African Institute for Agrarian Studies

Fourth draft

Emerging Land Tenure Issues in Zimbabwe

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2007

OUTLINE

1 INTRODUCTION

Since the Fast Track Land Reform Programme (FTLRP) from 2000, Zimbabwe's debate on agricultural land tenure and property rights has remained *passé* compared to current international tenure debate. It has focused on the merits or demerits of having converted formerly freehold land tenures, held mostly by a racial minority, into state land, and its subsequent redistribution through statutory leasehold and permissory tenures. Some elements in society call for the land tenures to be re-issued as pure or hybrid freehold tenures to the beneficiaries of the land reform, if not to former landowners.

This advocacy is not surprising given that the land reform shook a colonially established order of private property rights to agricultural land, dominated by European values. Settlers espoused the universal and civilising virtues of freehold property rights, albeit on land expropriated through colonial conquest, while relegating the majority indigenous population to marginal lands on the basis of 'contrived' customary values of land tenure (Cheater, 1988; Moyana, 2002; Mamdani, 1986). The debate, overlooks the 100 year history of state interventions to construct agricultural land and factor markets in support of the development of 'commercial farming' (Rukuni, et al. 2006), and neglects to argue the systematic state repression of farming in customary tenure to the primacy of freehold tenure in determining agricultural investment and productivity, (Moyo and Yeros, 2005).

International tenure policy prescriptions instead, having failed to fully privatise land in Africa by the 1980s, tend to argue for an evolutionary process of converting customary and 'informal' tenures into formalised individual statutory tenures, through various forms of land registration and titling (Mighot Adholla, 1994; Peters, 2006). In spite of donor pressures for liberal land policies, most African states have largely retained customary tenures, with some lands increasingly being converted to state leasehold property (Manji, 2006).

Today, this freehold tenure perspective on productivity is privileged in explanations of the current downturn in agricultural production. The mainstream land tenure proposition is that Zimbabwe has destroyed or lacks agricultural land (property) rights (Richardson, 2005), and alternatively that the newly redistributed land rights are not 'secure' (Sukume, 2007; Mhishi, 2007; Robertson, 2007). The arguments detail the causes of the purported non-existence and/or insecurity of the new land rights (Ibid), especially for securing private credit and hence investment.

Since inadequate tenure is considered the problem, it is argued from this position that Zimbabwe needs to re-establish private agricultural (landed) property rights, in unregulated land markets, to reverse the decline in agricultural production (Ibid). Yet this logic underplays the effect of various non-tenure factors on agricultural production, including incessant droughts, isolation from international markets, broader

economic collapse, weak economic and agricultural policies, and the force of political opposition to land reform (see also Moyo, Dangwa and Jowah, 2007).

The underlying question in this debate, however, relates to the importance ascribed to the failure to retain on freehold tenure the former white farmers (as 'citizens') and to 'protect' foreign land ownership, presumably to ensure agricultural investment. Yet on the distribution issue, albeit not the focus of this paper, it is the weight of national majoritarian demands for access to land, reflecting various gender, class and ethno-regional structures, focused particularly on protecting newly gained land rights, rather than the form of land tenure, which may be decisive.

In the wider context of political polarisation, economic decline and the insufficiency of locally produced food and agricultural foreign currency earnings, it is facile for the tenure debate to assume a fundamentalist perspective. This perspective is purveyed by a media ensconced in the propaganda war on the Zimbabwe question (Willems, 2005). Reductionist and anecdotal analyses argue that non-freehold tenure, the unproductive behavioural traits of the new farmers (read unskilled and non-enterprising) compared to the erstwhile white farmers and the mismanagement of a corrupt authoritarian state, have together created "dead capital" out of agricultural land, (Richardson, 2005; Mhishi, 2007), which presumably was legitimately alive.

Here, the logic of tenure security hinges on one universalistic form of legal title to land, rather than the real life experiences from diverse forms of tenure. Moreover, the (il)legitimacy of the land distribution pattern, especially of the racially concentrated land holding structure vis-à-vis the legitimation that arises from more popular access to land, is not considered essential to establishing the fundamentals of durable tenure security.

This perspective however has rallied the élite (the media, capital in general, black and white capitalist farmers and some donor officials) segment of the policy 'community', rather than existing popular perspectives on tenure among land reform beneficiaries, and many others who seek to be accommodated.[1] Nor are most locally embedded bureaucrats and organic intellectuals decisively inclined towards such a fundamentalist perspective.

Lacking a dynamic methodology, the freehold tenure fundamentalists have tended to miss the evolution of critical social phenomena which shape 'security'. The changing tempo and intensity of conflict and violence over land since 2002, the shifting legal basis of land acquisition since 2006[2] and the gradual stabilisation of land allocation processes over the period, have shifted perceptions of and actual tenure security over time (AIAS Fieldwork; Moyo et al, 2007). Instead some analysts are stuck on recounting the incidences of violence over land occupations and compulsory

[1] AIAS field survey evidence.
[2] Constitutional Amendment No.17/05 and Land Consequential Act No. 8/06

acquisitions that peaked during the electoral struggles between 2000 and 2002, and posit these as indicators of tenure insecurity.[3] While there are continuing but sporadic and limited evictions of former landowners who had remained on contested farms, and former landowners continue to litigate over the land,[4] while incidences of corrupt farm property grabbing occur, these are hardly a durable sign of the purported tenure insecurity across the farmlands.

Nostalgic legalism based on narrow 'rights based approaches', in the face of the 'social facts' on the ground, regarding effective and authorised land occupations within a framework of new laws and land administration processes, misses the dynamics of official response to popular demands for socially grounded security of tenure, vis-à-vis the tenure demands of emerging black capitalist farmers and local capital.[5]

This chapter examines Zimbabwe's evolving agricultural land tenure situation, focusing on its reconfigured property rights system since 2000, as well as the role of the state and other actors in tenure administration. Contestations over land tenure policy are investigated in historical perspective to expose the social basis of emerging forms of tenures and their wider (in)securities. We look beyond the immediate imperatives of capital, within the current context of political polarisation, economic 'crisis' and international isolation, to assess the legitimacy and security of the new tenures, and point to a likely trajectory.

2 CONQUEST, LAND EXPROPRIATION AND DISCRIMINATORY TENURES

Colonial rule in Zimbabwe combined direct and indirect forms which suppressed the economic and political activities of the black majority, towards cheap labour mobilisation. This entailed territorial segregation, (Land Apportionment Act of 1930) and even more crucially, *legal* segregation, which entailed the transfer of judicial authority within communal areas to chiefs, under the Native Affairs Act (1927) and the Native Law and Courts Act (1937). This bound women to the land by kinship relations, adjudicated by chiefs (Schmidt, 1990). White agrarian capital exercised direct power over the vast tracts of expropriated 'European' land and reproduced relations of personal dependence vis-à-vis black tenants and labour (Palmer, 1977). Mining capital entrenched the 'compound system', to bind labour through a variety of economic and extra-economic instruments (Van Onselen, 1976). Policy undermined African agriculture systematically by taxing and manipulating it (e.g. the Maize Control

[3] (Richardson, 2005; Hellum and Derman, 2004; Hellum and Derman, 2006; Hammar and Raftopoulos, 2003; NGO Forum for Human Rights)

[4] See recent SADC Tribunal hearing on farmers

[5] The absence of empirically based information on the tenure situation and rigorous analysis of changing policy and laws explains this gap. To our knowledge the AIAS 2006/7 survey is the largest such survey based on 2000 households, while the UZ/Economics department and ZIPPRO study provides macro economic data; and the Zimbabwe Institute and PLAAS-DFID studies provide their data as well. NGO forum surveys of former white farmers, through JAG, providing an interested advocacy perspective.

Acts of 1931, 1934), while subsidising white agrarian capital and reinforcing its economic-structural supremacy.

Settler society designed a development strategy and policies which were structurally imbalanced and racially discriminatory. These secured mainly the domestic markets of the white minority and exports. They repressed trade unionism, while providing minimum incomes for the subsistence of the black poor and the reproduction of migrant labour. The control of colonially expropriated land, livestock and other natural resources, and the uneven allocation of economic infrastructures in rural areas, was integral to this development strategy, which until 1979 emphasised import substitution industrialisation. The land question became central to nationalist struggles, which evolved into extensive rural militancy before independence in 1980 (Moyo and Yeros, 2005).

Land was alienated to white settlers mainly on leasehold tenure with the option to buy, providing them with the largest bundle of land rights. Settlers declared that the indigenous black population was ignorant of any land ownership concepts (Cheater, 1988). At independence in 1980 a dual, unequal and hierarchical system of land tenure was inherited (Shivji et al, 1997). Approximately 6 000 white commercial farmers, differentiated according to land holding quality and sizes (see Moyo, 1998, 1999, 2000)[6] held about 15.5 million hectares (45 percent of the agricultural land) of which more than 50 percent was located in areas of high rainfall and fertile soils (Table 2.1). These lands were held under freehold (and leasehold) tenure which provided rights and duties protected by law, binding everybody including the state.

The small scale commercial farming sector comprised 8 500 black farmers on 1.4 million hectares, holding leaseholds to buy, located mainly in drier regions. About 700 000 black families subsisted on 16.4 million hectares of land (called 'tribal trust lands' during the colonial period), most of which was located in marginal soil and rainfall areas. These land rights of the indigenous black population were permissive rights, not adequately protected in law, albeit recognised administratively.

[6] Contrary to the alleged lack of understanding among land scholars of the differentiation of white settler holding (Selby, 2006). I had long recognised this fact, regarding the white "landed gentry" (see also Von Rensburg, 1994), and especially in relation to land underutilisation the narrow group of new exports adjusters, in relation to targeting land for acquisition.

Table 2.1 Agricultural Land Distribution and Holdings Size (million ha) Patterns

Land Category	1980		1999		2007	
	No. of families/ farms	ha (mil)	No. of families/ farms	ha (mil)	No. of families/ farms	ha (mil)
Communal	700 000	14.4	1 000 000	16.4	1 100 000	16.4
Small to Medium Scale Commercial (old SSCF & small to medium A2)	8 000	1.4	8 000	1.4	22 000	2.4
Large Scale Commercial (LSCF, large A2, estates)	6 000	15.5	4 500	11.8	4 543	4.9
Resettlement (old & A1)	-	-	73 000	3.7	215 000	9.4
State Land	-	0.3	-	0.3	-	0.3
Urban Land/Parks	-	6.0	-	6.0	-	6.0
Total	**714 000**	**37.6**	**1 095 500**	**39.6**	**1 342 543**	**39.4**

Source: Moyo, (1999); Utete Report, 2003

The multi-form tenure system prior to 2000 was a complex mosaic of six regimes, which overlapped, intersected and interfaced at various levels, namely freehold, leasehold, customary (mislabelled communal), permit, statutory allocation and licence tenures (Shivji et al. 1998). It also included unalienated and/or unallocated state land (which is not a tenurial regime but simply untenured land) held by the state as a sovereign, and over which no person or body has any claim or right of occupation or use. During the colonial era, this land constituted a reserve to meet new land demands for white commercial farms or resettlement of indigenous people from overcrowded tribal trust lands (Moyana, 2002). In the post colonial period, unallocated land was at times occupied by landless people or used by adjacent communities until the government decided on its use.

