

NATURAL RESOURCE TENURE IN SOUTHERN AFRICA: An Overview of Key Issues and Policy Options for Communal Areas in Southern Africa

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1. Purpose of this Brief

This brief provides decision makers with an overview of key issues and policy options for the development of appropriate tenure systems/property rights to promote the sustainable and equitable use of natural resources in the communal areas of southern Africa. It provides:

- an introduction to key concepts and terminology used within the debate
- an overview of current trends
- an overview of the critical policy issues and options of relevance to tenurial arrangements
- additional recommended literature.

2. What is natural resource tenure?

In the context of this brief, natural resources refers to land and the biological resources that occur on it. The tenure system in place is the legal and institutional framework which determines the ways in which property rights are defined and enforced. Tenure is one of the principal factors determining the way in which resources are managed and used, and the manner in which the benefits are distributed. Four major categories of tenure are commonly identified, state property, private property, common property and open access property (see Box 1 for details).

BOX 1: KEY CONCEPTS AND TERMS

Natural resources – generally refers to all lands, biological, mineral and climatic resources. However in this brief, as is the general case in southern Africa, natural resources refers to the land and biological resources occurring upon it.

Tenure – control over resources or the way in which people hold, or do not hold, individually or collectively, exclusive rights to land and all or part of the natural resources upon it. Tenure is one of the principal factors determining the way in which resources are managed and used, and the manner in which the benefits are distributed.

Tenure reform – involves changes in the terms and conditions that govern resource use.

Land reform – a revolutionary process encompassing any redistribution of land. This involves passing power, property or status from one social group to another.

Property rights – Tenure is also referred to as ‘property rights’. This commonly has two components:

property rights: entitlements defining rights and duties in the use of natural resources;

property rules: the rules under which those rights and duties are exercised.

property rights/tenure categories - generally four major categories are identified. These categories are defined on the basis of who exercises exclusive rights to the resource. These are:

State property – on which the public sector exercises rights over resources;
Common property – where rights are exercised by a defined group;
Private/freehold property – where an individual entity has rights; and
Open access (non-property) – or effectively no property, land where no one has defined rights.

Security of tenure – the need for security of tenure is commonly identified as the most significant determinant of a sustainable tenurial system. It is commonly associated with four sets of rights that indicate the relative security of a tenure system as follows:
use rights: are rights to grow crops and trees and raise other resources, livestock or wildlife, and harvest the products of these;
transfer rights: are rights to transfer the land or use rights, i.e. rights to sell, give, mortgage, lease, rent or bequeath;
exclusion and inclusion rights: are rights by an individual, group or community to determine who to exclude or include from the rights discussed above;
Enforcement rights: refer to the legal, institutional and administrative provisions to guarantee rights.

Common property resources – resources used in common by a defined group.

De jure – by law.

De facto – by practise, irrespective of law.

Institutional arrangements – these include instruments for defining and enforcing property rights, be they formal procedures, social customs, beliefs or attitudes which determine the legitimacy and recognition of these rights.

3. *The context for natural resource tenure in southern Africa*

Natural resource tenure is **traditionally viewed as having a narrow technical focus** with implications for agricultural production and natural resource management. However, the development of appropriate tenurial regimes for natural resources also has **cross-cutting implications for southern Africa’s economic, social, political and environmental development. It is inextricably linked to the broader issues of equity, democracy and good governance. Natural resource tenure is a complex and emotional issue with its roots in colonialism and the struggle for social justice.** Box 2 illustrates how people’s rights to land and other resources has emerged as one of the most important political issues in the recent history of southern Africa. This role is likely to continue for the foreseeable future because of the multiplicity of functions that natural resources fulfil in an area where most of the population still depends on land, water or forests for a living. **Developing appropriate tenure systems is a crucial long-term policy issue essential for the sustainable development of southern Africa.**

BOX 2: HISTORY OF NATURAL RESOURCE TENURE IN SOUTHERN AFRICA

Natural resource tenure in southern Africa is a complex and often emotional issue with its roots in colonialism and the struggle for justice. To understand the political nature of the

debate surrounding natural resource tenure and reform in southern Africa it is necessary to consider the historical context in which the current tenurial arrangements have developed.

Pre-colonial period – Indigenous tenure systems were characterised by diversity and adaptability enabling them to meet specific local conditions. They were however based on similar principles of heritable rights of usufruct, held within family lineages, regulated and sanctioned by customary authorities. Accepted kinship and inheritance rules, varying from group to group, generally prescribed the access rights of different group members. These access rights were usually very secure, respected by all in the community.

