

REFORMING LAND RIGHTS: THE WORLD BANK AND THE GLOBALISATION OF AGRICULTURE*

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ABSTRACT:

Since independence, landholdings in Southern Africa have remained highly skewed between the rich and poor reflecting the land and agricultural policies adopted in colonial times and after independence. More recently agricultural policies have been prescribed by the World Bank as conditionalities of multilateral loans which have both facilitated and also driven the growing integration of such countries in the world economy. This article argues that such integration is being played out on an increasingly unequal global playing field, structured by global agricultural commodity chains and international trade, and strengthened by those very policy prescriptions of the World Bank. Instead of overcoming the dual economies and regulatory systems created in colonial times, people living in the region have only seen growing poverty and deepening inequality. This provides the context necessary for analysing the World Bank's recently published policy position on land reform. It argues that the approach taken by the Bank does not address the structural reasons for the distortions of landholdings in the region, and moreover that such inequality is likely to be reaffirmed and reproduced by the Bank's proposals. It further argues that the model of market-based land redistribution favoured by the Bank will be insufficient to dissipate the pressures of this ever-growing inequality. With considerations of 'efficiency' given prominence over other concerns, it concludes that the Bank's policies are unlikely to meet both of its overarching goals of poverty reduction and growth.

Keywords: land rights; property; land reform; globalisation; agriculture; World Bank; Southern Africa

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INTRODUCTION

Since independence, landholdings in the settled states of SSA, particularly in Southern Africa, have remained highly skewed between the rich and the poor. Such a structure of landholding reflects the agricultural and land policies based upon colonial rule as well as subsequent domestic agricultural policies that have been adopted, which have in turn been shaped by changes in the world economy. Whatever these policies have been, as the Food and Agriculture Organisation (FAO) has put it,

“the simultaneous persistence of widespread extreme food deprivation and plentiful food supplies in a world with excellent means of communications and transport can only suggest that there are fundamental flaws in the ways in which nations are functioning and the relationships between them are governed and managed” (FAO 2001a: 9).

Such relationships have changed significantly over the last twenty years or so, with ever increasing integration of countries into the world economy. The corollary of this has been increasing marginalisation of those countries unable to respond to the challenges thrown up by such integration, most countries in (sub-Saharan Africa) SSA. Over the same period, the World Bank has provided loans to such countries, the terms of which have prescribed fundamental changes to their macro-economic policies. These have also facilitated their integration into the world economy which has directly and indirectly influenced the conditions facing those who depend upon agriculture. Changes in the international trading architecture and the growth of global supply chains of agricultural commodities will therefore increasingly influence the constraints and opportunities to which such countries are exposed. The Bank has also been involved in reforming land holdings in the area and in 2003 published a document setting out its policy position on land reform. Land reform is fundamentally about recognising and changing a certain distribution of power over land and resources represented by that land. It involves a change in the current holding of ‘rights’ over land, promoting one person’s access to land over another’s. This is therefore of particular importance to many states in SSA which were subject to colonial rule.

In this article I consider the potential impact of the World Bank’s land reform policies on the rural poor in SSA, particularly those in states which have highly distorted landholdings between the rich and poor. Such policies will be applied in a context of the global conditions in which countries are now operating. In the first part of this article therefore, I look at some of the effects of the Bank’s macro-economic prescriptions in relation to such countries from the 1980s to the present, certain aspects of the international trading architecture and the policies of Northern countries in relation to agriculture which affect those policies which may be adopted in the South, and also changes which have arisen as a result of integration in global agricultural commodity chains. Against this background, I look at characteristics of Southern Africa’s landholdings which are to be ‘reformed’, the Bank’s policy position in relation to such reform and the likelihood for its attaining the twin goals of poverty reduction and growth for smallholders.

1 – GLOBALISATION AND AGRICULTURE – POLICIES AND EFFECTS IN SUB-SAHARAN AFRICA

International and transnational economic and political processes, particularly over the past two decades, have had an important effect on the developmental structures and institutions of sub-Saharan African states. With the emergence of ‘independent’ African states, there has also emerged a challenge to the very concept of the nation-state in the form of globalisation. In this section I explore the implications of such processes for the sub-Saharan African state, looking particularly at the agricultural sector, and ultimately their effects on the rural poor. This will provide the context for a consideration of issues relating to land and the adoption of particular policies in that area.

Colonial structures of power had institutionalised a dualism in agriculture across SSA and although post-colonial governments did have different policies, many colonial structures remained in place (Puplampu & Tetey 2000). Nevertheless, state and donor funding of subsidised inputs and credit replaced the ‘subsidisation’ of colonial farmers by black smallholders and with such cheap inputs and credit, the growth in production was impressive (Karshenas 2001; Jayne & Jones 1997). Pan-seasonal and pan-territorial prices were maintained and in many countries they were supplemented by the maintenance of grain reserves to support market intervention (Bookstein & Lawson 2002; Chattopadhyay 2000). By the mid-1980s however, these activities were undertaken at a loss, often as a result of inefficiency and corruption (Williams 1994), but also because farmers, particularly those closer to urban areas who were effectively subsidising more remote farmers, often resorted to other informal channels or crops (Bookstein & Lawson 2002; Jayne & Jones 1997). Nevertheless, although there had been increases in smallholder production, rapid rises in grain sales often masked inequalities of production in smallholder areas. State support of agriculture and industry, described by Bernstein as “the moment of developmentalism” (Bernstein 2002:

442), had proved unsustainable. But while in the 1970s such policies could be funded by credit from international banks, the early 1980s saw the onset of a global recession and soaring interest rates resulting in a global debt crisis (Williams 1994).

