



The opportunities and limitations of the Willing Buyer / Willing Seller approach to land reform in South Africa

Michael Aliber

Land Divided Conference

24-27 March 2013, Cape Town

STRATEGIC DIRECTION

Proactive role of the state

- Consensus on rejection of willing buyer, willing seller (except AgriSA)
- State must be the driving force behind land redistribution, rather than the present minimalist role. Specifically: more staff, more resources should be allocated for the programme, active negotiation with land owners and expropriation where needed.
- State must have right of first refusal on all land sales.

Who should benefit

- Primarily the previously disadvantaged people should benefit, but specific measures should be taken to target: the poor, women, farm workers and the youth.

Land redistribution to promote urban & rural development

- Land redistribution must provide land for production and settlement, in both rural and urban areas.
- Land redistribution needs to be integrated with infrastructure development.

Source: 'Commission 1', Land Summit, 2005

STRATEGIC DIRECTION

Proactive role of the state

- Consensus on rejection of willing buyer, willing seller (except AgriSA)
- State must be the driving force behind land redistribution, rather than the present minimalist role. Specifically: more staff, more resources should be allocated for the programme, active negotiation with land owners and expropriation where needed.
- State must have right of first refusal on all land sales.

Who should benefit

- Primarily the previously disadvantaged people should benefit, but specific measures should be taken to target: the poor, women, farm workers and the youth.

Land redistribution to promote urban & rural development

- Land redistribution must provide land for production and settlement, in both rural and urban areas.
- Land redistribution needs to be integrated with infrastructure development.

Source: 'Commission 1', Land Summit, 2005

The case against WB/WS? – the sacred and the profane

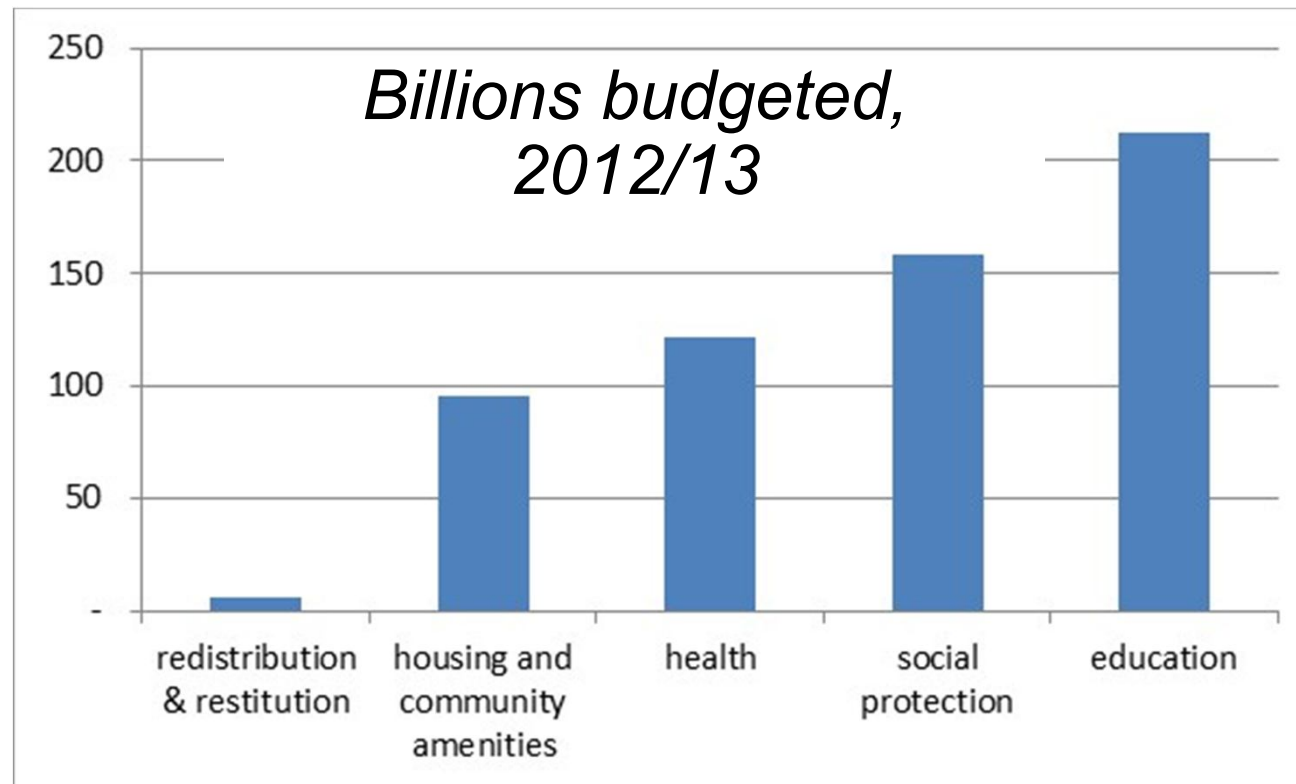
- Most critiques of WB/WS present little evidence as to its unfeasibility or impracticality
- Rather, they state that it is *wrong*, and then infer that it is unfeasible or impractical as well
- The use of the ‘market’ as a determination of value is *profane* relative to the sacred mission of redressing past wrongs; leaves too much discretion/autonomy to land owners
- Du Toit: “Most discussions about land reform are not actually about land, or about reform. They are displaced discussions about national identity, colonialism, and reparation. And this displacement is in turn symptomatic of the lack of resolution about those issues.”