Colonial period – Southern Africa experienced the most extensive white settlement of any region in Africa during the colonial era. This period was characterised by an extensive, racially based ‘land grab’, which served the economic and political aspirations of settlers at the expense of Africans. This manifested itself in the forced removal of millions from much of the most productive land and their resettlement into ‘tribal’ or communal lands, producing the dual land system that is still prevalent today. Not only did this policy alienate many from the land, it also thoroughly disrupted the indigenous tenure systems. Colonial land policy and legislation can essentially be viewed as a social engineering tool, developed to ensure that the distribution of opportunities was skewed along racial lines in favour of settlers.

Post-independence – The core issue at the heart of many of independence struggles was land. Independent governments have made efforts to address this by undertaking land and tenure reforms that abolished discrimination on racial grounds. The nature and level of success of this reform process has varied from country to country. However, it is notable that the dual land system introduced by the colonists, characterised by the division between commercial estates and communal lands, continues to exist.

The post-independence era witnessed a trend towards centralisation of authority over natural resources by governments that generally made themselves the ultimate custodians of resources. The ideological stance taken was obviously more pronounced and the implications on tenure most far-reaching in countries such as Angola, Mozambique and Tanzania which applied socialist tenure formulae. The colonial legacy of undermining indigenous tenure systems was continued because of the common perception that they represented obstacles to agricultural modernisation. The role of traditional institutions in communal resource management decisions was marginalised, largely as a result of the centralisation process and the common perception that traditional leaders had been co-opted by the colonial powers. This led to the creation of dual authority structures; traditional systems and state administered systems. These two systems compete for power and influence, frequently resulting in a power vacuum leading to the creation of ‘open access’ resource regimes.

4. *Key policy issues*

Experience throughout the region indicates that one of the key factors affecting the development of equitable and sustainable tenurial systems for communal areas is the provision of secure tenure at a level that provides the appropriate incentives for the desired outcome. The following issues are crucial in this process:

- **creation of incentives for local people to invest in the resource base through the decentralisation/devolution of authority over resources to the appropriate local level**
- development of appropriate institutional arrangements/legal frameworks to facilitate efficient and effective local management

- **capacity building activities by government at local levels** to ensure necessary skills development and creation of open and representative local institutions
- **co-ordination of cross-sectoral policies** by central government to ensure integrated and synergistic policy implementation

5. *Tenure systems in communal areas of southern Africa: Emerging lessons*

One of the major legacies of the colonial era is the dual tenure system still in place throughout much of southern Africa. This divides land into privately owned, commercial estates and communally or state owned, predominantly subsistence, areas. Generally, **the most problematic natural resource policy domain is considered to be that within the communal areas.** Communal areas are becoming increasingly crowded, environmentally degraded and susceptible to drought. The majority of people in southern Africa live in these areas, holding their land under indigenous customary land tenure systems, irrespective of the formal legal position under national law. **The development of appropriate policies and legislation - the enabling environment - to stimulate sustainable and equitable land use practices in these areas is a major challenge facing national governments throughout the region.**

Sustainable land use practices and the sustainable use of natural resources are not solely, or even largely, determined by physical and biological factors. **The crucial determinant of sustainability is a package in which human needs are bundled with economic, social and political realities.** One of the most pressing factors that affects sustainability of resource use is tenure. The key elements of ensuring sustainable resource use are described below. Technical terms are defined in Box 1.

Appropriate incentive structures: **Giving people tenure – i.e. conferring ‘custodianship’ or ‘ownership’ - over the resources they live with is often the essential first step in creating incentives for efficient and sustainable use. Without tenure security, there is no opportunity or incentive to choose the most profitable or efficient resource use options, and no reason to ensure long-term sustainability.** As long as someone else may reap the benefits of an investment made, the incentive is not to invest in the first place. However, if the investor knows that he/she will reap the benefit and that investment in the resource base will optimise the benefits received, the incentive is to invest and ensure the resource is not depleted over time. Box 3 provides an example of this principle in action in the communal lands of Zimbabwe. One of the most significant factors in the search for sustainability then is the provision of secure tenure at a level that provides the appropriate incentives for the desired outcome.

BOX 3 – INCENTIVES FOR LOCAL INVESTMENT IN THE RESOURCE BASE: THE CAMPFIRE PROGRAMME IN ZIMBABWE

The Communal Areas Management Programme for Indigenous Resources (CAMPFIRE) explores options for rural development and sustainable resource management. It is a Government of Zimbabwe programme, implemented with the assistance of various local NGOs. Its objective is to reorganise the control of Zimbabwe’s communal area resources, providing people with alternative, economically viable options of using their natural resources. CAMPFIRE emerged in the 1980s with the recognition that, as long as wildlife remained the property of the state, no one would invest in it as a resource.