The "globalisation of agriculture" has seen increasing technological industrialisation of food production with the growing integration of international, or global, production structures (Puplampu & Tettey 2000: 258, 259; Raikes & Gibbon 2000; Strange 1994). In SSA, the integration (and subordination) of such production into international agricultural production systems was ensured by colonialism but has continued to the present day (Bernstein 2002). Three international 'interventions' have contributed to the shaping of this developmentⁱ.

Firstly, "quasi-public" 'aid' agencies including the Bank have been involved in the formulation of macro-economic policies in the form of conditionalities of their loans. Following the global recession and the debt crisis of the early 1980s, IFIs have had a growing involvement in prescribing macro-economic policies in the form of conditionalities attached to loans. In the 1980s most SSA countries were implementing such conditionality programmes, and are continuing with such programmes today in the form of Poverty Reduction Strategy Papers (PRSPs) (Williams 1994; Patnaik 2003). Such programmes have prescribed a shift from supporting state interventions, to providing an "enabling environment" for economic growth guided by the private sector (Puplampu & Tettey 2000: 260; Mather & Greenberg 2003). This enabling environment has been interpreted as the need to "roll back the state" (Bernstein 2002: 445), the 'neo-liberal' approach to states and markets, and policies have followed a familiar trio of liberalisation, deregulation and privatisation. These have all opened the doors to greater involvement by the private sector and further integration of international forces of production with the domestic economy. Such changes have been controversial. Without an improvement in infrastructure accompanying the dismantling of the monopoly position held by parastatals it appears that there has not been an influx of private traders into marginal areas, and so benefits have largely been limited to those farmers closer to urban centres (Bookstein & Lawson 2002; IFAD 2002; Jayne & Jones 1997; Kydd & Dorward 2001). Moreover, such policies, alongside deflation, have resulted in increased costs of imported inputs such as seeds and fertiliser often rendering them effectively unavailable, with consequences for both quantity and quality of outputs (Raikes & Gibbon 2000; Kydd & Dorward 2001; Taylor & Pieper 1996). Meanwhile, while inflation has soared in many countries, the privatisation of banks has limited smallholders' access to credit with its high levels of future risk and seasonal demand, by charging prohibitively high interest rates or simply making loans unavailable. All of these factors have undermined the viability of smallholder agriculture evidenced by falls in production and increasing food insecurity. Such circumstances appear to have made the import of foods unavoidable but increasingly difficult to sustain with high levels of debt repayments which have created an "export imperative" (Stevens 2003a: 4; FAO 2001b: 3; Beierle 2002: 1091, 1092, 1093). The promotion of exports however, has had to be pursued but in the face of declining terms of trade, high volatility on world commodity markets and increasing barriers to entry in the form of import tariffs and those conditions laid down under international law or by GCCs.

The second set of 'interventions' contributing to the globalisation of agriculture can be categorised within 'international trade'. Despite SSA's 'export imperative', in 2002 the region only exported 2.6% of its total production of fruit and vegetables and only 0.6% of its staples (Weatherspoon & Reardon 2003: 344). While this represents a rise in exports between 1985 and 1995, there has been a general decline in their value relative to that of other regions (FAO 2001b; Raikes & Gibbon 2000). It has been argued that in spite of their often unwieldy and bureaucratic, and sometimes corrupt, operations, parastatal marketing boards nevertheless provided a counterweight of market power as exporters (Raikes & Gibbon 2000). In addition, since the 1960s there has been a continuing decline in the terms of trade for agricultural commodities partly resulting from growing competition between the industrialised agricultural exporting countries, principally the US and the EU, but more recently the 'new agricultural countries' (termed "NACs" by Friedmann 1993: 45) such as Brazil, India and Chile. Furthermore, both the US and the EU have supported domestic production by setting minimum prices for domestic agricultural commodities and maintaining those prices through state purchases. Heavy subsidisation of domestic prices resulting in overproduction, necessitated high import controls, export subsidies and food aid, and consequent falls in international commodity prices (Friedmann 1993; Kol & Winters 2004; Matthews 2001; Kennedy 2001; Beierle 2002).

Diversification into other crops or activities such as food processing has been discouraged by higher tariff levels in the EU for processed foods than those set for primary food products (Beierle 2002). In any case, according to Dolan and Humphrey, SSA's ability to participate in such value-adding activities is limited (Dolan & Humphrey 2001). The setting of such tariffs fell outside the GATT until 1996 when, with the creation of the WTO, agriculture was incorporated within its ambit. Of particular relevance to agricultural production are: the Uruguay Round Agreement on Agriculture (URAA); the Sanitary and Phytosanitary

Measures Agreement (SPS); and the Trade Related Intellectual Property Rights Agreement (TRIPs) – all of which will be discussed below.

