepassing te wees.

Die Paneel beveel aan dat individuele besitters van eiendom persoonlik verantwoordelik is om aan die regulasies te voldoen. Die reg om volmag te sedeer is van toepassing. Korporatiewe of regspersone moet 'n persoon aanstel wat wetlik verantwoordelik is om in alle opsigte van hierdie regulering namens die regspersoon op te tree.

Fases en tydsraamwerke vir openbaring, en strawwe vir versuim om te openbaar

Daar word aanbeveel dat nadat die aanbevole wysigings aangebring is, behoort openbaring in die volgende twee fases geïmplementeer te word :

Eerste fase

Die Paneel beveel aan dat met onmiddellike effek by enige nuwe oordrag van vaste eiendom of enige eerste registrasaie van nuut ontwikkelde vaste eiendom al die aanbevole vereistes van openbaarmaking ingesluit behoort te word. In navolging van hierdie doelwit moet die Akteskantoor verseker dat die betrokke vorms en dokumente dienooreenkomstig hersien word.

Tweede fase

Die Paneel beveel aan dat die openbaring en verklaring deur bestaande eienaars of belanghouers in die tweede fase vanaf Januarie 2008 behoort te begin. Twee opsies om hierdie fase te implementer, word voorgestel :

(a) 'n proses in een slag, soos die aanvanklike openbaringsprosedure in FICA, gebaseer op 'n verklaringstydperk van 18 tot 24 maande; of
(b) 'n proses in stadiums (soos die een vir bestuurslisensies), deur die proses in alfabetiese blokke volgens van of naam van die regspersoon in te deel. So'n proses sal langer neem

maar kan beter bestuur word. Byvoorbeeld : A – B: gedurende Maart tot Mei; C – D : gedurende Junie tot Augustus, ens.

Ten opsigte van beide opsies moet twee administratiewe oorwegings in gedagte gehou word :

(1) desentralisering van die openbaring en verklaringsproses na aangestelde agente van die Akteskantoor, soos die plaaslike regeringskantore, Poskantoortakke, Landdroskantore, polisiestasies, ens.; en
(2) openbaring wat elektronies gedoen word (*e-government*, soortgelyk aan die "UIF" se registrasie van huishoudelike werkers en die "IEC" se gebruik daarvan vir sy kieserslys.

Voorgestelde strawwe vir versuim om te openbaar

Vier moontlike strawwe word voorgestel :

(i) Geen oordrag van eiendomsbesit kan plaasvind sonder dat die vereiste inligting openbaar word nie, en die gebruik van ou registrasie-dokumente sonder die bygewerkte inligting sal onmiddellik ingekort word;
(ii) Aanpassing van sekere FICA-strawwe [17] vir hierdie doel;
(iii) 'n verpligte boete vir 'n oortreder van tot 20% van die waarde van die betrokke eiendom; en
(iv) 'n toepaslike boete vir die beampte wat nie aan die vereistes voldoen nie.

Openbaring van veranderings in besitter se besonderhede

Die Paneel beveel aan dat 'n persoon of entiteit wat vir so 'n verklaring verantwoordelik is, binne drie maande nadat 'n verandering in enige van die verklaarde besonderhede plaasgevind het, wysigings van die voorgeskrewe dokumentasie by die Akteskantoor moet indien. Versuim om hieraan te voldoen, sal die eienaar strafbaar maak met die voorgeskrewe straf.

5.3 Ministeriële Goedkeuring

Die Paneel beveel aan dat spesiale Ministeriële Goedkeuring (met of sonder voorwaardes) vereis word vir sekere veranderinge in grondgebruik in die algemeen en vir beskikking oor sekere kategorieë grond aan vreemdelinge – veral waar die verandering in gebruik of beskikking aan vreemdelinge die potensiaal het om die staat se grondwetlike verpligtinge van grondhervorming negatief te beïnvloed (grond wat onderworpe is aan herstel-eise of wat afgesonder is vir herverdeling of geïntegreerde menslike vestiging). Spesiale Ministeriële Goedkeuring behoort ook

[17] Moet nog verder ontwikkel word

van toepassing te wees op die verkryging van grond of veranderings aan grondgebruik deur Suid-Afrikaanse burgers wat dieselfde negatiewe invloed kan hê. Die besluit of grond binne so 'n kategorie val, behoort bepaal te word deur, onder andere, die tegnieke van die Inter-Ministeriële of –Departementele Oorsigkomitee (sien hieronder 5.4).