The land tenure system was embedded in unequal and discriminatory power structures and administrative procedures, which allocated land unequally on the basis of class, gender, ethnicity and other forms of social hierarchy (Shivji et al. 1998; Moyo, 2004). The 'freer' marketisation of land in this regime after independence led to further land concentration along these hierarchies (Moyo, 1999). The relationship between the tenures in this context led to the freehold and leasehold tenures being treated as superior forms of land rights to customary rights (Ibid).

Land under freehold tenure is held by or under the authority of a title deed either by a private individual or institution, in which case it is private land under individual title, or it may be held by the state directly or through a state entity under a title deed, in which case it is freehold state land (Ibid).[7] Freehold individual tenure, while the most securely protected until 1999, is not absolutely secure as against the state's wide ranging acquisitive powers under the provisions of the Land Acquisition Act, [Chapter 20:10]. Freehold tenure, still viewed both legally and ideologically by some as a

[7] Various parastatals (Forestry Commission, ARDA, Cold Storage Commission, National Railways, etc.) held such land (see for details Moyo, 1998).

superior tenurial regime, faces continued middle class demand,[8] given that its system of rights applies horizontally between and among individuals, and vertically against the state (Ibid). While the state is not legally precluded from interfering with and abrogating freehold land rights, it was carefully constrained and regulated (until 2006) from doing so without compensation.

Freehold tenure inhibited access to land by the majority of the people without resources to purchase land in the open land market (Ibid), sustaining inequitable land distribution, landlessness and homelessness, and hence social injustice. A historically founded problem with freehold tenure in Zimbabwe is that, because it mainly reflected ownership and control of land by a minority of whites, much of which arose from conquest, it tended to lack legitimacy both in the political and moral senses (Ibid).[9] Furthermore, freehold tenure imposes high transaction costs, especially on the poor, through survey and transfer fees (see Rugube, et al. 2003).
Land under leasehold tenure includes all land occupied in terms of a contractual agreement of lease with the owner – the state, a public body or a private individual (Shivj et al, 1998). Leasehold tenure is considered a far more (recent) and flexible tenure system than freehold tenure in so far as it allows the state greater flexibility to distribute land in terms of lease agreements, which may be long or short term leases. In terms of security a long lease of 99 years can be as secure as freehold tenure, if its terms are agreed to, enforceable and justiciable. Lease agreements are then registered against the title of that land to create real rights enforceable against the whole world (Ibid).

A Minister, under the state leasehold tenure, is empowered to issue leases on such terms and conditions as they deem fit, including ones requiring specified or general improvements required to be made by the lessee and ones relating to land use standards and terms (Ibid). In practice, these conditions tended not to be enforced, mainly because of the state's limited capacity and resources to enforce them, and as a result of political influence. The capacity of the state to regulate leasehold tenure can, however, facilitate infrastructural development and land use improvements (Ibid).

The colonial state modified and then rigorously applied the notion that African legal and tenurial systems did not recognise individual rights to land and that, therefore, all land occupied by Africans was state land (Cheater, 1988). This land, set aside for occupation and use by Africans was then vested in the colonial state, and African chiefs who held it in trust for their 'communities'. After independence this land was vested in the state in trust. 'Customary tenure'[10] refers to that tenure regime under

[8] E.g. by white and black citizens, some A2 farmers and others (AIAS Survey 2006/2007 and interviews; Zimbabwe Institute 'Progressive Zimbabwe' (2007).
[9] It has been argued that leaseholds acquired after 1980 ought to be treated differently (Zimbabwe Institute Land Policy, 2007).
[10] Communal tenure is an inaccurate concept. In the communal areas (lands) which fall under customary tenures two types of tenure exist: 'individual' tenure on the homestead and arable land where a family has "freehold type of land rights", and the common property tenure which covers grazing lands used by those in the

which land rights are acquired and held in terms of customary law. The land tenure problem here centred on the imposition of state land management institutions and rules, which, alongside land expropriation, constrained access to land and limited security of tenure within communal areas.

The customary land tenure relations are interwoven into societal structures and institutions, (mainly family structures, with their marriage and inheritance practices) such that an individual's rights to land are derived from their relations with other persons in the household and 'community' (Lastarria-Cornhiel, 2002). This system grossly undermined women's land rights. The community chief or lineage head is considered the ultimate custodian of community land, but all households belonging to the community have recognised rights to this land and other natural resources (Ibid).[11] The degree of control that community leaders have over land and resources, and therefore the control that individuals hold, varies considerably across customary systems (Ibid). Rights for individuals and families vary from discrete temporary issues such as gathering natural resources in communal forests, grazing on communal pastures, cultivating a specific field for one to several seasons, to permanent control over a piece of land or other resource for cultivation and to pass it on to their heirs (Ibid).

Under customary tenure, transfer rights tend to be limited to lineage and community member or the community itself, and do not entail commercial transactions, although a symbolic payment may be made, since the sale and mortgage of land, particularly to outsiders, was not permitted (Ibid). 'Informal' land markets (including sales and rentals) had, however, emerged in communal and old resettlement areas (Rukuni Commission, 1994), with the increased incidence of land purchases being associated with growing population pressures, urban expansion and expanded agricultural commercialisation. Customary mechanisms[12] permit access to communal area land by urban 'members', reinforcing control by local élites, and promoting land concentration and exclusion.

Statutory tenure (beyond freeholds and leaseholds) or allocations apply to all land held by the state or other statutory bodies under or in terms of specific statutory provisions (Shivji et al, 1998). National parks, national forests and game reserves all fall within this tenurial category. Different sub-tenurial arrangements are found within the statutory tenure. One such arrangement is the licence tenurial regime which applies to all state lands occupied and used by any individual by virtue of and in terms of a contractual licence applied for and issued by the state under the provisions of

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community and excluding outsiders. These tenures are dynamic and involve various forms of 'transfer' and 'transactions' (see Amanor, 2006; Peters, 2006).

[11] This system also has a tendency to exclude those who are considered not to 'belong' to the community ('strangers', outsiders, etc).

[12] Migrant settlers and purported 'squatters', who are not 'community members' by lineage, tend to gain access to land through such allocation mechanisms and other social 'relations', but this framework excluded others in need (see Moyo, 2000).

some enabling statute and/or regulations (Ibid). State lands occupied and used under licence for safari operations and trophy hunting, fall under this tenurial regime. The essence of the relationship between the state and the licence holder is contractual.

Another arrangement is the permissory tenurial regime which is regulated by permits issued or made by the state for land occupation and use. This includes resettlement lands allocated since 1980. Resettlement land rights are considered relatively precarious and insecure in law, as these depend on the administrative discretionary powers of the responsible minister, and are neither adequately enforceable, nor mitigated by procedural safeguards (Ibid). However, in reality there have been few notable incidences of their abrogation. In the early 1980s resettlement land tended to be allocated to applicants from across the country, only for this approach to be shifted (National Land Policy Paper, 1990) towards allocating land through chiefs and district councils, to people bordering acquired land. This led to an ethno-regional parochialism in resettlement land allocation, which tended to exclude non community members from access.

The pre-2000 land tenure system maintained historical inequities in access to and security of land rights against the majority population across race, class and gender. State land leasing and concessioning, alongside the freehold land market and customary tenures, was by the 1990s driving the concentration of land and exclusion from 'above', as well as from 'below'.

3 REDEFINING AGRICULTURAL LAND TENURE AND PROPERTY RIGHTS

The fast track land reform programme was first initiated in 1997,[13] and then substantively from 2000 when the Government of Zimbabwe proceeded to expropriate large scale commercial farm lands, alongside extensive land occupations. Widespread landowner litigation and sporadic violence and evictions occurred in these areas (Moyo, 2004).[14] The demand for land expanded beyond previous estimations[15] among various classes (peasants, the urban working class, black élites, and others), such that the targets of land acquisition and beneficiaries were also expanded to 10 million hectares and 150 000 beneficiaries.

3.1 Legitimation of Tenure Security through Redistribution

The race and class based landholding patterns of Zimbabwe, and the rural and agrarian structure were changed dramatically by 2007, when over 90 percent of the former Large scale commercial farm (LSCF) lands was transferred into state property and allocated to various beneficiaries (Table 2.1). Redistribution extended access to land to over 150 000 families where 4 000 had control, and significantly reduced the

[13] When 1 471 farms were listed for expropriation and the failed 1998 Land Donors Conference was held.
[14] This process was accompanied by significant losses in production and of capital stock. Compensation for acquired land improvements, according to policy was well below expectation.
[15] On the underestimation of demand for land see Moyo 1995; 1998 and 2000.

average size of landholdings. Over 120 000 beneficiary families hold less than 100 hectares each. About 12 000 new medium scale farm units now exist with an average of 200 hectares each. The new inequality entails the retention of large landholdings by approximately 4 000 black and white landholders with an average of 700 hectares each, compared to the previous LSCF average of 2 000 hectares. Approximately 260 of these are foreign landholders, although their tenure is not yet fully decided (see section---). This relatively uneven landholding structure now reflects more class than racial inequality.[16]

The land allocation process excluded some social groups and left others unsatisfied, including women, war veterans, farm workers, the urban landless and aspiring commercial farmers. In the A2 scheme, comprising 18 percent of the beneficiaries on 30 percent of the land, allocations tended in a number of cases to benefit relatively well off and socially connected urban and rural applicants, on the bulk of high quality land (including irrigable land), close to markets (Utete Report, 2003; Moyo and Sukume, 2005; GoZ Land Audits 2006/7). Some individuals still hold "multiple farm holdings", contrary to the one person/household-one farm policy.

Land reform substantially transformed agricultural land (property) relations, beyond the distributional question, by extending state land ownership to the bulk of Zimbabwe's prime land, and by expanding leasehold and permissory forms of tenure. This reduced the area of freehold tenures in agricultural land, and limited the place of land markets in the social and economic relations of agricultural production, and social reproduction. Furthermore, the reform altered the land administration system at the central and local government level, as well as the legal framework of land law.

The continuing process of land acquisitions and allocations over seven years, in the face of regular white farmer litigations, led to some notable land conflicts among competing new farmers, and between them and former landowners, given the policy framework of: one person-one farm, within the maximum farm size provision. The limited accommodation of white landholders provided scope to question the legitimacy of land tenure on grounds of their being discriminated against as citizens on the grounds of race.[17] Uncertainty over the tenure of some of Bilateral Investment Promotion and Protection Agreement (BIPPA) farms, and the current exposure of the Government of Zimbabwe (GoZ) to international litigation over these, also generated scope for external questioning of the legitimacy of the land reform programme.[18]

[16] Land redistribution was executed through two programmes. The A1 scheme, which entailed the provision of relatively smaller plot sizes including common grazing or woodlands areas, was intended for the landless and poor and vulnerable groups. The A2 scheme referred to as the 'commercial' scheme, provided land to potential or actual farmers with proven farming skills and/or resources (including the capacity to borrow and hire farm managers), on the basis of a long term lease.

[17] See the Supreme Court challenge in Zimbabwe and see also SADC Tribunal Case in which some commercial farmers were challenging the legality of the country's land reform programme. The case has been described by political observers as an acid test of the regional bloc's commitment to democracy and the rule of law.

[18] Case of Dutch farmers in the ICSID (2007).