Sine 1975, Zimbabwe has allowed private property holders to claim ownership of wildlife on their lands and to benefit from its use. They have since invested in wildlife, taken on wildlife management responsibilities, diversified risk and coped with drought through wildlife utilisation.

On communal land however, wildlife remained state property, frequently causing problems for farmers but offering no profits. Habitat and numbers continued to decline until the introduction of CAMPFIRE. This provided the legislative framework that enabled people living in communal lands to exercise the same rights of proprietorship. Tenurial rights over wildlife were decentralised from central to local government authorities, the Rural District Councils (RDCs). The RDCs in turn enter into joint management agreements with local communities, sharing benefits and management functions with them.

Government and NGOs are involved in capacity building activities with local communities. This includes provision of advice and training for local institutions, including the development of profitable and sustainable wildlife use strategies.

As a result of the decentralisation of authority over wildlife to local levels, Zimbabwe has witnessed a three-fold expansion in the land area available for wildlife management from 12 to 33% while wildlife numbers have continued to rise. All RDCs in areas where CAMPFIRE is economically viable - over 50% of the RDCs in the country - have adopted this approach, resulting in some 2 million beneficiaries.

Conceptually, CAMPFIRE includes all resources, but practically its focus has always been wildlife. **This policy of decentralising authority over wildlife has now been adopted by the majority of SADC countries and a number of countries in east and central Africa.** In many of these countries, such as Namibia and Botswana, the policy framework encompasses a broader spectrum of natural resources. This enables a more integrated approach to natural resources management in communal areas.

Security of tenure: **There is general agreement that security of tenure – having the ability to exclude others from using the resource - is the single most important factor required to promote efficient and sustainable land and resource use. However, this does not imply that formal title to resources is essential.** Systems of customary tenure are able to provide adequate security to the individual farmer or household. The particular challenges in southern Africa result from the historical alienation of communities from indigenous natural resources, first by colonisation then nationalisation. This has undermined customary systems in communal areas, resulting in insecure tenure systems and unsustainable resource use practices.

Secure tenure rights are largely dependent on having the right to exclude others from using and benefiting from resources and having the ability to enforce these exclusionary rights. **The post-colonial era has witnessed conflicts between two competing authorities; the traditional structures and the government established structures.** The competition for power and authority between the two has often created a power vacuum enabling a few powerful vested interests to be the primary beneficiaries. Communal resources have been designated as state owned with governments accepting the de facto prevalence of customary tenure, whilst maintaining de jure state ownership. **Government has the authority but responsibility remains with the communities. This control by government of the authority over communal resources has often resulted in ‘open-access’ situations. Customary tenurial rules can no longer be enforced, while governments do not have the resources and capacity to effectively enforce and uphold access and use rights. Effectively there are no tenure rules. Anyone is able to use resources with no constraints placed on this use. Use turns into abuse and overexploitation. There is common agreement in the tenure debate that ‘open access’ situations are to be avoided.**

Decentralisation and devolution: **Decentralisation refers to the transfer of government functions from the centre to regional and/or local government. Devolution goes beyond this as it involves the transfer of authority to local level community institutions.** Decentralisation and devolution are essentially political processes. Conflict may be inherent given that there are a variety of stockholders with vested interests in maintaining the status quo.

To address the problem of insecure tenure outlined above, policies need to ensure that tenurial rights are provided to, or shared with, those who are best placed to enforce them. **Experience has clearly demonstrated that responsibility for land and resources ultimately lies at the local level and it is at this level that enforcement can be undertaken most efficiently and cost-effectively.** This transfer of authority to appropriate levels can be achieved through decentralisation of tenurial rights to local government structures and beyond that through the devolution of rights to local communities.

The identification of the appropriate level at which to vest authority for resources, the tenurial rights, will vary depending on specific local conditions. However, there are two important considerations. Firstly, institutional dynamics suggest that **the smaller the unit of proprietorship the better.** Increasing numbers introduces increasing possibilities for misunderstandings, resulting in greater scope for conflict and misappropriation, including corruption and escalating costs. Secondly, experience has shown that **small agencies are more efficient than large ones.** This is largely because self-interest leads individuals to care for those things over which they have direct authority.