- “This market-reliance phenomenon is paradoxical because the beneficiaries of land reform were once, directly or indirectly, the victims of the very market forces that will now be determining their future through the land reform programme.” (Ntsholo 2009)
- “...there is no doubt that the market-led approach to land reform, including the protection of property rights in the Constitution and the ‘willing buyer, willing seller’ approach to land reform, will not unravel years of colonial and apartheid dispossession.” (Ntsebeza 2007)

- “The critical question of how land for redistribution is to be acquired, and the compensation (if any) to be paid, was resolved in favour of the ‘willing buyer, willing seller’ model in the White Paper of 1997, which effectively granted landowners absolute discretion over participation in the land reform programme.” (Lahiff 2007)
- “The [South African] government is caught in the quandary of trying to apologize for the massive land deprivation and displacement wrought by its apartheid predecessors without seeking to really uproot the land ownership system those settler colonial regimes established.” (Andrew 2006)

- “...the sanctity given to property rights has made land reform difficult and thus can serve as a sanctuary for enduring inequality. This is particularly true in countries like South Africa and Namibia where ownership is contested and land reform is essential due to pervasive past property theft.” (Atuahene 2009)
- “The principle on which our land reform is based – “Willing buyer, willing seller” – [is] the key reason for the slow pace of land reform. As the SACP we wish to argue that a market based land reform programme in conditions where such land was forcibly taken away from the majority through brutal and often violent colonial and apartheid dispossession cannot work....” (Nzimande 2005)
- Note also DRDLR’s obsession with finding of way of applying ‘just and equitable’ instead of market value – not likely a pragmatic step of cost saving, rather *the right thing to do*

- Point is not that this concern is misplaced, but:
 - Emotional wounds need emotional response
 - Shifting costs to current generation of land owners is arbitrary (objection to implicit 'sins of the father' argument)
 - Suggestion that market value is 'too expensive' is a difficult sell
 - Why so little? Because not a priority. Why not a priority? Because...