Under the URAA trade protection measures fall under “three pillars” of market access, export support and domestic support and the period 1986-1988 is used as a baseline against which levels of support are to be cut. A number of points are relevant in relation to this framework. Firstly, the years of the baselines have been described as “a peak time”, “abnormally high” and “quite high” in relation to each pillar respectively (Beierle 2002). This has limited the overall impact of the agreement, and in 2001 the OECD calculated that the total levels of support under all three pillars had “not decreased appreciably in the 15 years since the beginning of the Uruguay Round” (OECD 2001, quoted in Beierle 2002: 1093). Secondly, the proportions by which such support is to be reduced by developed countries is the same across the board, regardless of those levels of support at the outset. Therefore relative proportions of support will remain the same (Matthews 2001). Furthermore, for ‘market access’ measures, reductions relate to average tariffs and so ‘tariff peaks’ remain, of up to 350% in the US and 500% in the EU (Beierle 2002: 1095). Lastly, appropriate allowance has not been made for the possibility that *any* reduction in levels of state support for agriculture may damage the agricultural sector of many developing countries. Instead, there is simply a dispensation under the SDT principle so as to allow developing countriesⁱⁱ smaller reductions under moderated time periods for its implementationⁱⁱⁱ. Until the URAA is renegotiated however, if a developing country does not reduce its support^{iv}, it may be challenged under the dispute resolution procedure^v.

The SPS Agreement is increasingly important to developing countries exporting agricultural commodities. This agreement was supposed to prevent countries taking non-scientific measures which would amount to non-tariff barriers to trade, under the guise of protecting human, animal and plant life^{vi}. Those measures allowed however, have been said themselves to constitute “de facto” non-tariff barriers to trade (Finger & Tamiotti 2002: 100). The standards of the SPS Agreement are set by a number of organisations including Codex^{vii}, and its implementation is overseen by a committee in which both Codex and the International Organisation for Standardisation (ISO) participate (SPS Agreement)^{viii}. The standards drawn up by these organisations have in practice been adopted by importing countries setting those ‘responsibilities’ to be adhered to by exporting Member States for “maintaining national public systems of food inspection, testing and food manufacturing certification” (Gibbon 2002: 110). Furthermore, it has been argued that neither of these organisations sufficiently represents developing countries’ interests or capacities to take on the role of international standard setting (Laird 2002; Finger & Tamiotti 2002). In addition, as Gibbon has indicated, such standards also support vertical integration into commodity chains, as without this, they will be impossible to meet.

Finally, the TRIPs agreement prescribes that all Member States of the WTO shall introduce legal measures for the enforcement and protection of patents over “microorganisms, ... non-biological and microbiological processes [“for the production of plants or animals”]” and “plant varieties” for 20 years (*TRIPs Agreement*, Arts. 27(3), 33)^{ix}. The agreement also provides for the users of any of the end products of such processes, such as the seeds or the plants and plant varieties, to be obliged to respect such patents under threat of criminal sanctions. Thereby, a farmer will have to pay royalties to the producer of a particular seed, and will not be allowed by law to use any seeds which are reproduced from the plants, without paying royalties on those reproduced seeds as well (Kloppenborg 1988, referred to by Zerbe 2001: 668). Today, large multinational corporations (MNCs) hold the majority of patents^x. Prior to the implementation of SAPs in many countries in SSA, seed distribution was often supported by the state (Zerbe 2001) but following prescribed privatisation programmes, many state seed companies have been taken over by MNCs resulting in significant increases in prices for seeds and drops in smallholder consumption^{xi}. With MNCs often holding effective monopolies over seed production, choosing not to buy patented seeds may not be possible in countries where such MNCs dominate the seed production structure.

The third ‘intervention’ contributing to the globalisation of agriculture is that driven by MNCs which are increasingly shaping the development of international agricultural production across the South^{xii}. Changes in agricultural policies in the US and EU encouraged high intensity agricultural production, likened to high-input ‘industrialisation’ of the sector (Friedmann 2000). The price support policies of the US and the EU described above, encouraged technological developments and the specialisation and industrialisation of agriculture so as to increase productivity (Friedmann 1993). Agro-chemical corporations involved in agricultural production have increasingly driven research agendas into agricultural technologies and, alongside the growth in the sizes of farms, the importance of corporations involved in agricultural consumption have also grown. Shifts that have taken place in the agricultural sector have been described as ‘Fordist’ and ‘Post-Fordist’, with the incorporation of agricultural production into commercial commodity chains^{xiii}. There has for instance been a move by Northern MNCs away from direct investment in production to contract farming, facilitating less reliance on single sources of production and greater flexibility of supply

(Dolan & Humphrey 2001; Daviron & Gibbon 2002; Raikes & Gibbon 2000; Lawton & Michaels 2000; Phillips 2000). This has generally corresponded with greater concentrations of power in the "leading agents" of such chains, such as retailers and those coordinating the marketing activities of particular brands, and a shift from horizontal to vertical coordination of such activities^{xiv}. These changes however, have not been the same across all crops, and 'global commodity chain' (GCC) analysis has shown the different structures of governance for 'traditional' export crops, such as cocoa, coffee and cotton (and even for each of these crops), and 'new' export crops, such as horticultural crops of fresh fruit and vegetables (Ponte 2002; Daviron & Gibbon 2002). For example, such analysis shows how supermarkets now dominate the fresh fruit and vegetable market in the EU and display a high degree of 'buyer-drivenness' (Dolan & Humphrey 2001). This can be contrasted with coffee GCCs in relation to which retailers have not managed to wrest control from the roasters (Ponte 2002). With the development of cheaper air freight and technological advancements in cooling systems, fresh fruit and vegetables emerge as a viable export sector in the 1960s and 1970s and in turn African countries have emerged as dominant suppliers for EU supermarkets. But such supermarkets nevertheless source from a variety of countries and also develop competition between them and it appears that such competition has had an impact upon the producers themselves. According to Dolan and Humphrey, in both Kenya and Zimbabwe, just a few private individuals and companies control the exports of these crops the majority of which is channelled to supermarkets. For example, up until 1992 in Kenya, some 75% of produce was sourced from smallholders, whereas by 1998, only 18% came from smallholders and instead, "large-scale production units" dominated whose numbers have increased (Dolan & Humphrey 2001: 160, 161, 166, 168; Daviron & Gibbon 2002). This may be somewhat explained by performance standards imposed on the growers requiring high levels of management and packaging treatment post-harvest^{xv}. Furthermore, many smallholders in SSA farm on plots located on marginalised lands poorly served by roads and other infrastructure. These factors indicate that large producers will be favoured in these commodity chains. It is perhaps significant however, for those involved in African exports that certain value adding activities are being pushed back along the chain to the exporting country, although again, the capacity of many countries to take on such responsibilities is currently limited (Raikes & Gibbon 2000; Dolan & Humphrey 2001).

