

NATIONAL LAND TENURE SUMMIT 4 – 6 SEPTEMBER 2014

STRENGTHENING RELATIVE RIGHTS OF PEOPLE WORKING THE LAND

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rural development
& land reform

Department:
Rural Development and Land Reform
REPUBLIC OF SOUTH AFRICA

Presentation Outline

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- Combining Share-Equity & Co-Management
- Share Equity
- What is to be done?
- Financing Worker Equity
- Strengthening Relative Rights Model
- Conclusion

Context

- The broad context for all rural development and land reform policies is:
 - **Constitution:** Sections 25, 26, 27 and 36 of the Constitution.
 - **Freedom Charter** which declares that 'South Africa Belongs To All Who Live In It, Black And White!'
 - **National Development Plan (NDP)**
 - **Agenda 21 of the United Nations**
 - **General Comment No.7 (1997):** The right to adequate housing (Article 11 (1) of the Covenant): forced evictions
- Need to address historical land hunger and extreme concentration of land ownership and control in a few hands.

Context

Clauses 3 and 4 of the **Freedom Charter** provide that:

- Clause 3: The People Shall Share In The Country's Wealth!
- Clause 4: The Land Shall Be Shared Among Those Who Work It.

Agenda 21 states that *"People Shall Be Protected By Law Against Unfair Eviction From Their Homes and Land."*

- In the Habitat Agenda, Governments committed themselves to *"protecting all people from, and providing legal protection and redress for, forced evictions that are contrary to the law, taking human rights into consideration; [and] when evictions are unavoidable, ensuring, as appropriate, that alternative suitable solutions are provided."*

Context (cont)

General Comment No 7 (1997)

- **Committee on Economic, Social and Cultural Rights' General Comment No. 4 (1994):**
 - All persons should possess a degree of security of tenure which guarantees legal protection against forced eviction, harassment and other threats;
 - Forced evictions are, *prima facie*, incompatible with the requirements of the Covenant;
 - Term "forced evictions" is defined as the permanent or temporary removal against their will of individuals, families and /or communities from the homes and/or land which they occupy, without the provision of, and access to, appropriate forms of legal or other protection;
 - Prohibition on forced evictions does not, however, apply to evictions carried out by force in accordance with the law and in conformity with the provisions of the International Covenants on Human Rights.
 - Procedural protections involved in legal evictions include (among others): an opportunity for genuine consultation with those affected; adequate and reasonable prior notice prior; information on proposed evictions; state presence during eviction; and provision of legal remedies and aid.

Context (cont)

The National Development Plan

- **Chapter Six of the NDP** sums up the essence of an integrated and inclusive economy in the following 'Key Points':
 - Rural communities require greater social, economic and political opportunities to overcome poverty.
 - To achieve this, agricultural development should introduce a land reform and job creation / livelihoods strategy that ensures rural communities have jobs.
 - Ensure quality access to basic services, health care, education and food security.
 - Plans for rural towns should be tailor-made according to the varying opportunities in each area. Intergovernmental Relations should be addressed to improve rural governance.

Problem Statement

- There is a need to develop a system of incentives and disincentives to encourage those with vested interest in the land to ***conduct their relationship around land according to the dictates*** of these Clauses of the Freedom Charter, the National Development Plan, the UN's Agenda 21 and General Comment No.7 (1997), with whatever necessary adaptations here and there, as the case might be, given peculiar conditions and circumstances.
- **Major Gap:** No mention of duty and responsibility placed on the worker-dweller to play their role in ensuring that their right of tenure to the land is earned; and, could be systematically defended.
- In any constitutional democracy, rights are balanced with responsibilities. The system we introduce, therefore, must take this necessary balance into cognisance.

Combining Share-Equity & Co-Management

- A combination of Share-equity and Co-management is the key to achieving the system of positive incentives and disincentives.
- The combination could help manage unintended consequences to the re-opening of land claims and the introduction of the Exceptions to the 1913 cut-off date. The Exceptions will not fall under the framework of the Restitution of Land Rights Act (as amended).
- The LTA provides capacity to translate tenancy rights into the right to claim land and provides protection against eviction after a certain length of time working and residing on a farm.
- Even justified eviction would require the evictor to ensure that the evicted has alternative residence.