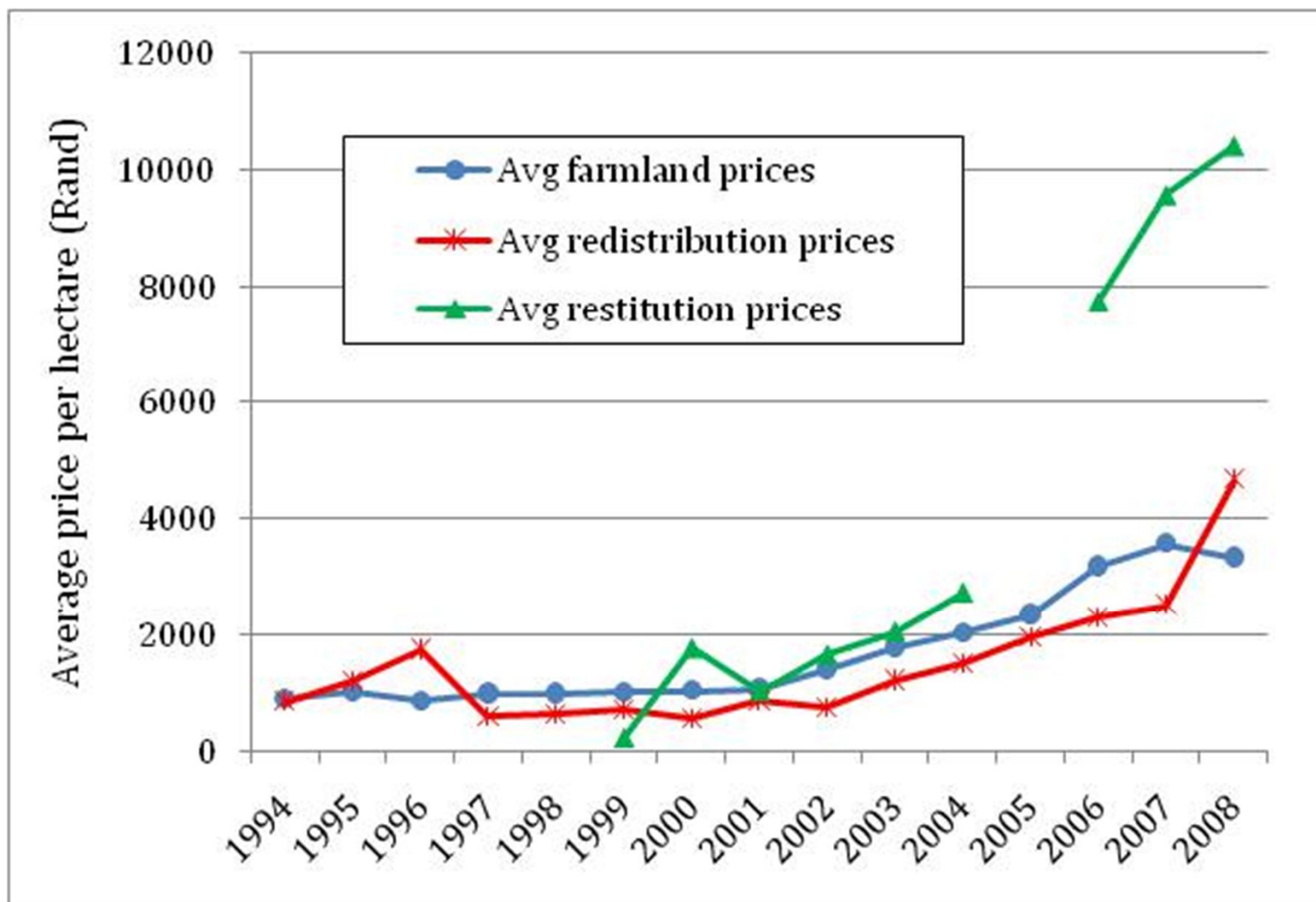
- What would an ‘emotional response’ look like?
 - Recalling an old HSRC pre-survey question: ‘What specifically would you say people should look at or measure to see if land reform policy was successful or not?’
 - “Publicise more on TV and radio.”
 - “Big demonstrations for us all to see. Celebrations like those of the 27th April – 10 years of democracy.”
 - “Celebrations and track national numbers of people who have been given back their land and keep and announce the records.”
 - “Advertise the beneficiaries widely so that everybody in the country knows.”

However, claims as to the unfeasibility of WB / WS may be at least *half true*

- “The bureaucratic complexity of the grant-making process ensures that intended beneficiaries are not able to compete in the ‘real’ market, but rather operate in a parallel market dominated by state officials, where beneficiaries have little influence over the purchase negotiations or the price paid.” (Lahiff 2007)
 - Note irony – on one hand LR too market-based, on other, not sufficiently market-savvy!
 - But hints at important truth – land reform does not operate in the market in a normal way – in what way?