The growing domination of MNCs involved in agriculture has been assured by the trio of policy prescriptions attached to multilateral loans. Such dominance has been demonstrated by the adoption of the TRIPS Agreement incorporating the US based patenting regime for their biotechnological processes into international law (Dutfield 2002). Furthermore, as argued by Daviron and Gibbon, "[i]n tropical agro-commodity trade, market liberalization and 'buyer-drivenness' have had a symbiotic relationship" (Daviron & Gibbon 2002: 138). The implications of this breakdown of horizontal coordination have seen a rise in the number of largescale commercial farms and a decline in the number of smallholders involved in export agriculture.

2 - GLOBALISATION OF AGRICULTURE AND LAND

SSA has seen dramatic increases in levels of poverty and falls in GDP throughout the 1980s and 1990s. This has bolstered its growing dependence on international capital and resulted in the consequent lowering of trade barriers, market liberalisation and privatisation. In turn, it has facilitated a shift in power from the national to the global, with increasing vertical regulation of global agricultural commodity chains, and the setting of increasingly rigorous and demanding rules and parameters of the international trade regime by countries in the North. Alongside consequent falls in commodity prices of key agricultural crops, rising levels of buyer-drivenness in global agricultural commodity chains have allowed Northern supermarkets and multinational roasting corporations to set "thresholds of inclusion and exclusion" (Ponte 2002: 1116). The result has been the growing exclusion of smallholders involved in export crops which will continue to increase the gap between the rich and poor. If larger plots are involved in export agriculture, it is likely that the distributional effects of trade will be less beneficial (Berry 2001). Furthermore, it has been recognised not only that large capital intensive firms are the more likely participants in export production and international trade, but also that as the size of the land used in farming grows, the amount of labour decreases (Berry 2001; Mather & Greenberg 2003).

If a country is successful in promoting exports, this is likely to enhance the value of both the land and the labour involved in those exports. It should be remembered however, that "in country after country, when land has become valuable enough, the powerful have pushed the weak off what land they had" (Berry 2001: 130). Colonial history provides a stark example of this. While the dispossession of people from their land into "reserves" and the implementation of policies to discourage smallholder production were together successful in overcoming labour shortages so as to promote the export of agricultural commodities by colonial farmers, the legacy of these policies has been disastrous for the livelihoods of the rural population (Bush & Szeftel 2000). In many countries in Southern Africa, the poor have already been pushed off the

land; the expansion of export crops will be taking place in countries where the patterns of ownership are already hugely distorted. These are therefore particularly important considerations in the face of such inequality of land tenure as in Southern Africa. The prospects for the promotion of export crops not only to promote growth but also help to reduce inequality so as to reduce poverty will depend upon the international context in which such trade is promoted and also upon the conditions in which those to participate in such trade are operating^{xvi}. According to Berry however, "historically it appears that the main cause [of this not happening] has been the[...] displacement [of the rural poor] from the land they previously operated and the conflict associated therewith" (Berry 2001: 130). But globalisation has ensured that, to paraphrase Bernstein, while a transition to capitalism has not yet been effected in most of SSA, the conditions of existence of all rural classes in SSA are nevertheless determined by forces of advanced global capitalism (Bernstein 2002; Moore 2001). Policies promoting land reform will also have to be resolved within this paradox, which will also decide their feasibility and the prospects for their success in achieving growth and poverty reduction.

3 – LAND REFORM IN SOUTHERN AFRICA AND THE WORLD BANK

Policies affecting property rights and land holding will invariably be enmeshed with political currents and issues of power. These have therefore clearly been bound up with SSA's colonial history. While land holding in SSA was subjected to different colonial systems, these often shared similar features (Whitehead & Tsikata 2003; Roth 2002). In many such states there remain stark differences between large-scale commercially oriented farms and a marginalised peasant sector (Lahiff & Scoones 2000). Such skewed systems of land holding have contributed to 'dual economies' and have had profound implications for such countries' development (Roth 2002). Since independence, many of these countries have followed distinct political paths but, with an increase in conflicts arising over lack of access to land, land reform continues to feature prominently in the politics of the region.