Share Equity

- The Share-equity Scheme should be complemented by the establishment of Sustainable Rural Settlements on land acquired through either share-equity rights accumulated by workers over time or through state interventions.
- The United Nations ascribes **effectiveness of "sustainability"** to the following conditions:
 - Socio-cultural development: health, education and recreation;
 - Economic development;
 - Environmental development;
 - Institutional / political support; and,
 - Morality and aesthetic relational values.
- **Sustainable Rural Settlements would achieve at least 3 objectives:**
 - secure the residential tenure of the farm-dweller/worker;
 - enable him/her to sell his/her labour-power across the fence, without fear of eviction; and,
 - Strengthen bargaining power in advancing worker rights and improving conditions of living.

What is to be done?

Policy Proposals:

- a) Protect and promote relative rights of people working the land.
- b) The regime being outlined here is based on the relative contribution of each category of people to the development of defined land portions or farm units. The historical owner of the land automatically retains 50% of the land, while the labourers on the land assume ownership of the remaining 50%, proportional to their contribution to the development of the land, based on the number of years they had worked on the land.
- c) The Government will pay for the 50% to be shared by the labourers, but the money will go into an investment and development fund (IDF) to be jointly managed by the parties constituting the new ownership regime. The Fund will be used to develop the managerial and production capacity of the new entrants to land ownership, to further invest on the farm as well as to pay out people who wish to opt out of the new regime.
- d) Keep the current regime of tenancy protection and derived rights, but balance that up by introducing a regime of duties and responsibilities which the worker-dweller must observe and comply with, in order to sustain this share-equity regime.

What is to be done?

Policy Proposals:

- e) All labourers who would have provided ten consecutive years of disciplined service on a farm, based on the regime of duties and responsibilities historically obtaining on the farm, the worker-dweller must be entitled to ten percent share-equity on the land, based on its market value.
- f) Should the worker/dweller wish to leave the farm, after ten years of disciplined service, having earned the ten percent share-equity ownership, he/she should be compensated to that extent, over and above whatever other rights were due to him or her, as an employee.
- g) After ten years of disciplined service, the Farm Manager should, by force of law, introduce the worker-dweller to basic elements of farm management, reflective of the new relational dynamics.

What is to be done?

Policy Proposals:

- h) After twenty-five years of disciplined service, the farm-worker/dweller should be entitled to twenty-five percent share-equity. The same conditions, which define the relationship between the farmer and the worker/ dweller, as set out in the relevant paragraphs above, hold in this regard as well.
- i) After fifty years of disciplined service, the farm-worker/dweller shall be entitled to fifty percent share-equity land and all the conditions as set out in the relevant paragraphs above apply.
- j) In the event a worker/dweller failed to comply with the regime, as set out in the contract of disciplined service to be defined in a future law, the Farm Management (reflective of the new regime) is obliged to take the matter up with the Land Rights Management Committee (LRMC). The LRMC has to consider the matter and advise on steps to be taken. In the event the decision is that the worker-dweller has to leave the farm, the Municipal Council must provide the farm-dweller with suitable accommodation, within a prescribed period.

What is to be done?

Policy Proposals:

- j) If the farm-dweller had not completed ten years of service, the ordinary conditions provided for by the country's labour relations system will apply.
- j) If the farm-dweller had completed ten years of service and had earned tenancy rights, the LRMC has to take this into account if it determines that the farm-dweller had to leave the land.
- The abovementioned conditions should constitute a regime of the protection of relative rights on land, in alignment with the provisions of the Freedom Charter, the NDP and the United Nations Agenda 21.