Appropriate institutional arrangements: These include instruments for defining and enforcing property rights, be they formal procedures, social customs, beliefs or attitudes which determine the legitimacy and recognition of these rights. **If decentralisation and devolution are to be effective in promoting sustainable resource management there have to be effective management institutions in place at the level to which authority has been transferred. These institutions have to be genuinely representative, transparent and accountable to the constituencies that they represent. A critical component of the decentralisation/devolution process is ensuring that these local level institutions are effectively empowered through both an appropriate legal framework and the provision of skills and resources needed to exercise such control.** A prerequisite to the successful functioning of such institutions is a clear and commonly understood definition of the membership of the group that such institutions represent.

This may require substantial capacity building and skills development activities by various government ministries. Experience in the region suggests that **assistance from NGOs and the private sector can complement government efforts.** Effective co-ordination both within and between government agencies and with the private/NGO sector is essential to ensure that conflicting policies and activities do not undermine this process as well as to ensure efficient use of scarce resources. Experience to date indicates that in several cases despite an effective legislative framework, implementation has been undermined by lack of a coherent implementation strategy leading to competition and contradictions between ministries.

Developing strong representative rural institutions is now widely recognised as being one of the central pillars without which rural economic development cannot take place. These local institutions are one of the most crucial channels through which otherwise marginalised rural dwellers can participate in and contribute to national economic development strategies. They are central to enhancing the process of democratisation and empowerment of communities.

6. Current policy trends in southern Africa

Three related changes in development policy have stimulated renewed interest in tenure issues in the recent years. Firstly, in countries such as Mozambique, Tanzania and Angola, the evolution from centrally planned to market oriented economies has prompted reviews over what to do with government land in state farms and cooperatives. Secondly, increasing concern over environmental problems and sustainable natural resource management has drawn renewed attention to tenure. Thirdly, the shift in development paradigms, emphasising entrepreneurship and the market with a reduced role for the state, has further stimulated debate on the strengths and weaknesses of indigenous tenure systems in comparison to individualised registration systems. This paradigmatic shift has led to a major debate on the most effective role of the state in managing common property resources.

Recognition of the role of indigenous tenure systems: With the notable exception of Swaziland, the dominant belief during both the colonial and immediate post-colonial periods was that systems that provided individual private property rights or state control of land were more progressive, equitable and economically efficient than those that vested property rights with communities, as indigenous tenure systems do. However, the adaptability and resilience demonstrated by indigenous tenure systems and their ability to co-exist with other forms of tenure, has led to their re-evaluation and a recognition of the important role they can play.

Policy and legislative changes have been effected which recognise the legal authority of traditional institutions in natural resource tenure regimes in Botswana, Lesotho, Malawi, Namibia, Zimbabwe and Zambia.

Moves towards decentralisation: Global economic trends and Structural Adjustment Programmes are further undermining the already stretched capacities and resources of governments to ensure the effective management of state owned resources. This, coupled with demands brought about through the increasing democratisation within the region, **has strengthened the trend towards decentralisation of authority. Highly centralised tenurial rights are increasingly recognised as a serious threat to tenure security throughout the communal lands of southern Africa.** Today, most governments are exploring options for the development of co-management arrangements with communal area dwellers. The Government of Botswana's Tribal Land Boards is recognised by many as one of the most successful experiences with decentralisation of land administration and democratisation of the process at the local level.

The wildlife sector is one that has been experimenting with decentralisation of authority over resources through programmes such as LIFE in Namibia, CAMPFIRE in Zimbabwe and ADMADE in Zambia. These and similar initiatives in Botswana, Malawi, Mozambique and Tanzania, commonly known as Community Based Natural Resource Management (CBNRM), seek to provide the legal, institutional and economic frameworks for communities to become co-managers of communal area resources. In many respects this approach is showing positive results. However, whilst these programs advocate strong 'ownership rights' for communities, they have been relying upon state permission to experiment rather than a mandate for decentralisation and tenurial security. Some observers consider that South Africa, and to some degree Namibia, are currently in the process of taking the 'next step' in this approach through the development of a policy and legislative framework that devolves full tenurial rights to communities. Box 4 contains a case study of the Makuleke land claim that has recently been passed in South Africa. This is viewed by some as an important precedent for the region.

BOX 4: DEVOLUTION IN SOUTH AFRICA: THE MAKULEKE LAND CLAIM

In 1969 three villages belonging to the Makuleke clan were forcibly removed from some 24,000 hectares of land known as the Pafuri Triangle. Most of the Pafuri – in which 9 ecological zones overlap resulting in extremely high biodiversity - was then incorporated into the Kruger National Park. This move was viewed as a great success by conservationists. To the Makuleke it was a crushing blow, leaving them disempowered and impoverished. With the introduction of the new regime in South Africa in 1994, legislation was passed that enabled the Makuleke to get back their land.