A government 'correction exercise', which was expected to rationalise multiple allocations to provide for the needy and to settle disputed land claims, has been opaque and slow.[19] The persistence of multiple and oversized farm ownership, competing land claims and the inequity that arose from exclusion has tended not only to de-legitimise the land redistribution exercise to some extent, but also to create land tenure insecurity among some landholders and unfulfilled expectations among potential beneficiaries.

This resilience of a degree of inequitable land distribution raised questions about the social legitimacy of some of the new tenures, while some threaten a fourth land revolution.[20] In spite of this, it can be argued that the extensive transfer of land constitutes an unassailable source of the socio-political legitimacy of most of the newly assigned land rights, if these are upheld by the state and law.

3.2 Do Agricultural Land and Property Rights Exist?

The current *de facto* agricultural land (property) rights and tenure system, which we argue has gained social and domestic political legitimacy, has only recently gained relatively adequate *de jure* formalisation and enforceability, via recent changes in the land laws. The GoZ argues that there were critical legal constraints (in the land law and related land litigations) which had been stalling the completion of land acquisition, and consequently of tenure reform until 2006.[21] While these have been addressed, some actors oppose the new laws, arguing that the basic constitutional and land rights of former landholders were undermined.[22] The legal bases of the newly assigned land rights, therefore, need further examination.

Contrary to assertions that land reform has despoiled agricultural land property rights and that these no longer exist (Richardson, 2005)[23] recent reforms to the Constitution and land laws have had the effect of creating 'real' and legal rights to property in agricultural land. Notwithstanding the drawn out process (eight years) of law reform and legal contestations, of the lawful basis of the new property rights since 2006,[24] the current Constitution and laws undergird the land rights of new landholders and most of the former LSCF lands have been effectively acquired.

[19] A 'correction' exercise, backed by numerous GoZ audits, is also a key demand of the main opposition political party formations, the MDC (Zimbabwe Institute Land Policy, 2007).
[20] Traditional leaders, some war veterans and some sections of civil society raise this concern; See statements by GAPWUZ, Farm Communities Development Trust (2007) NGO Forum for Human Rights (2007).
[21] See GoZ statements: Hansard 2005; 2006
[22] E.g. NGOs such as NCA, ZLHR, NGO Forum for human rights; and JAG etc…cite a peer; Supreme Court 2007.
[23] Civil society groups, business representatives, and the media .
[24] In 2000, Constitutional Amendment No. 16 effected provisions for compulsory acquisition; In 2001 the Rural Occupiers Act provided protection from eviction to certain occupiers of rural land, that provided for matters connected with or incidental thereto; In 2000 and then 2002 the Land Acquisition Act was amended; then in 2006 and 2007 Constitutional Amendment No. 17 and 18 respectively.

Land lawyers (e.g. Mhishi, 2007) affirm that new real rights in agricultural land are derived from Constitutional Ammendment No 17 of 2006, which recognises the right to agricultural landed property (section 16), subject to the right to compulsory acquisition on given terms (section 16A). The Amendment 'ousts the court' from hearing contests on the compulsory acquisition of land for redistribution and removes the right to compensation for the land, except for improvements. This also means that those freehold properties which have not been acquired by the state remain freeholds, particularly because the so called 'nationalisation' of land has not been done through a blanket law that extinguishes all freeholds. However, in accordance with the Land Acquisition Act of 1985, the sale of freehold agricultural land remains subject to the government exercising its 'right of first refusal'.

The Constitution also recognises the right of the state to own agricultural land (Section 16B), by providing the state the right to compulsorily acquire land (beyond the general principle of 'eminent domain'), and for the right for agricultural land to be vested in and owned by the state, for its "use and disposal", as it deems fit. This shapes the right of the state to issue leases and permits for the use of acquired agricultural land. Moreover, it requires that compensation for improvements on compulsorily acquired land be paid for by the state, using stipulated valuation processes, and allows landowners to contest in court the value and nature of compensation awarded. It also expects or encourages, without any real legal effect, the former colonial power (the United Kingdom) to pay compensation for the value of the compulsorily acquired farm land, over and above the value of the improvements.

Furthermore, the Gazetted Land (Consequential Provision) Act Ca 20:28; No 8/2006) further specifies the nature of and conditions under which state owned agricultural land may be occupied, namely, by state allocation of use rights. The law makes it an offence to occupy land acquired by the state, without its lawful authority, as defined in the relevant law governing 'land settlement' (Mhishi, 2007). Recent litigations over land compulsorily acquired from former white LSCF landholders,[25] reflects the existing framework for the adjudication of land rights – a process which may well be pursued for some time.

Agricultural leases, issued to A2 farmers through the National Land Board, are legally derived from the Agricultural Land Settlement Act [Chapter 20:01], which always provided 'real rights' to land through leases. These lease documents are considered legal, long term contracts: of 25 years for conservancy and 99 years for agricultural leaseholds (Mhishi, 2007). These are backed by statutorily required surveys (Land Survey Act [20:12]) and are registrable according to the Deeds Registries Act [Chapter 20:15]. They have been registered since 2007 through established notarial and/or conveyancing procedures.

[25] For example in October 2007 court cases against evictions; for example Supreme Court case 2007; Dutch Court case 2006/7 at the ICSID (2007).

The various types of 'real' rights to agricultural land which obtain in Zimbabwe today thus include: land possessed through the remaining title deeds (freehold), which are not acquired by the state; leaseholds between the state and lessors; land held through other forms of tenure (e.g. statutory allocations, license tenure, resettlement permit tenure); and customary tenures. All these tenures are protected by laws which existed before 2000, and continue to exist, and post-2000 laws.

Therefore, it seems that it can be argued that the fundamental basis for establishing Zimbabwe's new agricultural land property rights and/or a secure land tenure system that provides confidence to all landholders, is the emerging stabilisation of the process of land transfers and the social legitimacy derived from this. Given continued litigation by former farmers, completion of the assignment of legal tenure instruments (leases and permits), a 'formalisation' of the allocated land rights, is essential to their protection over time. An effective land administration system which supports and enforces the new rights is also critical to ensure equity. The next sections examine these specific questions further.

4 EMERGING SPECIFIC TENURE ISSUES

4.1 Agricultural Leasehold Land (Property) Rights

The issuance of agricultural land leases is currently underway. Close to 16 000 persons were offered land rights under the A2 scheme through a temporary land 'offer letter', which is expected to be replaced by a leasehold tenure, based on prescribed maximum farm sizes which vary according to agro ecological potential,[26] and according to farming scale – small, medium, large and peri-urban farms (Utete report, 2003).

By October 2007 over 809 A2 farmers had been recommended for leases,[27] with less than 7 percent of the A2 leasehold documents having been issued in the first year, indicating a lease issuance rate of about 1 000 per year. The Ministry of Land, Land Reform and Resettlement (MoLLRR) and The Department of the Surveyor General (DSG) officials, however, expect this rate to more than double by 2008, given that the teething problems of conducting the audits and finalising the content of the lease document are considered to have been resolved. This rate could increase if and when more resources for surveying are made available (personal communication).[28]

Evidently, lease issuance was delayed by the legal impediments to the acquisition of land before 2006, the long process of verifying the veracity of land offers and audits of

[26] Fast Track Land Reform policy (2001); Zimbabwe is divided into five natural regions ('agro-ecological zones') based upon the combination of rainfall total and incidence. NR I receives the highest rainfall (above 1 000 mm); NR II receives an average of 700-1000 mm; NR III receives between 650-800 mm; NR IV receives 450-650 mm and NR V receives the least (below 400 mm).; Average farm size for NR I is 250 hectares; NR II is 350-400 hectares; NR III is 500 hectares; NR IV is 1 500 hectares and NR V is 2 000 hectares.

[27] The MoLLRR noted that some new A2 farmers were reluctant to sign the 99 year leases for various reasons including resistance to payment of lease and rental fees (Ngoni Masoka, voice interview).

[28] Interviews Kagonye, 2007.

land use compliance, as well as the cumbersome administrative procedures and capacity requirements of issuing a lease contract (Ibid). However, some have interpreted these delays as arising from the reluctance of the GoZ to issue a secure lease, for political reasons, in line with their patronage thesis.[29]

Whether the actual pattern of distribution of the leases issued is related to the status and 'connection' (as claimed by Zimbabwe Institute, 2007) is a moot point. This would need to be measured according to farm size allocations or whole farm allocations, political party 'affiliation', race, wealth, gender and province. Yet available data do not adequately substantiate this perception.

The contents of the new leasehold policy have evolved through state led debates over at least four draft documents floated since 2003.[30] Debate also filtered out of Movement for Democratic Change (MDC) policy documents.[31] But the debate has tended to be fuzzy mainly because of the (in)accessibility of revised draft and final lease documents.

It appears that the lease document is generally accepted by most stakeholders (new farmers, banks, analysts, etc) in so far as it records a legal contract, which provides individuals with proof that they hold land on a leasehold basis, and clearly spells out most of the use rights contained therein. Most of its covenants on farm development, land utilisation and natural resource management, as well as the provisions for servitudes and so forth are fairly standard, as was the case with previously accepted leasehold contracts. Yet, the requirement that farmers either allocate 20 percent of their land to growing grain or sell 20 percent of their cattle to the parastatal (Cold Storage Commission) has raised dissent.

However, the most critical issue around which there has been vocal divergence among 'stakeholders' and the GoZ, is the 'tradability' of the leasehold. This is probably the most decisive question in determining the GoZ's land tenure policy orientation, in so far as it will define its philosophy on the emergence or not of land markets, in relation to the role of the state in land management and regulation of land markets, and in the adjudication of land disputes. There are vocal social forces that clearly seek to move the state owned leasehold and permissory tenures towards private freehold property. Notably, most of this tenure debate focuses on the A2 leasehold rather than the A1 permit land tenures.[32]

[29] Media reports and personal interviews (with GoZ officials), A2 landowners; some NGO personnel, etc) indicate that there were fears that mainly the 'well connected' élite would get leases, at least at the beginning.
[30] Involved were mainly internal government decision making and GoZ engagements with selected stakeholders in forums (NECF Gweru forum, AIAS-GoZ land and agrarian reform consultative forum, 2004; National Economic Recovery Committee, 2006; AIAS Land Tenure Policy Dialogue, 2007) involving, farmers unions, bankers, multi-stakeholder dialogue fora and ZANU PF fora.
[31] Restart, (2003) and Zimbabwe Institute policy papers (2004 and 2007).
[32] This seems to reflect an intra-class (middle to emergent capitalist class) battle over agricultural property rights and production relations, given the importance of various interests – legal (conveyancing/contract farming), banking, contract farming, other professions and business which intermediate farming.

Different notions of 'tenure security' tend to inform the perspectives of the various actors, which argue the importance or not of transferability.[33] Some A2 landholders, banks and analysts emphasise a narrow notion of 'tenure security', focusing on the suitability of the contractual right for providing security to lending institutions, particularly the transferability of land for purposes of loan recovery. Many beneficiaries, however, emphasise a broader notion of 'security' in which the landholders have assurance and protection of their own land use right, especially protection from any form of eviction, at the present or in the future.

There are also some who prefer a transferable lease in an open land market. These eschew a regulated land market which only caters for mortgaged land administration or which requires state approvals of lease transfers or ceding, and subletting, where the GoZ remains the main channel of leasehold disposal. They argue that this is necessary in cases of loan default and/or to allow for 'exit', as well as to allow trading (even speculative) of the lease right.