Financing Worker Equity

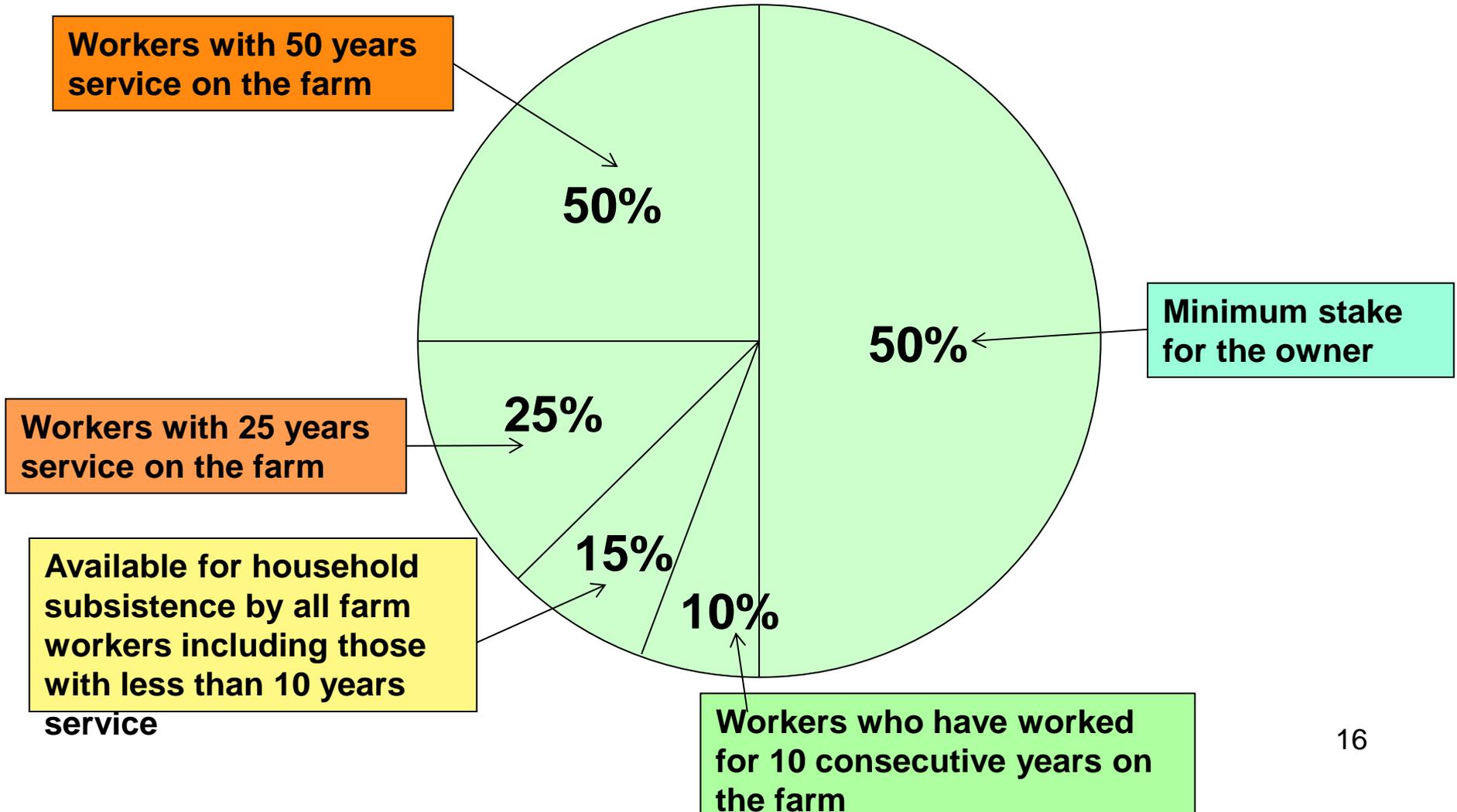
- There are two main sources of financing the worker-equity:
 1. Through the Land Reform Programme; and,
 2. Through own historical contribution by the worker.
- A future land tenure law shall recognize the farm-worker's cumulative rights, based not only on the fact that a worker lived on the farm for a particular period, but on contribution he /she made to the development of the farm, through his / her labour power.
- That labour power was never fully compensated for.
- The relative equity stakes recognize this full contribution, which the exploitative wages have denied the workers for all of those years.
- The contribution by the government is an attempt at restoring the dignity of the worker.