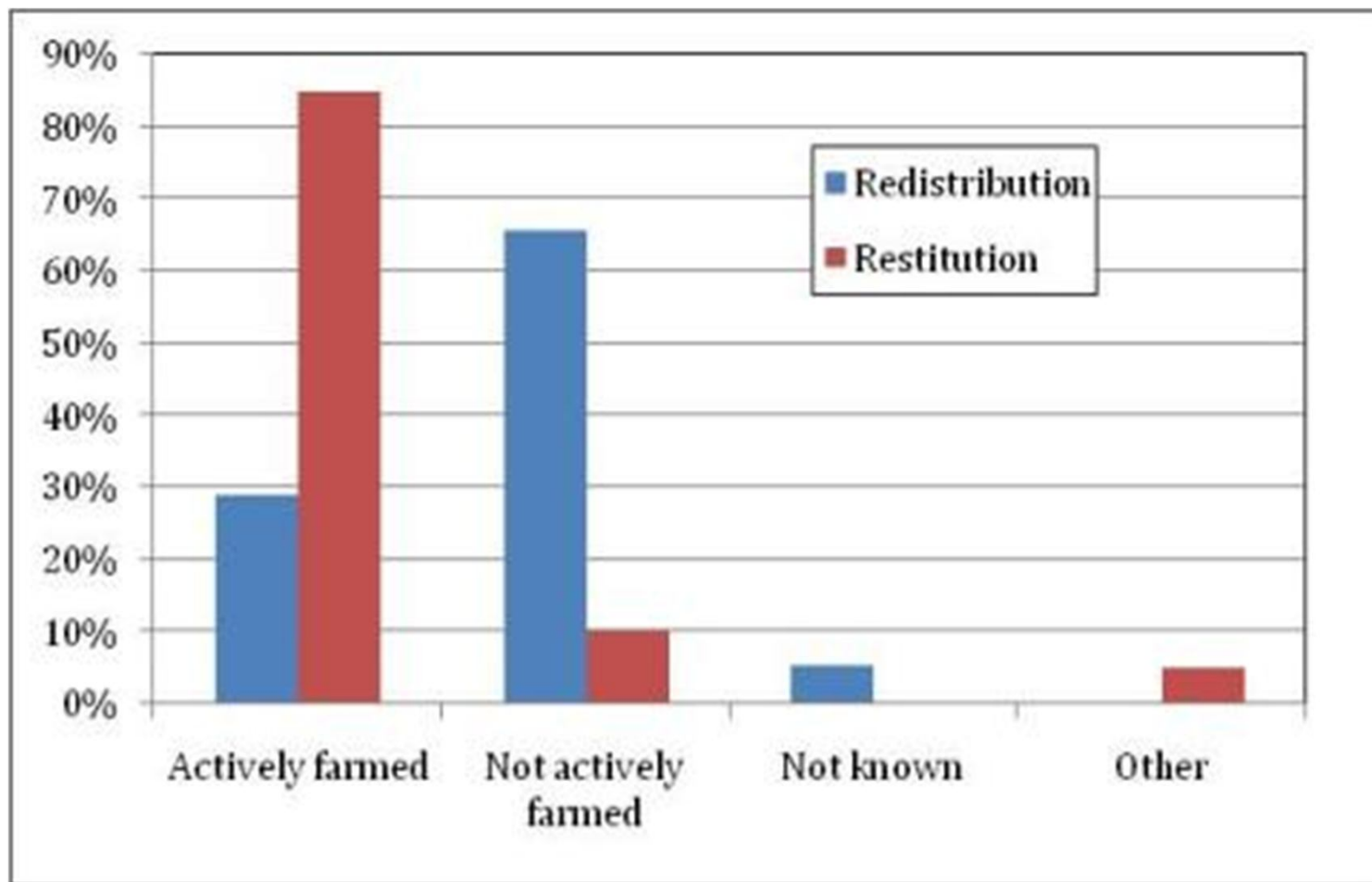
- Main issue - restitution vs redistribution
 - Redistribution departs a bit from how land market normally functions; but restitution departs dramatically
 - Owners of claimed land have monopoly on that land; claimants are not 'shopping around' as in the case of redistribution
 - Unusual bargaining power – can hold land reform to ransom; push prices up?
 - They are frequently *not willing*