Daar word aanbeveel dat die Minister van Landbou en Grondsake die diskresie en goedkeuringsbevoegdheid behoort te hê in die volgende gevalle :

i. Stedelike grond

Daar behoort riglyne te wees oor die grootte, waarde en aantal eiendomme wat 'n vreemdeling kan besit. Die riglyne behoort die waarde van vreemde direkte belegging wat deur die voorgenome vreemde koper verteenwoordig word, in ag te neem. Ministeriële goedkeuring is nodig as 'n koop oor hierdie riglyne gaan.

ii. Landbou en landelike grond

Die verkryging van landbou (landelike) grond bokant 'n sekere waarde en/of 'n sekere grootte deur vreemde persone/belang (soos omskryf in 1 hierbo) en/of nie-inwoners vereis Ministeriële goedkeuring. Die Paneel beveel aan dat riglyne oor grootte, waarde en beoogde grondgebruik ontwikkel moet word.

iii. Grond afgesonder vir Herstel en Herverdeling

Aankoop van grond (deur vreemdelinge of Suid-Afrikaanse burgers) ten opsigte waarvan daar 'n gevestigde eis vir die doeleindes van hetsy herstel of herverdeling is, vereis Ministeriële goedkeuring.

iv. Ontwikkeling van Golf-eiendomme, Polo-eiendomme en Wildsplase

In die lig van die sosiale, ruimtelike en omgewingsgevolge van hierdie eiendomme, beveel die Paneel aan dat die ontwikkeling van golf-eiendomme, polo-velde en wildsplase die goedkeuring van die Minister, in oorleg met die betrokke provinsiale en/of plaaslike owerhede, behoort te vereis.

5.4 Inter-Ministeriële/ - Departementele Oorsigkomitee

Die Paneel het opgelet dat daar baie belanghebbende partye betrokke is by die kwessie van besit en gebruik van grond deur vreemdelinge. Dit het ook oorweeg dat vreemde direkte belegging 'n belangrike komponent van die ontwikkelings-agenda van Suid-Afrika is.

Die Paneel beveel effektiewe, hoë-vlak inter-regeringskoördinasie en samewerkking aan vir im-

plementering en oorsig, deur die aanstelling van 'n permanente komitee wat uit die volgende Ministers/Departemente bestaan : Landbou, Grondsake, Provinsiale en Plaaslike Regering, Behuising en Omgewingsake en Toerisme. Die Komitee behoort deur die Minister van Landbou en Grondsake byeen gebring te word. Sy verantwoordelikheid is om die neigings in vreemde grondbesit en veranderings in grondgebruik te monitor, en om aan die Regering toepaslike regstellende ingrypings aan te beveel. Die voorstel dat die bestaande Kabinetsgroepe vir hierdie doel gebruik moet word, word nie ondersteun nie, want die toegewyde doel van die Komitee sal dan verlore wees.

5.5 Huurpag

Die Regering kan, in ooreenstemming met die praktyk in sommige van die lande wat bestudeer is, medium- en langtermyn huurkontrakte vir staatsgrond oorweeg as 'n lewensvatbare alternatief vir vreemdelinge wat in die toekoms grond en belange in grond wil bekom. Huurpagregte het tydsbeperkings en kan 'n aanvaarbare alternatief vir volle eiendomsregte wees, hoewel hulle steeds Suid-Afrikaanse burgers van die verkryging van besit en gebruik van die grond uitsluit. Terselfdertyd sal huurpagregte 'n tipe veiligheid van besit verskaf wat vir baie opregte vreemde beleggers aanvaarbaar mag wees.