Financing Worker Equity (cont)

- Contribution by the state must go to further development of the farm.
- The acquisition of equity is, and must be seen to be, a fundamental game-changer as it introduces co-management of the farm.
- Equity-holders must establish an Investment and Development Fund (IDF) which must be representative of all equity-holders to the farm.
- Government (DRDLR) will deposit its contribution into the IDF, earning membership of the management of the Fund.
- Although Government has full speaking rights in the management of the IDF, it will not have voting rights.
- A system of collective ownership, based on relative equity-holdings is therefore being introduced.
- The figure below illustrates the Model: it is a graphic attempt at operationalising the constitutional principle of 'Just and equitable' re-distribution of land.

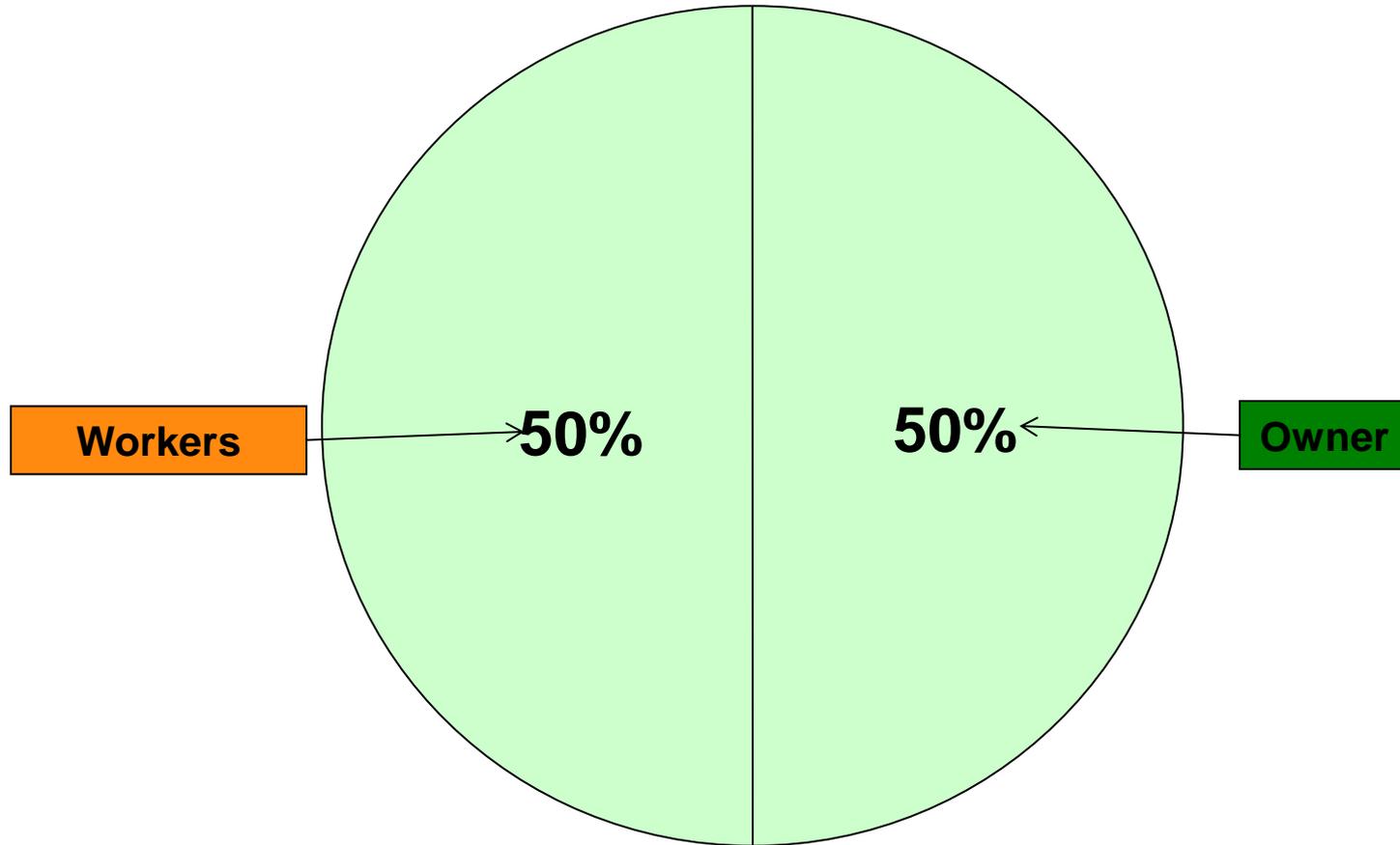
A RADICAL REDISTRIBUTIVE MODEL FOR LAND REFORM

Fig 1: *STRENGTHENING RELATIVE RIGHTS OF PEOPLE WORKING THE LAND*



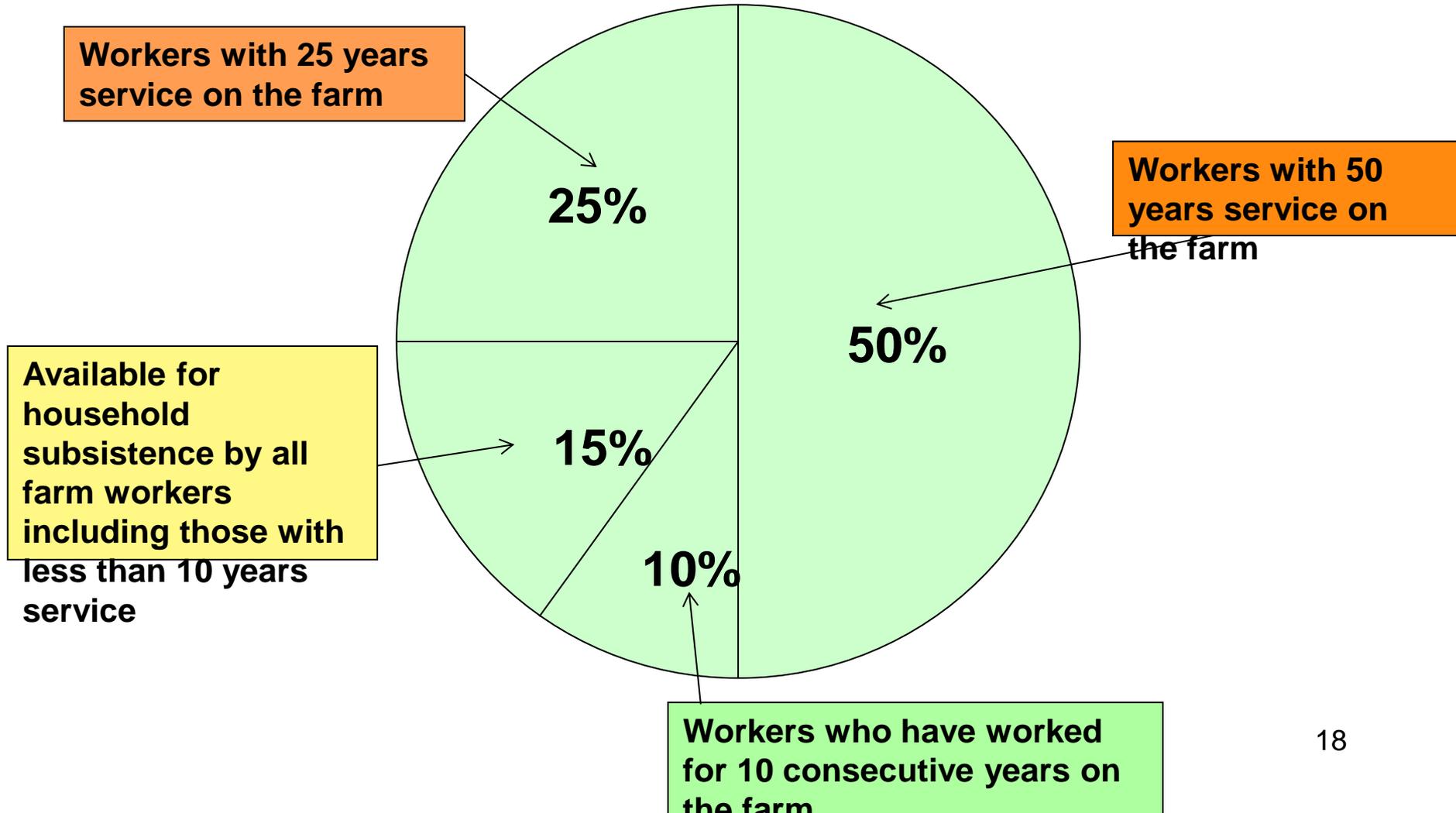
A RADICAL REDISTRIBUTIVE MODEL FOR LAND REFORM

Fig 2: *STRENGTHENING RELATIVE RIGHTS OF PEOPLE WORKING THE LAND – Workers and Owner Shareholding*



A RADICAL REDISTRIBUTIVE MODEL FOR LAND REFORM

**Fig. 3: STRENGTHENING RELATIVE RIGHTS OF PEOPLE WORKING THE LAND –
Workers' Shareholding**



ANALYSIS OF ALIGNMENT : "STRENGTHENING RELATIVE RIGHTS" - NDP;2014 ELECTION MANIFESTO; MTSF 2014 - 2019; , SONA JUNE 2014

NDP - INCLUSIVE RURAL DEVELOPMENT BY 2030	2014 ELECTION MANIFESTO	MTSF 2014 - 2019	SONA JUNE 2014