Some propose leasehold with an option to buy the land, as was the case with leaseholds before 2000, rather than what currently obtains in which only the improvements can be purchased and land transfers are approved by Government.[34] Indeed, the MDC proposes an evolution of tenure which moves all existing tenures, including the permissory and customary tenures, towards a leasehold with an option to buy (Zimbabwe Institute, 2007), building on earlier proposals by the Rukuni Land Tenure Commission (1994). Yet the cost-benefit of issuing tradable leaseholds and/or the conversion of customary and permit tenures, let alone the nature of the strategy to be used to achieve this (beyond the vague notion of 'evolution'), and its feasibility, based on international experience, has hardly been explicated.[35]

There are some who argue in a less fundamentalist vein and more coherently, but inconclusively, about the need for security of tenure through improved leasehold conditions in order to promote investment and productivity on A2 farms (e.g. Vudzijena, 2007; Sukume, 2007). They argue that, while the leases (and the A1 permits) provide a satisfactory 'duration' of the rights (to cultivate and graze land, to build residences and other fixed improvements), including a 'loose' right to mortgage the lease rights, the 'breadth' of the rights and consequently the 'assurance' of tenure is restrictive (Ibid).

The breadth limitation is said to lie in the fact that the right to cede, sublet and sell the lease requires ministerial approval without specified criteria and operational guidelines for approvals (Ibid). Again 'insecurity' is read from weakly stipulated procedures for the foreclosing of mortgaged land, which is considered critical to guaranteeing the

[33] Based on various workshops attended by the author and AIAS survey, 2007.
[34] Utete Report, 2003; MDC Restart, 2003; Zimbabwe Institute Progressive Zimbabwe, 2007.
[35] Various experiments in the registration of customary lands with the view to formalise these, and "allow them to become titled" have been attempted (see World Bank Report, 2007; IIED) in countries such as Ivory Coast, Malawi, Madagascar, Mozambique, with questionable success (ActionAid; Raj Patel - review of WBR, 2007).

right of lenders to recoup loans (Ibid; Sukume, 2007). It is argued that the lease lacks 'assurance' that leaseholders and lenders could recoup their investments or exercise their right to exit from farming without loosing their investment (Hungwe, 2006 personal communication).

While they appear amenable to a regulated land market, rather than proposing more efficacious regulations, they seem to call for blanket de-regulation. Moreover, since existing law on land acquisition provides Government with the right of first refusal in agricultural land sales, the policy would probably apply to any 'sale' of leasehold rights, where these are to be permitted.[36]

Yet, given that the lease is registrable and can be hypothecated for mortgage bonding, the focus of the demands for the leases to be able to be used as collateral is on the lease rights (land use and the improvements) to be freely tradable in an open market, and for banks to be permitted to freely foreclose on borrowers' leasehold farms and dispose of them (Mhishi, 2007 p7; also Robertson, 2006). Most banks have repeatedly raised the latter concern, even though it is questionable that this is indeed the primary obstacle to their increased agricultural lending.

Consequently, they argue in line with De Soto, (2000) that "…agricultural land in Zimbabwe has finally been transformed into 'dead capital', unless it can be made to be 'live capital' through "well-established private property rights like private ownership" (Mhishi, 2007, p9; Richardson, 2005). While Mhishi (2007) seems focused on bringing 'life' to the newly allocated land rights, others who focus on the "loss of rights" (Richardson, 2005; Robertson, 2006) seem more concerned with 'resurrecting' the former landowners' rights and banks' capital as stored in the land before 2000.

In theory, however, the lease conditions could be modified to provide this assurance without necessarily making the lease right tradable in an open private or freehold land market, in order to comply with the current land policy imperative, namely to control foreign landownership and restrict land concentration, through the "one person one farm" principle, and as a result, to minimise land losses by the poor and vulnerable. A regulated land lease rights market[37] could very well provide the assurance required by landholders and uphold policy by restricting the scope of 'buyers', rather than that of sellers, in order to limit concentration, while protecting the poor from the ravages of land markets through various socially grounded measures.

In general, the sceptics of the efficacy of the leasehold form of tenure argue on the basis of inconclusive evidence concerning its negative effects in terms of access to credit, and incentives to invest and improve productivity (see Vudzijena, 2007; Richardson, 2005). Assessing the relationship between the potential as collateral of redistributed land (or the absence of this within the current form of A1 and A2 land

[36] See the Land Acquisition Act (1985); To date farmers still get Certificates of No Present Interest (CONPI) when selling land.
[37] As practiced in China Mozambique.

tenures) and lending, and consequently on farm investment and productivity, is somewhat premature for various reasons. Firstly, the form of leasehold tenure and its utility as collateral, as reflected in the latest version (from September 2007) of the lease contract document, is new and has yet to be tested as to its legal and administrative veracity, acceptability by lending institutions and its use for borrowing by the few new farmers issued the lease.[38] Secondly, banks have been lending to some farmers on the basis of either collateral securitised by assets other than those tied onto the lease (e.g. urban property, farm machinery, vehicles and equipment on hire purchase, etc) or, in many cases, on the perceived 'viability' or 'bankability' of the farm projects (Tagarira, 2007; Agribank, AIAS Survey, 2007).[39]

While not satisfying the national level of agricultural finance required by farmers (Matshe, 2005; Chigumira, 2004), securities other than land or farm improvements have been the main source of collateral so far, suggesting that land tenure *per se* may not be the most critical factor in agricultural financing today. Finance houses are reportedly "innovating beyond the individual collateral system" (Tagarira, 2007) to various sub-contracting, group lending 'special purpose vehicles', partnerships and merchant financing schemes. However, certainty that the farmer has the right to hold land, without the threat of eviction, has been an important consideration, including for access to state backed or directed credit (ASPEF, Agribank). Land use partnerships however require ministerial approval, as it has been argued by the GoZ that these were used as a 'front' for the control of land by former owners and agribusiness (Made, 2002; Mutasa, 2007).

The sceptics however jump from their less than exhaustive argument that agricultural financing is limited by inadequate collateral, to suggest that the land use conditions expected of the leases cannot be fulfilled by most of them, and may consequently lead to the cancellation of their leases. Reflecting other biases, they perceive the new farmers as having limited capacities to develop 5 year plans for the effective use of the land, for example,

> *The sad reality is most farmers have no skills and funds and the leasehold scheme is therefore a challenge to production capacity….* (Mhishi, 2007, p6) [40]

Sidestepping the collateral issue to make the equally premature judgment on the absence of production skills among new farmers, without considering the wider production constraints imposed on the farmers by the currently adverse economic

[38] Nonetheless, it is true that the official land 'offer letter' system since 2000 does not specifically provide a legal mandate for its use as collateral.

[39] Agribank, state owned bank, until recently, and the RBZ's ASPEF credit facility (which directs banks to reserve funds to offer subsidised credit), only offered credit on the basis of proposals backed by offer letters, while private financial institutions have used non-farm securities to lend their own monies, outside the ASPEF facility.

[40] Check Robertson www.kubatana.net

environment, suggests a belief that the new farmers have inherently negative investment behavioural traits.

It has also been argued that tenure assurance is limited by what is perceived to be the 'autocratic' powers of the state to repossess and/or cancel the lease (with only 90 days notice) and the perceived inadequate scope for appeals against the Minister's decision, through an "independent appeal system" (Vudzijena, 2007). Yet, since the lease is (and ought to be) subject to the general provisions of Zimbabwe's contract law,[41] the right to appeal in existing courts does exist.[42] Indeed, the broad procedure provided for the Minister to repossess or cancel the lease in the relevant clause, is so open that it could certainly make the appeal process cumbersome and costly, and thus prejudicial to leaseholders. However, this concern also reflects the perception in some segments of society of the potential for abuse of public office and a purported lack of judicial independence, which view is not supported by survey evidence suggesting that less than 20% of beneficiaries surveyed had experienced the threat of repossession or eviction (AIAS Survey, 2007).

4.2 Freehold Agricultural Land Tenure and Land Markets

Freehold agricultural land tenure continues to exist in Zimbabwe but is less significant in scale than in the past. Land tenure insecurities are felt by some landholders who hold legally sanctioned freehold titles that have not (yet) been acquired by the state. This situation pertained more prior to 2006, when the land acquisition process was still incomplete and land litigation and conflicts persisted.

More than 80 percent of the former landowners were still contesting the acquisition of their land by the end of 2005. Some contested (in absolute terms) the legality of state acquisition, and others contested the acquisitions in respect of their claim to a right to one piece of land, while a few lodged court contests to affirm their right to fair and adequate compensation in view of the fact that only improvements are paid for.

The compensation process itself has been slow. Less than 40 percent of the acquired farms had been inspected for valuation and compensation purposes by 2006, and by Government's own admission, the budgetary provisions for compensation have been inadequate even to cater for compensating the improvements on less than 10 percent of these farms. Farmers tended to reject the level of compensation offered, leading to delayed legal transfer of land and the continued occupation of land designated for acquisition until 2006.

Indeed the policy of the main opposition party, the MDC, is to provide "full" compensation to the farmers (MDC Restart, 2003) although their consultancy reports (see Zimbabwe Institute, 2004 and 2007) seem to provide contradictory advice on

[41] Contract Act 1949

[42] A number of court cases of appeals against the withdrawal of even A2 'land offer letter' and A1 permits have already been successfully heard.

limiting payments of full compensation only to those who purchased their farms from 1985, when the GoZ had enacted a law providing for its right of first refusal on all sales of freehold agricultural land.

Thus, while the policy on compensation for acquired freehold tenure is clear, it remains contested by some landowners, some stakeholders and the political opposition.

Indeed, the tenure debate here is concerned with redressing the 'lost rights' of former land owners, as embedded in market based land values, and reflects a bidding for the tenure principle of market based land evaluation in compensating for compulsorily acquired lands.

Following the legal reforms of 2006, the speed of acquisition and conversion of formerly freehold lands into state land was increased somewhat. This changed the context of tenure (in)security among freehold landholders in particular, since some freeholds were still open to compulsory acquisition and were gradually being acquired, with some being continuously occupied by 'owners' 'illegally'. Private banks became less inclined to use freehold title as a basis for determining whether to give credit (Tagirira, 2007), with some reporting that title deeds had lost value following land acquisition. Verified land offer letters were even considered more certain proof of occupancy, while much of the credit was being provided against forward produce, through commodity merchants (Ibid).

However, freehold title to agricultural land is still formally recognised. Research is required to establish the exact number and areal extent of such titles, including the freeholds held by black and white persons, and corporations. While about 1 332 LSCF landowners were considered to be remaining as freehold landowners by 2003 (Utete Report, 2003), approximately 729 remained by mid-2007 (Ministry of Land, Land Reform and Resettlement, 2007).

By 1999 there were about 500 blacks with freehold land titles on large scale (averaging 700 hectares) agricultural land, apart from approximately 1 000 who held state leaseholds to LSCF land. Some of these freeholds were expropriated by Government, and many of the leaseholds were exchanged for 'better' A2 landholdings, given that the earlier leaseholds were on mainly marginal lands or farms distant from key towns. The number of those LSCF who would like to remain farming on appropriately downsized farms is not publicly known.[43] Those which the GoZ wishes to retain is also unclear, and contested within the state.[44] There are various reasons why the GoZ and landowners

[43] Data on this held by the CFU and JAG is not publicly available.