In 1996 the Makuleke lodged a formal claim for the restitution of their land. This claim was the strongest land claim against a schedule 1 Park and was bound to establish an important precedent for South Africa. The Pafuri was viewed as an ‘environmental hot spot’ and lay at the heart of several planned conservation initiatives for the area. Its prominence as a conservation area meant that decisions on its future would have profound policy implications, including redefining the term ‘conservation’. This process was fraught with conflict with many external interest groups, ranging from animal rights to sustainable use advocates, vocally involving themselves in the negotiation process. The Makuleke found themselves in the middle of a raging controversy, politically isolated and subjected to intense media scrutiny.

After an 18 month negotiation process an agreement was reached. This recognised the Makuleke as owners of the Pafuri. The Makuleke voluntarily agreed to use the land for conservation purposes, subjecting conservation and land management decisions to a Joint Management Board, consisting of themselves and the National Parks Board. Essentially, the Pafuri remains an integral component of the Kruger National Park, but the Makuleke have exclusive commercial rights over the area. This deal is now viewed as a template for dealing with similar claims against protected areas throughout South Africa.

The agreement provides the Makuleke with real power in their relationship with the National Parks Board and has created a ‘win-win’ situation for all. The Pafuri continues to be maintained as a conservation area and the Makuleke have won back their land. The responsibility for achieving conservation has now been moved to the grass-roots level, ensuring that the interests of the Makuleke are now bound up with those of conservation. This has resulted in them launching several conservation initiatives. These include the development of an intensive conservation training programme, which integrates modern approaches with traditional knowledge. This is now the largest training programme of its kind in southern Africa and has already resulted in some 20 young Makuleke gaining national diplomas.

From a development perspective, the Makuleke have acquired a significant economic resource that can be used for the benefit of their community. They have gained considerable self-confidence as a result of their struggle for the land and this has also led to the development of strong and respected local management institutions. Considerable local training is being provided and employment generated.

One issue that retains the interest of many observers is how traditional authority systems will be accommodated within the new tenurial arrangements emerging in South Africa. Currently, South African national policy – in line with most other countries recently gaining ‘independence’ - tends to marginalise traditional authority structures. In South Africa, as

elsewhere in the region, these had often been co-opted by the apartheid regime. Consequently new development structures are developed to replace them. Experience from the region has taught us that this may promote the development of dual power structures which results in conflict and inefficient resource use. Elsewhere the marginalisation of traditional authorities is now being reversed. How South Africa will address this remains to be seen.

Recognition of the complexity and implications of natural resource tenure: **The technocratic perspective**, which views natural resource tenure as a largely technical issue relevant to agricultural production and natural resource management, **is slowly beginning to make way for an approach that integrates the socio-economic, cultural and political dimensions of resource use. This changing perception facilitates a more flexible approach that acknowledges that there are no correct 'one size fits all' solutions. This is conducive to the development of an environment in which the necessary pragmatic, gradualist and long term solutions can be sought.** This environment allows for the exploration of issues crucial to the development of systems that will ensure equitable access to resources by various marginalised social groups, such as women and ethnic minorities.

7. Policy options and implications

A key issue facing policy makers is identification of the appropriate level at which tenurial rights - the authority and responsibilities - over natural resources should be held in order to facilitate sustainable management practices, social equity and poverty alleviation. This can only be identified at a national or sub-national level through a process of negotiation and consultation with stakeholders. But experience has clearly demonstrated that those who bear the responsibility for resource management should also bear the authority, the accountability and the costs involved in decision-making. Responsibility for the management of land and resources is ultimately exercised at the local level through the resource users, so too should authority.

Natural resource policies need to be reviewed in light of these experiences to catalyse and facilitate local action through:

- **an open and transparent negotiation process with all stakeholders**
- **provision of stronger incentives for local investment in land management**
- **co-ordination of cross-sectoral policies to ensure effective integration and removal of ambiguities**
- **decentralisation of control over resources from central to local government authorities**
- **devolution of control over resources to local communities**, including the development of innovative 'co-management' and 'resource sharing' regimes between the state and communities
- **investment in capacity development for local communities and institutions and investments into dispute resolution mechanisms**
- **recognition of the role and strengths of customary tenure systems in resource management in communal areas**
- **adherence to the 'subsidiarity principal'**, which states that decisions on management and administration must be taken as near as possible to where activities are happening.

RECOMMENDED READING:

Bromley, D.W. and M.M. Cernea, 1988: *The Management of Common Property Natural Resources: Some conceptual and operational fallacies*. World Bank discussion paper, 57, Washington DC, USA.

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