Per hectare prices, 1994-2008



Source: DRDLR 2009

‘Was property actively farmed just prior to transfer?’ – 2 districts in Limpopo



Source: Aliber et al. 2013

Condition of farm infrastructure just prior to transfer – 2 districts in Limpopo

	Fencing		Irrigation		Buildings	
	Redistn %	Restn %	Redistn %	Restn %	Redistn %	Restn %
None	13	5	37	35	18	25
Poor	50	25	26	15	26	10
Average	24	40	26	5	29	10
Good	13	30	11	45	26	55
Total	100	100	100	100	100	100
N	38	20	38	20	38	20

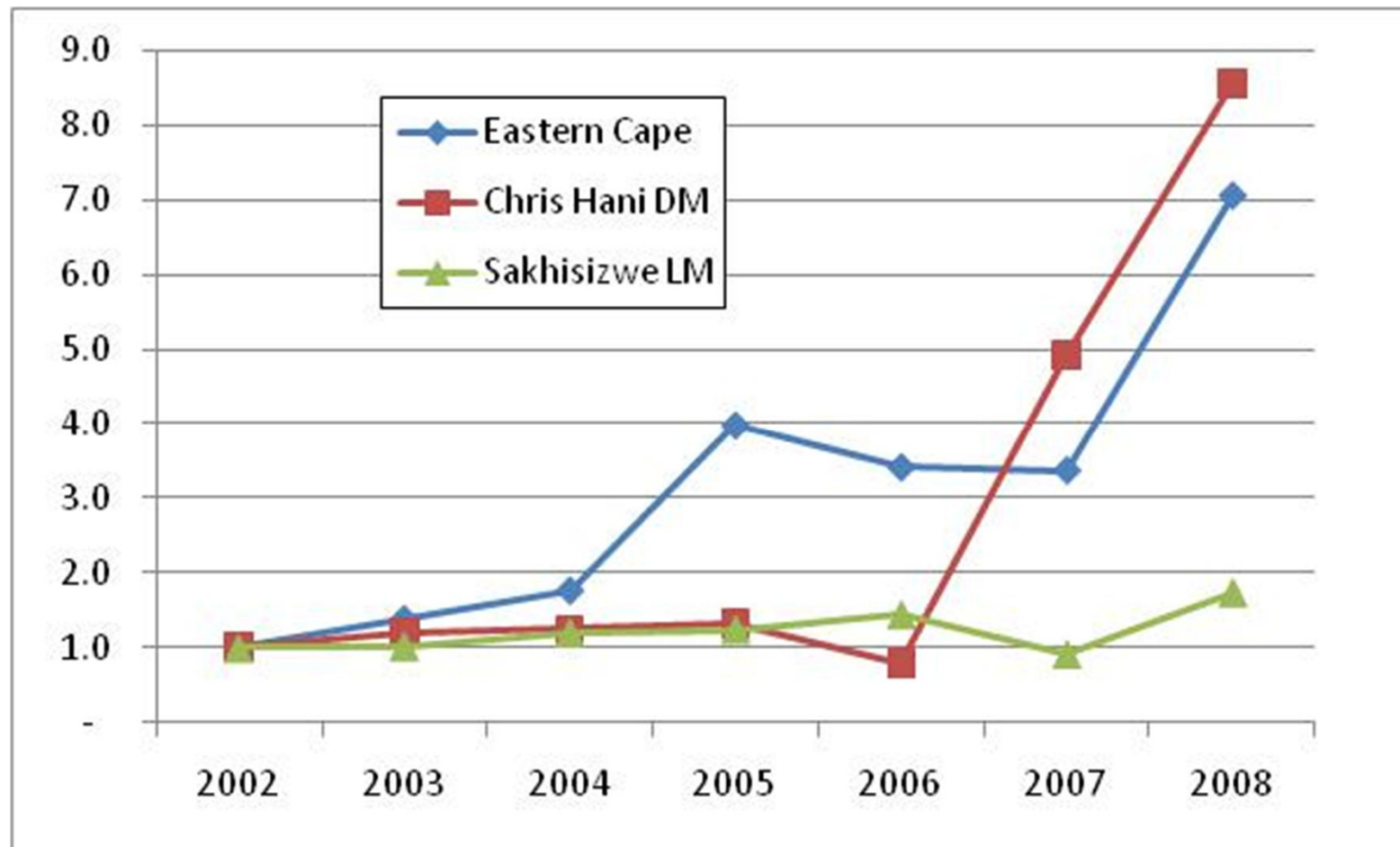
Source: Aliber et al. 2013

- Difficult to tease out factors that make restitution prices higher – monopoly power of owner versus higher value of land (need more research)
- Either way, restitution projects take too long to settle, and almost certainly are inflated to some extent
- Remedy: don't even *talk* about WB / WS in the context of restitution – expropriate
 - Still raises issues of what is correct valuation approach, what are we trying to achieve?
- As for redistribution? WB / WS far better than the alternatives, but can be improved

One way of improving WB / WS in context of redistribution – ‘concentrated land acquisition approach’

- Case study 1: Elliot District (Sakhisizwe Municipality), EC
 - 97 farms redistributed between 1999 & 2009 = 23% of district’s farmland
 - all but 2 of transfers were via LRAD from 2002
 - between 2003 & 2006, land reform accounted for half of all farmland transacted in the district
 - prices did not significantly rise in the area, especially compared to rest of district or province
- How did this come about? *Deliberately*

Average per hectare prices, 2002-08



- Case study 2: Molemole Municipality, Limpopo

- Owners came together to resist land claims, then decided to work collectively to sell, bc realised terms were fair and didn't want to be left behind

“Myself and several other farmers who are willing sellers of land in Soekmekaar hereby respectfully request a meeting with the Commission and the claimants.... We believe such a meeting will set a platform for constructive progress and amicable discussion. We would like the following matters discussed.

1. What is the validity of the claims on Soekmekaar?
2. What other outstanding issues still need to be resolved?