[44]For example, Vice President Msika has frequently argued for the land policy to be followed by not excluding white farmers, particularly those who have cooperated with the downsizing requirements. This position has been supported by various Provincial Governors who report that farmers have been cooperative not only with downsizing, but through beneficial 'co-existence'. The latter includes interactive social and farming processes of mutual assistance and collaboration. Others (Blair, 2003) have argued that 'co-existence' has been compelled

failed to agree on the nature and spread of downsized farms to be retained by former landowners, which also explain the varied extent of their retention among the provinces. Many former landowners refused to cooperate in downsizing at all, but others negotiated.[45] Some LSCF landholders had claimed whole farms, or made proposals for subdivisions in which they would retain most of the arable land and general infrastructure (roads, etc.) and leave marginal lands for new settlers. Some had been allocated poor quality land by Government. In a number of cases, new settlers insisted on accessing the best quality land, residences and core production infrastructures, shunning the underdeveloped parts of the land, at times contrary to the land allocated to them by GoZ. In yet other cases, corruption and opportunism by some new land seekers pursuing prime properties have soured the process of negotiated land transfers.

Failure to achieve negotiated transfers has implied frequent litigation, high compensation costs, foregone production and insecure tenure for remaining white landholders, especially before the Constitutional Amendment No.17. Thus, the tenure security of the remaining white LSCF farmers on freehold land has remained unclear over quite some period as some in government seek to accommodate some of the remaining former landholders, including those who have applied for leasehold land, in opposition to a strong lobby against retaining them. This tenure debate has evoked questions about the apparent limitation of the citizenship rights of white farmers compared to 'indigenous' Zimbabweans (Hammar and Raftopoulos, 2003; Alexander, 2006; Derman et al, 2005), with regard to land tenure rights.[46]

Freehold tenure security was particularly unclear on remaining freehold properties being used as wildlife conservancies or engaged in agro-industrial estate farming since the policy on the redistribution of these farms was only clarified around 2004.[47] There remained about 96 estates (large scale agro-industrial complexes) and wildlife conservancies by 2003, while some of these were gazetted for acquisition in 2005 but had not yet been acquired. Some parts of the conservancies were excised and redistributed to both A1 and A2 settlers.

The acquired conservancies were allocated to beneficiaries on a lease basis with a duration of 25 years, although this has been contested by some stakeholders who deem it unviable, purporting that wildlife land use take a longer period to generate profits.[48] The current policy also intends to promote new group conservancy schemes involving former landowners and new settlers, although the criterion for selecting

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and is not voluntary and, as such, is not a sign of virtue, although there are decreased racial (social and economic) barriers among the farmers. On the other hand, Minister of Security, also in charge of land, Mr D. Mutasa has called for the eviction of all remaining farmers. Also see media reports of local communities defending some remaining white farmers.

[45] The Midlands province seemed to provide a negotiated land redistribution (See Utete Report, 2003; UNDP Report, 2002), although it has been alleged that some provincial governors and high ranking politicians were 'selling out' to whites and/or extorted protection fees from them (media reports; personal communications).

[46] This applies to the wider indigenisation of business and mining (*The Independent*, Oct/Sept 2007).

[4747] See Wildlife Based Land Reform Policy (2006).

[48] See WWF 2004; Du Toit, 2006.

beneficiaries remains unclear and the proposed 25 year leasehold tenure has yet to be provided to the beneficiaries. Tenure insecurity in these cases relates to the broader uncertainties of remaining on the land rather than the form of title.

4.2.2 *Foreign land ownership and tenure security*

Government of Zimbabwe policy on foreign ownership of agricultural land since 1990 (GoZ, 1990)[49] had been to limit it, particularly in the context of absentee owners with underutilised land. The GoZ, however, had approved foreign land owning projects through bilateral protection agreements. During the fast track programme many of these farms were occupied and/or were acquired, while some were de-listed from the expropriation register. Those holding freehold land rights under Bilateral Investment Protection and Promotion Agreements (BIPPAs) contested the acquisition of their freehold land, including in terms of its added protection under international law, and have demanded the fulfilment of their compensation under international law and jurisdiction, when their land was expropriated. The first international claim under BIPPA was lodged by Dutch farmers. The debate on foreign agricultural land ownership and tenure thus moved from promoting it, to the protection of existing BIPPAs from expropriation.

By the end of 2006, a total of 267 farms had been classified as BIPPA properties,[50] whose tenure security has been clouded by the lack of public information on such farms, including to land administrators. The GoZ tended to decide the fate of BIPPA properties on a country by country and case by case basis. Thus the main tenure issue in the public domain regarding BIPPA farms is that, since they are legally protected by investment agreements on a government to government basis, the GoZ was expected to exempt these from expropriation and redistribution, or that their expropriation entails market value compensation adjudicated in the international courts of dispute settlement.

Yet, public debate on BIPPAs tends to be mute on issues such as their underutilisation of land and their being oversized farms, contrary to the spirit of land reform policy. Ideally, the BIPPA land tenure question should be viewed in the same way as other farms, based upon the maximum farm size and effective land use policy. However, international law can order the retention of full properties and maximum compensation on acquisition. Moreover, exemptions from acquisition could be based on a phased land redistribution exercise where the transitional leasing of land for strategic production is kept alongside the processes indigenisation and equity bearing in mind the high cost lump investments on the larger BIPPA farms, while redistributing the unutilised parts of the land.[51] There is a clear moral hazard to maintaining some of the extremely oversized and underutilised foreign owned farms in relation to local grievances about inequity.

[49] Land Policy Statement, issued by Mr W. Mangwende: Lords Hansard texts (www.publications.parliament.uk)
[50] According to data in the Ministry of Land, Land Reform and Resettlement and the Ministry of Foreign Affairs Committee on BIPPAs
[51] See this option presented in World Bank (2006)

4.2.3 *Emerging land markets: rentals and sharing of redistributed land*

In the above context, while the sale of freeholds not acquired by the state is known to have been continuing, the nature and extent of recent land market transactions has not yet been researched adequately. Yet the emergence of informal land markets, through renting, subletting or 'sharing', has been observed in the newly redistributed lands (Sukume et al, 2003). The latest A2 leasehold contract retreats from the previous GoZ draft proposal, which outlawed the sharing and subletting of land, by providing for this, on condition that the Minister approves it. The GoZ had argued (Utete Report, 2003) that since land was allocated to beneficiaries according to what they said they were able to utilise, there would be no land to sublet or share within the communities. Permission from the lessor to sublet land is to be given without specifying the possible grounds for the approval or refusal of requests, a situation which some fear could be open to abuse by land administrators (Vudzijena, 2007). It has been argued that transparency in the conditions under which ceding or subletting is allowable could help to address local land shortages and land use improvements leading to more efficient utilisation (Sukume et al, 2003). Again, little research has been conducted on the potential land losses the poor could face under a more liberal regulation of land rental markets, or on how to prevent this.

Nonetheless, field evidence suggests that a number of A2 farmers who are short of either arable or grazing land in relation to their current scale of production and apparent capacities for land utilisation should rent land (Sukume et al, 2005; AIAS Survey, 2007). The African Institute for Agrarian Studies (AIAS) Survey found 2.8 percent to be engaged in such rentals, which is low when compared to China for instance.[52] Sometimes this informal arrangement of renting of extra land is sanctioned by the land authorities on underutilised plots, and/or on unallocated lands.

In the A1 areas, we observed a phenomenon referred to as 'sharing' of land in which neighbours, relatives and even 'squatters' were allowed to use some of the landholders' land without necessarily paying a fee. Up to 20.5 percent of the A1 beneficiaries practised this. The current underutilisation of land in general, due to various factors such as farmers' capacities, input supply bottlenecks, and the fact that some land has not been allocated,[53] seems to promote land subletting. Some new landowners face temporary or long-term problems (e.g. illness [incidences of death and resultant cases of orphan hood may also impact on the utilization of land] desertion, divorce and pecuniary problems) which constrain their land utilisation, and they rent out land as a survival strategy (Sukume et al, 2005).

There are cases, such as in the case of dairy farms with high sunk costs, where the farm size limitations are considered by some farmers to necessitate their renting of additional grazing land from neighbours (AIAS Survey, 2007). Some plot holders with

[52] A study on land markets in China (2000) found less than 5 percent of the landholdings were involved in such rentals, and argues why this is so.

[53] *Sunday Mail* reports on the land audit report indicated that a significant percentage of A2 land is underutilised.

large farm infrastructures claim these can only be used to optimal capacity if the custodian plot holders or their neighbours are able to gain access to more arable land (e.g. for tobacco or horticulture) on a rental basis, through subletting underutilised land or by exchanging land pieces to augment their arable land for specific crop enterprises. Thus some A2 farmers claim that the lease subletting conditions should be less rigid, while preventing the re-concentration of land control through outright land sales and ensuring fair rental fee payments and contracts.[54]

The one household-one farm policy which constrains legal land concentration is considered feasible, if pursued alongside regulated land sharing arrangements, given that in a dynamic farming industry farmers with the capacity to work larger holdings should have an opportunity to expand their land sizes (Sukume et al, 2005). Farmers who wish to farm only a small fraction of their holdings (e.g. those going into flowers) should be allowed to let or cede the rest of their holdings to other farmers (Sukume et al, 2003). Establishing a regulated land rental or leasing market (e.g. with maximum area sizes as is done in India) and/or offloading land to new aspirants would enable these variations in plot size. The adjustment of land allocations to new farmers and encouragement of the use of underutilised land through subletting may well be a critical mechanism for increasing the production of a variety of crops among the few élite, given that agricultural financing is still low (Ibid).

But whether this would enhance the legitimacy of the A2 tenure system is a moot and untested point. The flexibility in the maximum farm size regulations or 'guideline' may well lead to the upward adjustment of land allocations to a few and to the exclusion of many others.[55] The purported advantage of a regulated land exchange system is that it would maintain the breath of land ownership while, at the same time, ensuring that land is fully utilised. These debates suggest that the question of designing a regulated land market, based on real practises on the ground, while defending land concentration, is very much on the policy agenda, particularly that of the élite.

4.3 Extending Permissory Rights: Modified 'Customary' Rights?

Approximately 140 000 individual 'household' land rights for establishing a homestead and cropping, attached to shared or group grazing land rights were allocated to settlers in the model A1 scheme. Their land sizes vary according to agro-ecological potential, with 5 arable hectares allocated in the wetter regions and 10 arable hectares in the drier regions, while the grazing land per beneficiary varies between 7 and 60 hectares in wetter regions, and from 20 to 200 hectares in the drier areas. Selected settlers are

[54] Personal communication with A2 farmers in the Norton area.

[55] It was evident during 2003 and 2005 that a number of A2 landholders were bidding with land administrators to get their plots 'rationalised' upwards as a response to the Utete Review's proposal that national farm sizes be corrected or "re-planned", in what was commonly referred to as plot "consolidations". This meant the combining of two or more A2 plot allocations and, in some cases, this entailed attempts (some successful) to evict A2 or A1 neighbours (interviews, media). But the data on this is also scant, while the number of A2 plots has increased to about 16 000.

initially given paper sheets reflecting their allocation against a list of beneficiaries on each particular farm property (compared to the offer letter given to A2 beneficiaries), and are expected to later receive and sign a 'permit' to use the land. This differentiation in the structure of land access and tenure rights constitutes the core of GoZ land redistribution policy; to promote "social farming", alongside indigenised "commercial farming".