5.6 Totale verbod op Vreemde besit in geklassifiseerde/beskermde gebiede

Beleid word aanbeveel oor die verbod op private besit van grond deur vreemdelinge (en Suid-Afrikaanse burgers in sommige gevalle) binne die territoriale jurisdiksie van die Republiek op gronde van nasionale belang, omgewingsoorwegings en nasionale veiligheid.[18] Voorbeelde van sulke grond sluit in Nasionale Sleutelpunte, [19], kusgebiede,[20] bewaringsgebiede, areas van historiese en kulturele belang, grond naby aan militêre instellasies, water-opvangsgebiede en grond langs grense/internasionale grense.

5.7 Beskikking oor Staatsgrond

Die Staatsgrond Beskikkingskomitee en Provinsiale komitees het geen jurisdiksie oor Munisipale

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[18] Verslagdoeningsverpligtinge op bestaande besit deur vreemdelinge in die aangewese gebiede binne 'n voorgeskrewe tydperk moet via die Volle Openbaarmakingsregulasaies opgelê word. Daarna kan die Regering, onderworpe aan "regverdige en billike" vergoeding, die grondwetlike mag uitoefen om grond te onteien en dit hetsy behou as staatsgrond of aan gemagtigde burgers toewys.

[19] Wet op Nasionale Sleutelpunte, No. 102 van 1980

[20] Die Wetsontwerp op Kusbestuur dek aspekte hiervan

grond nie wat (na die oordeel van die Paneel) steeds foutiewelik en ongrondwetlik as "private grond" gekategoriseer word. Dit is 'n konvensie of praktyk wat uit die verlede oorgeërf is. Die drie sfere van regering is instellings en organe van een soewerein demokratiese staat, en Bylaes 4 en 5 by die Grondwet klassifiseer nie besit van, en beskikking oor, staatsgrond as 'n uitsluitlike bevoegdheid van Munisipaliteite nie. (Artikel 1 gelees met Hoofstuk 3 van, en Bylaes 4 en 5 by, die Grondwet). Daar word dus aanbeveel dat aldrie sfere van regering deur al die aanbevelings van hierdie Verslag gedek behoort te word. Daar word ook aanbeveel dat al die provinsies deel van die stelsel van grondbeskikkingskomitees behoort te word. Die Regering en al die staatsorgane behoort die voorbeeld te stel by die implementering van die regulatoriese stelsel van vreemde grondbesit en moet hul weerhou van die beskikking oor, en verandering van, grondbesit wat grondhervorming kan ondermyn en die soewereiniteit van die staat in die gevaar kan stel.

5.8 Beperkte tydelike moratorium op die beskikking oor staatsgrond aan vreemdelinge

'n Beperkte tydelike moratorium van (min of meer) twee jaar word voorgestel. Dit moet die beskikking oor staatsgrond, met inbegrip van grond wat deur enige staatsorgaan of staatsonderneming en enige van die drie sfere van regering besit word, aan vreemdelinge verbied [21] - en in beperkte gevalle aan Suid-Afrikaanse burgers wat nie vir vergoeding kragtens die nasionale beleidsrigtings van grondhervorming kwalifiseer nie. Dit is nie 'n totale verbod nie. Dit is bedoel om sekere sfere van regering en staatsorgane te verhoed om oor staatsgrond te beskik wat vir grondhervorming en menslike nedersettings vir ontneemde en gemarginaliseerde persone en gemeenskappe gebruik kan word. Natuurlik kan uitsonderings oorweeg word. Die beperkte tydelike moratorium kan opgehef word sodra die proses van Ministeriële Goedkeuring en die Inter-Ministeriële/-Departementele Komitee wat hierbo aanbeveel is, ingestel is en in werking is. Aangesien die aanbeveling beperk is tot breed-gedefinieerde staats/openbare grond (asook munisipale grond), kan verwag word dat die entiteite wat die betrokke grond besit die nasionale beleid sal nakom, selfs in die afwesigheid van 'n statutêre verbod.