I – BACKGROUND TO THE WORLD BANK'S POLICY ON LAND REFORM

With such high levels of poverty in the agricultural sectors of the economies of SSA, and due to their influential position as creditors, IFIs have long been involved in promoting reform of landholding and in designing many of such land reform programmes, alongside setting reforms of macro-economic policies (Deininger & Binswanger 1999; Christiansen 1993; Whitehead & Tsikata 2003). In many countries in Southern Africa, as a result of the historical importance of land, redistribution or, as defined by the World Bank, 'Land Reform', has been on the political agenda since independence (Bush & Szeftel 2000)^{xvii}. In 1975, the Bank published its first "Land Reform Policy Paper" and it was not until May 2003 that a second 200-page comprehensive overview of its land policies was published, "Land Policies for Growth and Poverty Reduction: A World Bank Policy Research Report" (PRR) (Deininger & Binswanger 1999; World Bank *PRR 2003*). The purpose of this article is to highlight the context in which the Bank's land policies are to be considered, a context of the colonial legacy resulting in dual economic and regulatory systems in many countries in the region, and the additional effects of globalisation on the state and on smallholder production. It is also useful to put the recent developments in the stance adopted by the Bank in the context of previous policy approaches to land.

African customary systems and institutions governing both use rights and rights of exchange, themselves raise important issues of concern in relation to security of tenure. For example, in SSA rights of exchange often do not result in a market for land as such exchanges are subject to reversionary rights (Mafeje 2003) and therefore may limit security of tenure for migrant labourers occupying and working such land. Furthermore, often only use rights are granted to women based upon the labour they provide to the lineage and rights of possession do not pass across to a spouse but down to the male progeny on their marriage (Yngstrom 2002)^{xviii}. This can a source of injustice to women particularly in cases where their relationships with their husbands come to an end through death or separation^{xix}. With numbers of those with HIV/AIDS in SSA reaching some 28.1 million people, addressing these issues is crucially important.

There have been a number of theories relating to the development of African systems of land tenure upon which land reform policies have been based. Colonialism left an ongoing legacy in the form of policies promoting the 'modernisation' of agriculture by way of individualising land rights and promoting agricultural markets to which only a handful of landowners had access (Whitehead & Tsikata 2003). From the outset, those customary proprietary practices recognised by colonial administrators alongside the imposition of other colonial policy instruments, not only served to maintain pools of available labour in the reserves but also enabled the administration to nurture political ties with certain traditional leaders (Mafeje 2003; Adams 2001; Feder & Noronha 1987; McAuslan 2000). From the 1930s however, with the drive to 'develop' African agriculture, individual tenure came to be seen as desirable for 'modernisation'. British colonial administrators saw the difference between African and Western tenure systems as "points along a

continuum" (Migot-Adholla et al 1991: 158) with Western systems of individualised private property being considered more 'developed' and communal property less so. These views continued to exist in certain circles and in turn have fuelled particular types of 'reform' (see for example Feder & Feeny 1991; Migot-Adholla et al 1991).

African systems of landholding were considered to be "static and inflexible" and therefore necessitated state intervention in the face of economic change (Yngstrom 2002). Individualisation policies were initially driven by the perceived need to promote access to and control over land for smallholders, seeing them as the key to agricultural growth (Deininger & Binswanger 1999; Platteau 2000). In the 1980s the titling of land was considered to be a mechanism for the privatisation of landholding and therefore necessary to improve policies of economic liberalisation (Toulmin & Quan 2000: 12). It was thought that titling would promote market-driven development by enhancing security of tenure so as to provide sufficient incentives for individuals to improve their land. More recently another interpretation of African customary systems has gained validity, the 'evolutionary theory' of landholding, that in fact such systems do respond to changing economic conditions and that individualised rights in land actually emerge from customary practices (PRR 2003: 31, 32, 33). Initially it was considered that titling was still necessary to provide security to those individuals holding emerging individualised rights but more recently, this has been countered by the view in some quarters that however customary systems emerge, they would provide sufficient security of tenure and thereby incentives to peasants investing in the land (PRR 2003: 53). Certainly evidence indicates that in many cases, titling has actually been detrimental to particular socially embedded rights which may not have been recognised in the titling procedure (Toulmin & Quan 2000; Yngstrom 2002; Whitehead & Tsikata 2003; Griffin et al 2002).

The discussion above, raises some of the issues in relation to arguments surrounding security of tenure and provides a useful background against which a critique of the Bank's recent policies in this area can be discussed. The sections that follow mirror three key areas of land reform covered by the PRR: land tenure, land transactions, which includes both rental and sales markets, and redistribution.

II – WORLD BANK CRITIQUE - INTRODUCTION

The Bank recognises that "[p]roperty rights are social conventions backed up by the power of the state or the community" (PRR 2003: 22). In SSA, tenure systems evolve over time involving socially embedded processes responding to socio-political and economic changes (Whitehead & Tsikata 2003). As no one is considered to 'own' the land, while its physical characteristics may shape the rights granted over that produced by the land, 'rights' relating to it derive from the 'interaction' of social relations with the land (Mafeje 2003). Recognising this enables us also to evaluate the social relations between those who are asserting particular rights over another, and therefore the basis upon which such rights are to be protected and defended, deriving from particular notions of what is considered to be valuable to protect, such as human rights, or equality^{xx}.

According to the Bank's PRR,

"[t]he optimum type of property rights depends on [i] the nature of the resource, [ii] its relative scarcity, [iii] the externalities that arise in its use, [iv] the cost of specifying and enforcing property rights, [v] the state's capacity to enforce property rights, [vi] the ability to minimize external effects through regulation, and [vii] the means available within a given group to delineate and enforce rights and responsibilities internally" (PRR 2003: 34, 35).