The proposed permit draft reflects a slight reform of the existing form of permissory tenure on agricultural land (see Section 2). The permit tenure is partially similar to the land rights provided under 'customary' tenure in terms of the nature and breadth of rights to use land for the homestead, cropping and the shared utilisation of a common grazing and woodland areas. Traditional leaders are also empowered to oversee household compliance with various land use practises, particularly natural resource protection, and are responsible for the adjudication of land disputes, such as those over succession issues. However, the permit differs from customary tenure in so far as the state has control over the initial land allocation, although traditional leaders were involved to varying degrees in nominating the potential beneficiaries. The permit is offered by the state in perpetuity. It is, therefore, a formalised statutory land right which, while establishing a vertical legal and social relationship between the state and households, also adopts some elements of customary land administration.

While the permit tenure in the older resettlement schemes was considered to have worked relatively well (Rukuni Land Tenure Commission, 1994), it was criticised for having limited legal enforceability or justiciability. Intra-family tenure security, especially at succession, and in particular women's rights, was considered to be weakened and to have been left open to abuse (Shivji et al, 1998). The local land administration systems were also found to be lacking in terms of fairness and the protection of the land rights of 'vulnerable households', from the powerful families and state level interventions (Shivji et al, 1998; Tshuma, 1997). This critique, which also applied to the security of customary tenures, contributed to the unadopted proposal that a 'traditional freehold tenure' be established in the communal areas (Rukuni Land Tenure Commission, 1994).[56]

The question of reforming not only permissory tenure but also customary tenure appears to be on the medium term policy agenda of some,[57] since current 'learning' and 'interests' derived from the new landholding regime, especially among the emergent medium scale capitalist farmers, appear to influence land tenure policy towards the

[56] The concept of 'traditional freehold' was not adequately developed and debated publicly.

[57] It appears to be of emergent interest in some quarters (see e.g. MDC ZI, 2007) and has been under broad debate in the GoZ, given that the '(re)distribution' problem is considered to have been tackled. I have also observed that the new social and individual experience of holding land, beyond the negative terms imposed in communal areas, and a nascent new wave of indigenous (agrarian and wider) capitalism, is beginning to sway some of the middle class attitudes towards landed property, in favour of greater formalisation, if not outright privatisation. Among the elite, therefore, and within the GoZ, there are fewer believers in customary tenure and the need to protect the poor, and more land marketers.

general direction of greater individuation,[58] and specific succession and women's rights. The new A1 permit has, however, not yet been issued to the settlers, although we can deduce its trajectory on tenure security from the available draft permit document.

Unlike the earlier resettlement permit, the draft proposes (in theory) to strengthen women's land tenure rights and security, although less is proposed on the wider gender front. It provides for joint 'spouse' ownership registration on the permit, meaning that males can no longer legally dispose of the use rights or exclude women (for whatever reason – separation, divorce, widowhood), without the consent of the wife.[59]. As we note later, more women have been offered land in their individual right than in the past. However, this is resisted by some men, while many women neither have the requisite resources nor adequate power to ensure that they will individually or jointly sign onto the permit, let alone influence key permit use decisions.

Debates in government appear unresolved concerning whether or not to provide for the permit rights to include its use as collateral for mortgaging land, whether it can be registered (supposedly to convert it into a 'real' legal right) and whether to allow for its 'transferability'. Such reforms are certainly not a GoZ priority[60] although according to some, the GoZ is cautious about the cost-benefit aspects of transferability. The potential danger of land loss among poorer permit holders, particularly female spouses, and the effect of this on livelihoods would be real. Moreover, the administrative requirements of pursuing even the registration of permit tenure alone would be much larger than the lease issuance and its implementation would confront more complex land tenure struggles in diverse local conditions, given the class and cultural admixture of these landholders.

In practice, some A1 farmers tended to face uncertain and/or insecure tenure during the first 5 years of resettlement (post 2003), when the "re-planning" exercise led to the 'eviction' of some unlawful occupiers (including those who self-settled after 2001[61]), as well as the many who occupied conservancies and forest lands. Indeed many A1 landholders gained land through 'illegal' land occupations, sanctioned by the state. Also, in a number of cases A1 schemes were converted into A2 schemes, apparently because the infrastructure was too sophisticated for small farmers, leading to evictions.[62] Surveys show that about 12 percent of A1 settlers had faced some threat of eviction, while fewer landholders still feared this (AIAS Survey, 2005).

[58] A notable sign of this was the introduction of the 'self-contained' version of the A1 settlement model, which allocated grazing rights to the homestead and arable allocations. Most of these were taken up by more educated and/or urban oriented beneficiaries and some were later converted into A2 schemes. The allocation of self-contained plots was decelerated around 2002, when the pace of A2 land allocations improved.
[59] This clause appears to have arisen mainly from the lobbying by Women's Land Lobby Group, and others since 1998.
[60] Personal communication by Ministers (November 2007).
[61] Which was restricted then according to the Land Occupiers Act (2001).
[62] For example New England farm in Zvimba district

Some tenure conflicts (affecting about 20 percent of the beneficiaries[63]) arise among official land allocatees vis-à-vis other unofficial claimants, and/or purported 'squatters' (mainly former farmworkers and urban occupiers) over some pieces of land, or over boundaries and the use of natural resources in the newly established settlements. Newly found wood and wildlife, and gold panning resources are a focus of some land conflicts. While the co-existence of settlers and former farm workers has not been adequately established in some A1 areas, the tendency has been to accept them, as they are considered a fellow suffering landless 'lot', which however needs to be "formally settled elsewhere". Moreover, since some A1 land claimants 15.1% are multiple landowners (of A1 and communal area land), and a few claimants have not yet effectively occupied their plots, there is some pressure from the landless on such landholdings.[64]

Furthermore, some A1 'communities' seek to be re-planned into self-contained A1 plots or into three tier resettlement schemes,[65] while others are under pressure to downsize individual land allocations in order to accommodate more people from neighbouring 'congested' areas. The tendency for 'informal' subletting and land sharing in a number of areas (about 0.9% beneficiaries[66]), including the growth of various arrangements in contract farming, and the new gender relations of tenure, also introduce various potential land conflicts. This means that the assignment of land rights to a wider range of claimants, and the provision of fully secure tenure in A1 areas remains to be finalised, unlike the situation of established permits in old resettlement or in communal area settlements, in spite of the general acceptability of the permit form of tenure. Other tenure insecurities revolve around grazing land conflicts, resource poaching by neighbours and 'squatters', excess cattle being kept for communal dwellers by some dwellers, residential and infrastructure use disputes, and disputes over the administrative authority of traditional structures. However, less than 20 percent of the A1 settlers feel tenure insecure, face limitations to farming from tenure or experience land conflicts (AIAS Survey, 2007).

In general, the new land permit seems to have raised new kinds of concern over tenure security, given that many of the beneficiaries reflect a new generation (sociologically) of farmers, who on average have higher levels of education, former and current work experience, urban connectivities, etc., compared to the communal area or old resettlement population. These seem to demand a more formal type of permissory tenure which better specifies some of the land rights and which reduces the scope of influence of their traditional leadership.

[63] AIAS Survey, 2007.
[64] AIAS Survey, 2007.
[65] Settler households will be allocated 180 hectares to be used as follows: 3 hectares for residential and agricultural use; 177 hectares pooled into communal grazing and utilised in three tiers. The first tier comprises a cluster of villages with arable land and social services, the second tier is the nearby grazing area, where each benefiting household keeps livestock units for day-to-day use and the third tier comprises the grazing area for commercial purposes.
[66] AIAS Survey, 2007

Thus, improved local land administration systems in A1 areas are critical to the tenure's legitimacy and to ensuring that its administration is fair, judicious and enforceable, especially in protecting the land rights of the vulnerable. This is more critical because A1 areas are transitional zones, in terms of the establishment of new sub-area traditional leaderships, within the evolving land administration system having to cater for an expanded area and number of permit tenure holders.

5 PROPERTY RELATIONS: CLASS, GENDER AND ETHNO-REGIONAL ISSUES

The land tenure security situation within the new landholding and tenure system is subject to various struggles over access to land and the social relations of production, which are highlighted by emergent class, gender and ethno-regional differentiations. Tenure inequity arises with regard to equitable access to land, secure inheritance rights, the right to benefit equally from one's labour on land, and the protection of the land rights allocated from displacements, including eviction or the threat of it. The latter can include threats related to unjust demands by the state (alongside the traditional leadership) or related parties (husbands, farm employers, etc.) for various services (labour, benefit sharing, etc.) from the sections of the beneficiaries and/or the excluded, over whom some form of authority has been imposed. Class, ethno-regional and gender inequality in land tenure relations relate particularly to the unequal power relations and/or capacities of vulnerable social groups, such as women, farmworkers, poor peasants and less educated small farming and landless households.

5.1 Gender Relations in Land Tenure

Regarding the gender relations of land tenure, which entails repressive customary and policy based patriarchal relations, inequitable land rights apply especially to vulnerable women (including the aged, divorcees, single and the childless, particularly those without a son), as well as to married women, especially those in polygamous relationships (see Gaidzanwa, 1995; Sunungurai and Gaynor, 2007).

Available empirical evidence on women's access to redistributed land in their own right is varied. Government sources indicate that about 17 percent of the land beneficiaries were women (Utete Report, 2003; GoZ Audits, 2007; Buka Report, 2002; etc). Other studies suggest that these beneficiaries constitute between 10 percent and 28 percent of the total (Women in Land, 2007; AIAS Survey, 2005/6; Sunungurai, 2006; Sadomba, 2006; Jiriria, 2007). Research has so far not adequately exposed the effectiveness of such land access in terms of control of the benefits. Tenure insecurity from evictions (or the threat of same) was found among 12 percent of beneficiaries (AIAS Baseline Survey, 2007).

The sources of gendered land tenure inequity appears to relate to the constraints faced by women in applying for land – bureaucratic constraints, gender biases among the selection structures (which comprise mainly men), the lack of information on the

process and poor mobilisation by women's activist organisations around the issue of applications. The GoZ selection system for A2 applicants gives women more score points at the starting line, but this has not adequately increased the proportion of their access. Reportedly women tended to use their husbands' physical address in applying for land, with the expected or implied danger that the men were in this process 'gifted' control over land by women who did not have an 'independent' physical address. Cultural(patriarchal) and ideological prescriptions that define property and the home as belonging to the husband contradict and undermine official GoZ's stance on land tenure issues.

The empirical evidence on whether the land tenures on which access to land is provided to households, rather than individual applicants, and is gender equitable is also weak. Reports from both Government and civil society actors (NGOs, scholars, farm labour unions, etc.) suggest that, so far the majority of the offer letters (in A2 schemes) and A1 permit allocations issued have been given in the name of the male spouse. There are also reports that some women, who had been given these tenure documents as individuals, then reversed this by going back and getting government officials to re-issue them in their husband's name.

The GoZ policy is to offer spouses joint tenure (Ministry of Land; GoZ officials)[67] but GoZ officials argue that the policy does not allow them to 'force' applicants applying individually or jointly to register jointly and/or to refuse the reversal of joint land offers, as this would be regarded an intrusion into matrimonial affairs, and because their powers to insist on joint registration are not enforceable in law. Thus while officials are expected to and do tend to encourage joint registration, those who are gender biased may not do so, leading to a situation in which the practice varies among provinces (Ibid).