5.9 Sonering, grondgebruik en beplanningswetgewing

Die Paneel beveel aan dat daar rasionalisering en harmonisering moet plaasvind van wette wat grondgebruiksbeplanning en grondsonering raak. Dit moet gedoen word deur middel van die verordening van oorkoepelende nasionale wetgewing om sekerheid, minimum standaarde en orde te verskaf. Goedkeuring vir nuwe ontwikkelings en hersonerng van grond vir ander gebruike is tans nie gekoördineer tussen die verskillende regeringsfere nie. 'n Ontwikkelaar kan byvoorbeeld

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[21] Die Konstitisionele Hof kan genader word om 'n bevel kragtens artikel 167(5) van die Grondwet wat verklaar dat enige wetgewing of ander bepaling, wat munisipale verordeninge en Ordonansies insluit, ongrondwetlik is indien dit grond wat deur enige staatsorgaan of regeringsfeer besit word, as private grond kategoriseer.

een sfeer van regering (soos 'n provinsie) nader vir goedkeuring van 'n nuwe ontwikkeling sonder dat 'n ander sfeer van regering daarvan kennis dra (soos die plaaslike munisipaliteit waar die ontwikkeling sal plaasvind). Alternatiewelik kan die plaaslike regering dit goedkeur sonder die provinsie se kennis. Daarom moet die Wetsontwerp op die Bestuur van Grondgebruik weer na gekyk en geaktiveer word. Die afwesigheid van oorkoepelende nasionale standaarde lei tot ongelyke en verwarrende praktyke in grondgebruik, veral op plaaslike regeringsvlak. Vreemdelinge en sterk "ontwikkelaars" blyk die situasie uit te buit, en dit lei tot openbare afkeur en persepsies van korrupsie. 'n Hersiening van huidige praktyke in die sonerings- en hersonerings-prosedure, veral met betrekking tot die ontwikkeling van golf-eiendomme, lewenstylboerdery, polo-eiendomme en wildboerdery [22] behoort binne die bestek van ministeriële en inter-regeringstoesig gebring te word.

5.10 Voordoening (bv Front-maatskappye)

Voordoening is uitgewys as 'n vraagstuk wat die Regering se beleid oor grondhervorming en regulering van vreemde grondbesit kan ondergrawe. Dit is ook 'n praktyk wat die statistieke kan verwring wat verkry is van die verpligte openbaring/verklarings wat in 5.2 aanbeveel is. Daar word dus aanbeveel dat sekere maatreëls ingesluit moet word by enige nuwe beleid wat vreemde grondbesit moet reguleer. Maatreëls wat reeds in ander wetgewing bestaan en wat maatskappye en breedgebaseerde Swart Ekonomiese Bemagtiging, asook belasting regleer, behoort oorweeg te word vir insluiting in hierdie beleid.

5.11 Algemene magtigende wetgewende wysigings om uitvoering aan sommige van die aanbevelings te gee

Die Paneel beveel 'n omvattende Algemene Regswysigingswetsontwerp of 'n Grondsake Wysigingswetsontwerp aan, soortgelyk aan die Wysigingswetsontwerp of Geregtelike Aangeleenthede, om die aanbevelings wat wetgewende wysigins vereis, te verorden. Dit sal die behoefte aan heeltemal nuwe wetgewing of ondergeskikte wetgewing (regulasies), soos die aanbevole wysiging van Regulasie 18, vermy. Die voordeel van so 'n benadering is dat die gevolge van wysigings aan 'n spesifieke Wet/te op ander wetgewing maklik in 'n enkele Wetsontwerp geakkommodeer word.

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[22] Die land sit reeds met 'n ssaak van moord op 'n plaasbestuurder wat verbind word met die omskepping van grondgebruik na wildboerdery (sien W Hlongwa, "Make Way for Wild Animals" **City Press**, 28 Januarie 2007 op bl 21).