This seems to be a safety-net definition from which it would seem that all kinds of property rights can be defended, and in turn all can be challenged. The reason for this appears to be confusion relating to the notion of a 'property right'. It is apparent that the first three variables (I will call them 'Group 1') upon which property rights depend, are different from the remaining four variables ('Group 2'). Group 1 refers to the resource itself which is, and arguably should be, directly related to the rights granted over it. Group 2 however, refers to capacity, which may well have an impact upon the enforcement or recognition of the property rights in question, and in devising realistic policies for protecting and promoting those rights, but which arguably should not determine "optimality". Conflating the two sets of variables will encourage a cost/benefit analysis of property rights rather than a proper evaluation of the need to protect particular persons' property rights in the face of insecurity, based upon particular notions of value^{xxi}. Furthermore, even if we accept that Group 1 contains issues relating to the property which are fundamental to any such evaluation of "the optimal type of property rights", they are not the only issues which should be considered. They refer to the property but do not relate to social considerations. It is difficult to see how property rights can be divorced from those social relations and can be judged "optimal" when looking just at the attributes of the land, that is "[i] the nature of the resource, [ii] its relative scarcity, [and iii] the externalities that arise in its use" (PRR 2003: 34, 35). This confusion appears to have resulted in a number

of inconsistencies in the PRR and to have promoted a particular form of compressed analysis in many contexts where a more nuanced analysis is appropriate.

III – WORLD BANK CRITIQUE – TENURE SECURITY

The Bank's concerns with land tenure are based upon its concern for security (PRR 2003: ix). Shifts in opinion of the meaning of 'security' however, can be seen in changes in Bank lines on tenure reform. As indicated above, individualisation of tenure was promoted on the basis that it would promote investment in the land^{xxii}, and would enable a farmer incapable of investing in the land to sell it to someone who could, thereby enhancing efficiency (Feder & Noronha 1987)^{xxiii}. Thus, in one study produced by the Bank in 1987, even though it was acknowledged that "in most Sub-Saharan African societies, land under cultivation by an allottee cannot be taken away", the definition of security was explicitly modified so as to include "the ability of an occupant to undertake land transactions that would best suit his interests" including the ability of that individual to sell and mortgage the land (Feder & Noronha 1987: 159). This appears to stretch notions of 'security' so as to fit within policies of economic liberalisation and privatisation. As has been indicated by Adams however, security in "occupation and usufruct rights, free from threat of eviction, with access to productive land and natural resources are essential for rural livelihoods" (Adams 2001: 1). Not recognising these aspects of tenure security can in turn distort policy prescriptions and render invisible those whose interests may not be recognised even if such policies achieve their limited aims relating to investment. This wider definition of tenure security has fortunately been acknowledged in the PRR. While the incentives for increased investment provided by the granting of land rights and security of tenure remain of central importance (for example, PRR 2003: 23, 26, 36, 39), it is also recognised that there are other social benefits which will derive from them as they are "a key element of the social fabric of most societies" (PRR 2003: 23) and "one of the most important catalysts in stabilizing communities, improving shelter conditions, [and] reducing social exclusion" (PRR 2003: 39). Importantly, it goes so far as arguing that there are "public good characteristics" (PRR 2003: 74) of such secure property rights, providing a safety net to households who will as a result spend less on defending such rights (that is, "an incentive compatible safety net") (PRR 2003: 40). The Bank has developed its position considerably over the last 20 years, and such developments are to be welcomed.

From its position advocating the abandonment of customary communal systems and the subdivision of the commons into plots over which freehold title would be granted (Deininger & Binswanger 1999: 248), today the Bank recognises that customary systems often provide "secure, long-term and in most cases inheritable" land rights (PRR 2003: 53). Its analysis however, of when it might be desirable for such rights to be recognised at state level, appears to rest largely on economic concerns and moreover, on a 'modernisation' thesis that individual property rights are preferable, but that group rights may be acceptable "at low levels of development" (PRR 2003: 28, 29, 30). Thus it sets out that "the allocation of benefits from the common needs to be roughly proportional to the effort (time, money, and so on) invested" (PRR 2003: 30). While it is undeniable that issues of cost and practicality are essential considerations when putting into place *mechanisms* for increasing tenure security, as argued above such considerations are not relevant when evaluating the *existence* of property rights themselves and thus their need for protection. If such a distinction is not made, the two will become conflated making it more likely that the "benefits" will be poorly recognised, which in turn is likely to result in the development of unsuitable policies for their protection. Certainly in the PRR there is no indication as to how such "benefits" will be measured, and then enumerated so that a calculation of proportionality can then be made. Moreover, as recognised in the PRR, "minor or temporal rights, such as the right to pasturage after the harvest or right of way, are rarely formally registered, because in most circumstances the cost of doing so would exceed the value of the right" (PRR 2003: 34). While it is ambiguous whether the Bank considers that such costs and values are to be decided upon by some 'higher authority' or by the right holders themselves, this nevertheless highlights the potential for injustice when anyone other than the right holder is to make a judgement of its value. Furthermore, even if such rights could be valued in economic terms, which is doubtful, if such a holder has insufficient resources anyway, the valuation will be rendered meaningless^{xxiv}. As indicated, a step back from its former position of blanket application of freehold titling programmes is to be welcomed (but see discussion below), but when choices as to whether customary systems are to be recognised formally or not are based on cost/benefit analyses (PRR 2003: 53), this will be unlikely to enhance tenure security for the poorest.