The effective implementation of the gendered aspects of land tenure policy is limited by the preponderance of men in decision making (Utete Commission). In the land administration structures – GoZ land officials at national and district level land offices, National Land Board members, the provincial and district land committees' members, traditional leaderships, and district administrators – women constitute less than 10 percent of those employees in positions of influence.

The empirical evidence on the equitability of the distribution of access to government inputs and credit support, and the benefits from women's labour and investments into land is also weak, although observers (WLZ) suggest that these benefits are less easily accessed by women.

This administrative inequity, alongside the absence of legally enforceable statutes to ensure equitable access and tenures, and the limited capacity of women's

[67] Personal communication and interviews with government officials

organisations to mobilise for redress,[68] within the prevailing patriarchal power relations of society, and the structural tendency that make more women poorer and less educated (and, therefore, lacking the resources of struggle), have limited the overall gender balancing of tenure rights.

In general women's land rights have been restricted by the patriarchal conceptualisation of state policy and planning processes, as well as discriminatory implementation practices. Thus, the "farmer tends to be conceptualised as a man" (Mandimika, personal communication), as is the 'head of household', and access to land, tenure documents and government support are restricted by this (WLZ). Furthermore, an important barrier to women's access to A2 land is the gender insensitive and onerous requirement that applicants should have the 'means' to farm, or prove their productiveness over the past three years for them to be recommended for the issuance of a lease, given their structurally limited histories of capital accumulation, leading to their lack of collateral to access credit. They lack basic items such as scotch carts, oxen and savings, let alone vehicles, tractors and urban houses, which are also used as security and enable farmers to have a 'production record'.

While recognising that fewer women benefited in their individual right from the fast track process, in comparative African terms, this proportion (estimates varying between 10 and 28 percent) is relatively high.[69] Various aspects of customary law and practice underlie the discrimination against women in terms of access to land and asset accumulation in general, exacerbating the various disadvantages that face women as a result of their institutionalised insecurity in marriages and over divorces. These include inequities over inheritance of land, the division of property on divorce and the male 'head of household's control over resources, such as commodity sales, income, cattle, etc.

5.2 Class Based Tenure Inequities and Legitimacy

The key class based tenure inequity from the redistributed land and assigned tenures relates to the fact that A2 farmers, who generally comprise a 'better off' category of land beneficiaries (in terms of education, incomes from past or present jobs, assets, savings, etc.) were provided with leasehold tenure on relatively larger plots compared to permit tenure provided to the poorer, A1 land beneficiaries.[70] In theory (for now) the leasehold provides *a priori* greater breadth of rights than the permit although, as we have seen (Section 4.3), there tends to be a much lower perception of tenure insecurity among A1 beneficiaries. Moreover the permit tenure combines individual household rights with group rights over grazing lands, which may expose the

[68] Recently (2006/7) a new 'women farmers association' has been formed by WLZ although its membership is still limited, while a few women lead existing farmers unions or new ones WLZ is a network representing 30 NGO's.

[69] Few studies or audits articulate the proportion of men who benefited as individuals rather than husbands or 'heads of household'.

[70] Who mainly comprise people who originated from various rural occupations – peasants, farm workers, other workers, etc.

beneficiaries to the wider risks of controlling resource utilisation by non-members and the unequal extraction of resources by the 'better–off', especially those with access to more cattle (of their own or 'kept' for association) to graze.

Yet the class basis of tenure insecurity appears to be simmering around the contestation of the legitimacy of the level of land rights allocated to A2 beneficiaries, rather than the tenure system *per se.* Popular demand among the lower and middle class strata of society for a share of the redistributed land, especially from the larger sized allocations, suggests a threat to some A2 farmers. There is a perception that better off classes of people received larger land sizes than they required and than some of them can use, at least in the short term, while some of the vulnerable but needy groups (women, the poor, farm workers, etc.) were excluded. In some respects this concern reflects inter-class and intra-class (across party political, gender, ethnicity and racial lines) competitive bidding for access to land. The right to access commercial farming land reflects an élite intra-class demand.

5.3 The Land Tenure Situation of Farm Workers

Farm workers lost the most from land redistribution due to their loss of homes, employment and the compensation of severance benefits.[71] At least 150 000 former commercial farm workers (Ibid) have been left without secure housing, land or jobs and their receipt of wages has become precarious. Based on various estimates (Ibid) farm workers constituted about 10 percent (or 15 000) of the beneficiaries. The rest are either still living within the redistributed farming areas' former farm compounds providing casual labour to A2 and A1 farmers, or are squatting on pieces of land within the farming areas. There are reported cases of eviction and conflict between former farm workers and newly settled farmers.

The land rights of farm workers, in terms of their access to residential land and infrastructure on former LSCF land and access to small food security plots, have always been informal and incidental to their provision of specific labour services to landowners. In the current situation most farm workers still have no residential tenure security, social protection or "human capital development support", and this undermines labour productivity. Labour disputes generate resistance by both parties to engagement of former farm workers, leading to labour shortages and local conflict between the new farmers and former farm workers still residing on some farm compounds in A2 areas.[72]

[71] Estimates (Magaramombe, 2003; Chambati and Moyo, 2005) indicate that there were about 175 000 fulltime farm workers prior to the FTLRP, and an equal number of part time workers. Of these, about 80 000 retained their employment on the remaining white and black large scale commercial farms, parastatal farms, church owned farms and large scale plantations.

[72] In addition, in A2 areas, some new farmers distrust former farm workers due to their perceived loyalties to former LSCF owners, while farm workers also perceive new farmers as poor employers. In some areas, former farm workers are alleged to be involved in theft, stock rustling and other socially 'undesirable' activities (excessive drinking, prostitution and so on).

Most, former farm workers are women, who are currently unemployed (Chambati 2004), and lack access to land and secure residential land rights, as well as to alternative income generation opportunities. It is mostly the skilled former farm workers who managed to be re-engaged by the new farmers. Women farm workers tend, as in the past, to be subjected to piecemeal and casual labour tasks, with the lowest wages. This system also often requires the deployment of child labour on short and insecure work contracts. Their tenure is the least secure and is dependent on husbands, employers and at times 'foremen', who frequently engage in sexual harassment. Their capacity to advocate for better labour rates and residential tenure rights is weak.

These women also rely on gold panning as alternative employment to ameliorate their poverty and insecurity. However due to the strenuous and physical demands of small scale gold mining, these women depend on the less productive alluvial gold panning as an alternative income source.

Current tenure policy does not address either the structural problem of gender equity in access to land and livelihoods, or the wider accommodation of the land rights of farm workers.

5.4 Ethno-Regional Exclusion and 'Belonging'

Inter-regional or provincial grievances over access to A2 land, which at times cut along ethno-regional lines, have been a simmering aspect of intra-class (especially élite) competition and struggles over land. Firstly, there has been a general tendency for access to A2 land to be restricted to those who do, or to exclude those who do not, 'belong' to a particular province, such that only those from the province applied or were even considered in the allocation. The popular trend has been for élites to either seek land near the town they live in or to apply for land in their 'home area' (kumusha). Eventually the latter trend became more dominant when conflicts between A2 beneficiaries who 'belong' and those who do not surfaced. Indeed, there have been many cases of local élites pushing for the exclusion of 'strangers', who had been allocated land in some provinces.[73]

Thus, particularly during the height of land bidding (2000 to 2003), there were many 'evictions' or unfair rejections of applicants on ethno-regional grounds. Furthermore, some later land occupations, including by the landless, entailed struggles between 'autochthones' and 'alogenes'. To date this remains a threat, mainly to tenure security among A2 beneficiaries who are considered not to 'belong' to socially and politically constructed ethno-regional identities, which in any case are quite malleable.

This insecurity does not apply so much to A1 beneficiaries because most (over 70 percent) of the land allocated to them was distributed to people from within the

[73] In a Mashonaland West example it was alleged that a list of non-indigenes had been compiled towards their ejection (See Mutingwede paper). The case of Humphrey Malumo is a notable one.

relevant district or province (AIAS Survey, 2005/06), although this already reflected an ethno-regional bias, given that the selection of beneficiaries was from neighbouring areas. Yet, as argued earlier, even in this instance former farm workers tend not to be seen as 'belonging' to an area where they may have worked for decades, and they tended to be excluded from A1 land allocations because these prioritised the 'indigenes', while they were often labelled as 'foreign'.

Thus when we consider the range of class based struggles over land in relation to various categories of the elite, vis-à-vis peasants and the working classes (especially farm workers), as well as in relation to the diverse perceived and actual ethno-regional and the nationality identities, and in terms of gender based discrimination, the scope of the tenure insecurity problem is diverse, particularly within A2 areas, even if it has not been widespread. This, however, does not mean that there are no property rights *per se*, but that the potential for insecurity and land conflicts is real. For this reason, the new land rights need effective protection by a land administration system with adequate capacities to fairly resolve land disputes on principle.

6 STATE, LAND ADMINISTRATION AND TENURE SECURITY

The security of land tenure, particularly in terms of the recognition and protection of agricultural land (or property) rights, and the enforcement of rights, depends to a large degree on the role of the state (at central and local levels, including its various branches – the executive or administration, the judiciary, legislation and security forces), in terms of its social and power relations, in guaranteeing the rights through its land administration system (e.g. Luo, 2007). The arrangement of land ownership promoted by the state and the social relations that this gives rise to shape the form of authority over land that the state exercises.

The Zimbabwe literature on land tenure security in relation to the effects of land administration has tended to focus on the managerial efficiency of government land administration structures and procedures (Rukuni Land Tenure Commission, 1994; Sukume, 2007; Zimbabwe Institute, 2007). A more diffuse stream has argued that the state uses the land tenure system (i.e. referring to increasing central state influence and control over customary tenures, and more recently the 'nationalisation' of freehold private land) and land redistribution to consolidate its authority over land and its legitimacy (Worby, 2004; Hammar, 2003; Alexander, 1993, 2006; Marongwe, 2003; Chaumba, Scoones and Wolmer, 2003). Both these currents lean towards the belief that freehold tenures reflect a more efficient and legitimate basis for land utilisation and tenure security, and that customary tenures are more effective with less state intervention.

The Zimbabwean government is said to have shifted its land policy from 1998 away from its 'modernisation' and democratisation project of the 1980s, in which traditional leaders had been sidelined in land administration, and freehold property rights upheld,

because of growing popular contestation of its authority over land, including the questioning of its legitimacy by 'popular rural nationalism' (Alexander, 2006). It moved to 'reconstruct' or 'remake' the state by transforming its authority over land, including through encouraging land occupations and redistribution from 2000, while leaving the land question unresolved (Ibid). The expansion of permit and leasehold tenures derived directly from the state is seen as a perpetuation of this authority (Ibid)

'Excessive control' over agricultural land by the state, instead of the further 'decentralisation' of land administration which is needed for secure tenure and effective management, is deemed by the 'managerial school' to be a source of poor governance – lack of transparency, fairness, equitability and 'efficiency' (SARPN, 2003; Zimbabwe Institute, 2007). This is said to have undermined the selection of appropriate beneficiaries, including through political partisanship, leading to the exclusion of the 'capable' (skilled, experienced and resourceful) and needy persons, as well as vulnerable groups, such as women, farm workers and those with disabilities (Zimbabwe Institute)

The land administration system is also alleged to have failed to address various land disputes, including over land plot boundaries, double allocations, claimants' conflicts, corrupt land bidding, delayed decision making, inaccessibility of the land institutions, lack of knowledge of rights by landholders and claimants, due to various capacity constraints and political interference (Sukume, 2007; Midzi and Jowa, 2007). Yet the managerial school also highlights various capacity constraints facing the land administration system, particularly due to its over-centralisation, and consequently the limitations to enhancing tenure security.