3. Will we as willing sellers have to wait for the issues with those not willing to sell and opponents to land reform to be resolved first?
4. How will the final selling price of each portion be determined?
5. What post-transfer options are available to us?....

List of willing sellers attached....” [Letter from ‘Willing Sellers’ to RLCC]

- Claimants then approached owners to join forces in pushing RLCC to move faster

- What are the main elements of the approach?
 - Information – cheaper and quicker to get good information if focus on one area rather than equal number of farms over larger area
 - Bargaining power – shifts perception from sellers' market to buyers' market, because LR now has a real presence
 - Working with farmers as groups – offer a 'take it or leave it offer', avoid one-on-one negotiations
 - Goodwill – assists communication, reduces resistance; but forfeits the psychic rewards of paying below market value; could also establish better basis for post-transfer period

- Puzzle: Elliot was DLA's own initiative – why didn't DLA rush to refine and scale it up?
 - Because we – gov't and many LR experts – are focused on symbolic/emotional battles rather than looking for pragmatic answers?
 - Note preference for land ceilings, land tax, right of first refusal
 - But if that's the case, then the timorousness regarding expropriation is all the harder to understand
 - Perhaps that in turn is for lack of clarity as to when/where expropriation is the right tool?

Conclusions

- The 'solution' must take both issues of emotional justice and pragmatism into account – but not to confuse the two, and find ways of addressing both
 - Quest to pay less is a key point where emotion and pragmatism collide – Is it worth it? Is Treasury's lack of enthusiasm for LR best dealt with by shifting costs to current owners? Are the right people paying?
- Importance of recognising that restitution and redistribution are different – require different responses
 - For redistribution, unlikely that expropriation makes sense in most cases – other promising remedies that seem to work, require no new legislation, and complement area-based planning
 - Key to making expropriation useful is to know where and how to use it. But what is the goal – to conclude restitution as quickly as possible, or to save 10% to 20% on an already too-small budget?