Deconstructing the benefits to be derived from putting into place procedures to promote the recognition and protection of certain property rights is particularly important when it comes to vulnerable groups or members of society such as indigenous people and women or, increasingly, those whose family members have or had HIV/AIDS^{xxv}. As recognised by the Bank, "unless women's rights are specifically protected^{xxvi}, increases in land values ... may lead to a progressive weakening, or even loss, of women's rights to land" (PRR 2003: 58) – the same can be said for other vulnerable groups. It is because such rights have not

adequately been recognised and protected that registration and titling of existing land rights have often created insecurity rather than security (Hilhorst 2000; Yngstrom 2002: 5; Griffin et al 2002). The PRR recognises that "title is not necessarily equal to higher tenure security" (PRR 2003: 39) but, subject to certain preconditions, promotes "integrating households into the formal system" (PRR 2003: 41) by giving legal recognition to customary systems of land tenure (PRR 2003: 31, 51, 63). As indicated in the first part of this article however, the process of doing this is extremely complex and may itself undermine the development of such rights. Other than those comments referred to above, and a number of other rather generic references to the need, for example, to "improve[...] the institutional environment" (PRR 2003: 31) and for "mechanisms that would help to resolve conflicts quickly and early on" (PRR 2003: 36), there is no indication of how such difficulties are to be resolved^{xxvii}. The Bank does however, adhere to the thesis that "individualised" rights in land develop through customary processes as a result of changing economic conditions (PRR 2003: 31, 68), and clarifies that this is the desirable end point for policy (e.g. PRR 2003: 42, 31). Thus it indicates that even if customary group rights are set out at law, "mechanisms for exit and/or the transition to more individualized property rights structures need to be clearly defined ..." (PRR 2003: 53). Once developed, the argument proceeds, titling and land registration of such individual property rights will be desirable (PRR 2003: 33).

Registering only one individual as holding title to the land has been criticised as resulting in injustice to women, particularly in SSA where inheritance is based upon lineage (Hilhorst 2000; Yngstrom 2002). While a number of legal systems now recognise the right to register joint titles based upon references to "basic norms of equality" (PRR 2003: 57, 60), this still fails to capture the various, and different, rights which may be held by men and women within the household or community (Mafeje 2003: 58). Furthermore, such rights are likely to adapt and change in response to changes in the broader socio-economic system (Yngstrom 2002). This criticism goes to the root of the 'individualisation' thesis adopted by the Bank. As described by Yngstrom, 'individualisation' which does occur can itself be a highly contested process, and therefore its acceptance as a basis upon which to form policies, whether or not they include registration and titling, will create distortions. These can be likened to those distortions which arose in the legal recognition of customary law in colonial times which have considerable potential to exacerbate the security of those whose rights are rendered invisible by the process. Although the Bank does appear to recognise that "modernization" may "clash with traditional values" in which case it will be necessary to "clarify the rules and explore the extent to which they are consistent with other values, such as gender equality, and if they are not, to examine how such consistency might be achieved at either the procedural or the legal level" (PRR 2003: 60), unless it adopts a more textured analysis than its 'individualisation' thesis, and its cost/benefit approach to the protection of rights, then it is likely that the layers of rights will neither be recognised nor protected in policies adopted.

The *effects* of tenure security are also important. By way of summary, the Bank recognises three main ways that enhanced tenure security can affect households, by providing them with security from eviction, greater ability to transfer land and enhanced access to credit (PRR 2003: 42, 43). A number of points can be made in relation to this.

Using land as collateral for access to credit for the rural poor is not only unlikely, it is often undesirable (Quan 2000; Platteau 2000). While the Bank does promote smallholder farming over large-scale farms, it accepts that "credit market imperfections" (PRR 2003: 82) will ensure that very few smallholders are granted credit (PRR 2003: 96). Furthermore, it recognises that it is likely that only those with a sizeable area of land will be able to access sufficient credit for both the initial outlay to purchase the land and for financing working capital; land usually cannot be used as collateral twice (PRR 2003: 96). On this basis, the Bank considers that without a grant, it will be necessary to purchase land out of savings and use credit, if received, for subsequent investment (PRR 2003: 96). Moreover, due to the risk involved in granting credit over a small plot of land, either interest rates will be prohibitively high, or more realistically, and as acknowledged by the Bank, "in most of the informal settlements where the scope for foreclosure is dim and most of the residents are poor and do not have viable business projects in the first place [, "the use of land as collateral for credit is only a remote option"]" (PRR 2003: 41). In any case, the threat of foreclosure on land is not only likely to increase insecurity, which would undermine the supposed purpose of its policy interventions in this area, but in the face of shocks, which may result from bad harvests or other social or economic events, will actually result in the poor losing their land. As the Bank has recognised, "the establishment of formal and individualised property rights through titling may have an adverse impact on equity" (PRR 2003: 50). In cases where "a latent demand exists for formal credit" (PRR 2003: 48) it continues to advocate the elimination of "barriers that might reduce access to credit" (PRR 2003: 50), such barriers principally deriving from a lack of "formal land titling and registration" (PRR 2003: 48, 50). In the face of acute food shortages across Southern Africa, and following the implementation of conditionalities of multilateral loans which prescribed the withdrawal by the state of its state-funding of social services, there

will always be demand for access to increased resources by whatever means, including resort to using ones land as collateral so as to access such resources. Moreover, as pointed out by Manji, any credit that is granted is likely to be used for buying food and accessing healthcare rather than for investing into land (Manji 2003: 108). Without investment in the land however, redemption of the loan becomes increasingly unlikely and thereby security is weakened. Rather than continuing to advocate the use of land as a means of accessing credit, it would be better to concentrate research into other, more desirable means of accessing resources^{xxviii}. As Toulmin has argued, it is perhaps appropriate when discussing policies relating to land reform so as to reduce poverty, that “[t]his red herring of an argument should be allowed to rest in peace” (Toulmin 2003).