These constraints include weak land information and records registration systems (Mushonga, 2007).[74] The available capacities for land surveying, mapping and registration, in terms of human resources and ICT and GSP technologies, are deemed so inadequate as to perpetuate some of the land disputes. By delaying the surveying of subdivided plots and the issuance of formal tenure documents to new landholders, and consequently delaying the establishment of a new land register, including the recording of new lease tenures in the Deeds Office, tenure security is considered threatened.

However, as Sukume (2007) argues, tenure security is determined by the "perceptions of economic agents", of the quality of the land administration system, including the many structures involved, quite apart from the nature of the legal provisions of tenure and the actual land administration process. This entails perceptions of the responsiveness and efficiency of the variety of land institutions involved in the various processes, such as in processing applications for light rights, the recording of such rights, their adjudication, the transfer of rights (including valuation of improvements),

[74] The absence of adequate transparent information is also the source of demands for and "independent" land audit (see MDC, 2003 and Zimbabwe Institute, 2007; others)

land use regulation and the distribution of financial benefit from land (Ibid). Where institutions are accessible, transparent and do not unduly delay decisions, including not interfering excessively in the land transfer process and sharing of benefits from land use, (Ibid) and are perceived to be effective, notwithstanding the form of tenure (freehold or otherwise), tenure security is enhanced. Indeed, while land conflicts exist, they are not perceived to be debilitating or widespread, such that only 19.4% of households face land conflicts or disputes (AIAS Survey, 2007).

The capacity and efficiency of Zimbabwe's land administration system has of course been stretched by the fast track programme, in which over 150 000 new 'parcels' of land have been created in eight years (Midzi and Jowah, 2007; Chonchol, 2000; Janneh, 2002). This requires greater data management, monitoring, valuations, registration, surveying and dispute mediation capacity than was required before, especially concerning the freehold tenures. This has exacerbated the earlier deficiencies arising from the dualistic administration system, the fragmentation of organisational mandates and their weak coordination, and the varied sources of authority of these structures (e.g. some are derived from legislation[75] and others from the Executive). Much more public information and many more dialogues are necessary to enhance confidence.

Yet the formation of District Land Committees (DLCs) from 2000, comprising various departments and selected elements of civil society – war veterans, chiefs' representatives, the ruling party (to the exclusion of the opposition), and their linkage to central government through Provincial Land Committees (Midzi and Jowah, 2007), had the effects of substantively decentralising administration of various land management processes within newly redistributed areas as well as in the process of issuance of tenure documents (Moyo and Yeros, 2007; Moyo, 2005), in spite of the retention of indirect central government control of 'communal lands' areas. The coordination of land administration was thus also elevated in some aspects, such as land identification and allocations. The Ministry of Lands' role in maintaining the land register of the smallholder redistribution scheme has been limited by the delayed issuance of A1 permits and is perceived as being overshadowed by the Ministry of Local Government.

In this context, the consolidation of a new decentralised land administration, under the central authority of the Ministry of Lands, Land Reform and Resettlement (MoLLRR) and the National Land Board (NLB)[76], remains unfinished business, and may be threatened by the significant role played by the security arm of the state, given the on-going struggles over land allocations among some central and provincial political leaders, bureaucrats and sections of civil society (e.g. farmers associations, war veteran associations, etc.). Struggles over the decentralisation of land administration also emphasise the 'politicisation' of decision making in land administration, given the

[75] For example, Deeds Act, 1996; Land Acquisition Act, 1990 etc.
[76] The NLB is constituted under the Land Settlement Act (2000) which reports to MoLLRR, and not Parliament as has been proposed previously by Shivji et al. (1998), and by the MDC (2003) (Zimbabwe Institute, 2007).

currently polarised politics of land reform.[77] In the case of A2 land allocations, the operative law[78] gives the final say on land allocations to the Minister of Lands, Land Reform and Resettlement, enabling them to override the proposals of the Provincial Land Committee and local level bureaucrats.

However, while most observers agree that, to some extent, land allocations in the A2 scheme were influenced by the corrupt actions of bureaucrats, politicians and aggressive land seekers (Moyo, 2005), some technocrats argue that the scale of this has been limited by the vigilance of District Land Committees, given their links with various constituencies (which overwhelmed them with applications for land) and their coordination of key processes, from land requests, to beneficiary selection, offers and the recording of beneficiaries (Midzi and Jowah, 2007). Moreover, the quality of land administration, especially the registers of land allocations, varies widely among the 55 districts (Ibid; Mushonga, 2007). It can also be expected that the degree of equitability of land allocations (and land use and land valuation processes) will vary as well.

There has been a persistent local level land administration conflict arising over competition for authority over newly redistributed lands, between traditional leaders and A2 land beneficiaries. While the land policy and local government law stipulate that the authority of the chiefs reigns in A1 areas (as in communal areas) with regard to some environmental and land use management issues and general social administration and legal processes (e.g. maintaining residential registers, adjudication of low level civil disputes and criminal offences, etc.), although not over land acquisition, allocation and agricultural land use compliance, this policy and law does not apply to A2 schemes. Yet since the two schemes are interspersed, traditional leaders have sought to reign over A2 farmers, who tend to resent this and refuse to cooperate, given their social capacity to contest traditional authority (personal communications; Utete Report, 2003; etc.).

The A2 land beneficiaries have also demonstrated a determination to contest the MoLLRR's authority over land (administration) in their areas, after being provided with land offers. This occurs in terms of refusal to comply with various conditions under which land has been offered and the spirited contestations over the conditions obtaining in the recently adopted lease document. Contrary to current regulations, they engage in land subletting or renting (see Section 4.2.3). Some have been refusing to sign the lease contracts because it requires them to pay land rental fees or because the lease requires the signature of spouses. Some resist the lease because, depending on their agro-ecological location, it expects them either to produce grain on

[77] See also Zimbabwe Institute (2007), which notes this politicisation, while at the same time propounding a politicised or partisan approach to rationalising land allocations and tenures. See the calls by Vice President, Joseph Musika (*Herald* 9, 10, 11, 2007) for the land administrators to comply with provisions of land policy, or the assertion by some that beneficiary selection, farm size determination and/or the eviction of 'remaining white farmers' has been based upon political criteria (Zimbabwe Institute, 2007) which override 'technical proposals' (Utete Report, 2003; Midzi and Jowah, 2007).

[78] Agricultural Land Settlement Act [Chapter 20: 01].

20 percent of their arable land or to sell 20 percent of their cattle to a parastatal, the Cold Storage Company (CSC), as a land use condition.

Land administration in A2 areas has also been bedevilled by various disputes over the control of and utilisation of farm infrastructure 'bequeathed' to the new farmers on their individual plots. Those whose plots have structures tend to treat them as their individual or private property and indeed the leases provide them with 'caretaker' responsibilities over them, while allowing them to sublet them to neighbours, and land rental fees are expected to reflect the value of such improvement. Moreover, the lease encourages landholders to acquire the improvements, through paying for them either up front or over a period of time. Those without such infrastructure on their plots tend to expect to share these with their neighbours while they procure their own. This arrangement has not worked well as some disputes have emerged and little sharing has occurred.

Hardly any observers argue that land administration is encumbered by the excessive formalism (bureaucratic, legal and logistic) required by the type of permits and leases being offered, suggesting their acceptance of such tenure formalism. Long formal registrable documents are being issued as (A2) leases, and have similarly been designed for A1 permits. The former requires a survey diagram done by 'qualified' surveyors and registration according to various statutory requirements in existing laws (Mushonga, 2007).[79] These have delayed the issuance of leases as well as various related processes. The costs of these processes are higher than currently available government budgets and foreign exchange provide for.[80] Nonetheless, despite these capacity constraints, the fact that these land administration structures, laws and processes exist suggests that their adaptation to the extensive land redistribution exercise is feasible over time, dependent on the improved mobilisation of resources.

The coordination and 'rationalisation' of various agents with mandates over land has been a concern. These include Water Catchment Area Committees, the Zimbabwe Water Authority (ZINWA), the Environment Parks Authority, the Natural Resources Department and rural councils, alongside 'conservation' associations, farmers' associations and labour unions, as well as specific land administration structures and the traditional leadership. Thus it can be argued that the previous technocratic planning systems and directive continue to operate without either adequate reforms or the resources required to support effective land administration.

The entire land administration system is under tremendous pressure to complete the land reform process, as well as to enhance land tenure security. A new institution, the National Land Board, was established in 2004 specifically to address the administration of leasehold areas. However, it has been entangled within an unclear division of responsibilities vis-à-vis Provincial Governors and Ministry of Lands officials

[79] The Land Survey Act (1996), Conveyancing regulations, Deeds Registry Act (1996)
[80] Mushonga notes that operating at 62% establishement levels, the DSG needs to replace its Information Communication Infrastructure, particularly computers and the main server that are close to ten years in service.

at central and provincial government levels, and its relationship to District Land Committees is loose. Land allocation (and audits) continues to be regarded, not convincingly, as too politically sensitive to be handled solely by a technocratic NLB. The membership and role of the NLB needs to be adapted to expand its representativity and to allow it to coordinate a wider range of land administration activities from local to central levels. It requires greater autonomy and capacity to oversee the land tenure processes implemented by relevant government departments, such as registration of allocations, maintenance of contracts (leases and permits), monitoring land use, and compliance with rentals and service charge payments. It may well work better if it were directly accountable to Parliament (see Shivji et al, 1998).

These elements need to be reviewed in order to develop a more effectively integrated national land administration system, which could work better on the basis of a revised land tenure policy.

7 CONCLUSION

Most land beneficiaries do not cite tenure insecurity as an issue, despite the problems they do face, and less than a fifth report having encountered any type of land conflict. Yet some of the A2 landholders, supported by various stakeholders, demand transferable land rights. It may be that the majority of new landholders, while not necessarily perceiving their tenures to be insecure, feel that the land administration system needs to be effective in communicating policy and implementing it consistently, so as to enhance their security.

Land redistribution has not yet been brought to its full conclusion, with regard to land allocations, issuance of formal tenures, compensation for land improvements and the rationalisation of land administration structures. Land tenure insecurity is perceived by some beneficiaries, potential land users and financiers, and to some extent affects land utilisation and investment, alongside other issues such as the weak financial and inputs markets, and output pricing. While the tenurial provisions may constitute a constraint to the increased supply of credit for agricultural production, the critical starting point should be that all farmers and rural labourers in redistributed areas need to perceive their landholdings as secure.

Zimbabwe has established a new land tenure system, the property rights system of which most beneficiaries have confidence in. The exceptions to this are among the new commercial farmers. However, the land tenure policy objectives and strategy have tended to be poorly communicated, especially in stipulating the rights and obligations of various persons/entities and the state, specifying procedures for accessing land and enforcing tenure rights.

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