<p>In 2030 there will be integrated rural areas, where residents will be economically active, have food security, access to basic services, health care and quality education. Achieving this vision will require leadership on land reform, communal tenure security, infrastructure and financial and technical support to farmers, and building the capacity of state institutions and industries to implement these interventions.</p>	<p>Continue to improve the tenure security and administration of people living in communal areas, with emphasis on the security of tenure of women</p>	<p>Priority 1: Improved land administration (tenure reform) and spatial planning for integrated development in rural areas:</p>	<p>The economy takes centre stage - campaign against poverty: creation of decent work; creating work requires faster economic growth</p>
	<p>Further intensify the development aspect of land reform, ensuring that all land reform farms are productive and contribute to food security</p>	<p>Priority 2: Sustainable land reform (restitution, redistribution, tenure reform; development) contributing to agrarian transformation</p>	<p>Government will provide comprehensive support to smallholder farmers by speeding up land reform and providing technical, infrastructural and financial support</p>
	<p>Enhance the success of our Recapitalisation Programme by continuing to work with commercial farmers to support emerging farmers in exchange for speedy implementation of the land reform programme</p>		
	<p>Increase investment in agricultural infrastructure - including irrigation, storage facilities and fencing - in support of smallholder farmer development, with former homeland communal areas being a priority.</p>	<p>Priority 6: Growth of sustainable rural enterprises and industries - resulting in rural job creation</p>	<p>The economy takes centre stage - campaign against poverty: creation of decent work; creating work requires faster economic growth</p>

Conclusion

- The policy measures introduced here are meant to change the agricultural landscape fundamentally and to strengthen the position of both the farm-worker and the farmer, as people working the land.
- These proposals recognize that both the worker and the farmer have vested interest in the land; and, both want to improve their living conditions through working it.
- The legal rights of these two important actors are historically not equal.
- These policy proposals introduce a new system of substantively recognizing the relative contributions of the farmer and farm-workers to the development of the farm as well as the integrality of their relative rights on the land.
- The moral basis for these proposals is that South Africans who benefitted from land dispossession and segregation policies have a responsibility to contribute to the restoration of justice and national reconciliation effort. Maintaining the current status quo is politically undesirable and unsustainable.
- There is a direct relationship between these proposals and the Agricultural Landholdings Policy Framework, 'Freehold with limited extent', and land access and ownership by foreign nationals' policy initiatives.

Conclusion

- The government was expected to redistribute 30% of 82 million ha of white-owned agricultural land to black people by 2014. This target has not been met.
- This proposed policy is targeting this 82 million ha of white-owned agricultural land.
- A policy which will affect all land owners will be based on the Privately - owned land tenure tier: freehold with limited extent, as espoused in the Land Tenure System adopted in Mangaung.

Thank You



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