While reference to credit may be a red herring so far as the rural poor are concerned, it nevertheless highlights the connection between the enhancement of property rights and transferability, referred to as one of the three main ways that enhanced tenure security can affect households (PRR 2003: 42, 43). Nevertheless, the PRR stresses that “tenure security can often be enhanced quite independently from the rights to transfer land” (PRR 2003: 76). While this may be theoretically and legally true, its practical likelihood will be discussed in the light of policies advocated in the PRR in relation to “Land Transactions” (PRR 2003: 79-132).

IV – WORLD BANK CRITIQUE – LAND TRANSACTIONS

The Bank advocates the promotion of smallholder family farming due to the “higher incentives [of family members] to provide effort than hired labour” (PRR 2003: 81) but recognises that the ‘imperfections’ in the operation of the markets, both land and credit, can “overwhelm th[is..] productivity advantage ... and give rise to a positive advantage between owned farm size and productivity” (PRR 2003: 82). Without such ‘imperfections’, according to the Bank, evidence suggests that there is an “inverse correlation” between farm size and productivity (PRR 2003: 83). This productivity advantage however, does not apparently arise for livestock farming or farms where highly specialised machinery is used, nor, importantly, for plantation crops (PRR 2003: 83). Such farms are not only likely to have the market ‘distortions’ working in their favour but the effects of increasing integration and dependence on international capital, referred to in the first part of this article, will also reinforce their position over smallholders. How such a growing bias against smallholders and in favour of larger farms is to be addressed is discussed below.

A starting point for analysing the Bank’s position in relation to land markets is its view that “[I]f all markets were perfect, the sale price of land would equal the net present value of the stream of profits that could be derived from the land” (PRR 2003: 94). As it recognises, all markets are not perfect but having accepted this, it views anything else which is capitalised in the price of land as amounting to a ‘distortion’^{xxix}. Such ‘distortions’ or ‘imperfections’, will ‘artificially’ inflate the cost of land prohibiting purchases by the poor and promoting distress sales in times of difficulties and therefore should be “eliminate[d]” wherever possible (PRR 2003: 96). It is arguable however, that the initial position is itself artificial. As the Bank has recognised, property rights over land are a “social construction” (PRR 2003: 22) and it is these rights over the land which are transacted (demonstrated by the very construction of a distinction between sales and rental markets). The value granted to such rights will be based on the social relations of power relating to that land which in turn may be influenced by the implementation of particular policies, such as granting subsidies or grants to certain beneficiaries over others. The elimination of such subsidies should therefore also be driven by policy considerations to promote certain ends and in their place other policies may be adopted, such as “giving grants to poor producers” as advocated (inconsistently) by the Bank (PRR 2003: 96). It recognises that high and fluctuating costs of land along with the “credit market distortions” will create a growing inequality of landholdings between rich and poor (PRR 2003: 96). This should be addressed with policies to overcome such problems. In Bank’s view however, such policies would usually amount ‘distortions’.

Overcoming the biases in favour of larger landholdings will involve the adoption of policies so as to promote access to land by the poorest. As indicated by the Bank, there are a multiplicity of paths to access land “including, ... state-sponsored land transfers, ... divestiture of suitable state land, ... and rental and sales markets” (PRR 2003: 155). The Bank’s 1975 position focused on the creation of sales markets for the efficiency-enhancing transfer of land to the most highly productive farmers (Deininger & Binswanger 1999: 255). Recognition of the potential of rental markets is therefore an important development (PRR 2003: 79). It argues that rental markets will enable poorer households to participate in farming themselves and provide a means of overcoming market imperfections which distort the operation of sales markets (PRR 2003: 79, 84, 85). It recognises however, that “the ability of the land rental market to bring about efficiency-enhancing transfers is constrained by potential tenants’ endowment of assets and other means of production” (PRR 2003: 91). Such endowments will also enhance or constrain the tenants’ bargaining power in the negotiation of rental arrangements and therefore the surplus which remains to reinvest in the

land after payment of the rent, affecting the tenant's longer term livelihood based upon the productivity of the land. Furthermore, as Bernstein has indicated, "in many circumstances the rural poor are just as likely to *rent out* land that they possess as to *rent in land to farm*" (Bernstein 2002: 454; Griffin et al 2002; Hilhorst 2000). These considerations have been sufficiently important for a number of countries to implement policies to improve the welfare of tenants (PRR 2003: 116). As highlighted by the Bank however, such implementation "is not easy" (PRR 2003: 116), and it goes on to refer to a number of examples of policy instruments which have been so unsuccessful as to have "reduce[d] land access and thus equity" (PRR 2003: 116). Rather than advocating the need for research into the creation and implementation of better policies to protect tenants, the Bank concludes that "[t]he only relevant policy questions are how to sequence the elimination of rent ceilings and other restrictions on tenancy in a way that minimizes disruptions, ensures that sitting tenants will be compensated for any investments they have made and avoids negative equity impacts" (PRR 2003: 119). While compatible with its position that such policies amount to 'distortions' on the operations of land markets, in view of the potential that rental markets may have over sales markets, for improving the position of the poor, by providing flexibility to households which might otherwise contemplate the sale of land in the face of shocks, this policy stance will not overcome the weaknesses it recognises exist (PRR 2003: 86). Instead, its real concern appears to be optimising the incentive effects of rental arrangements on the "effort supply by the tenant" (PRR 2003: 90).

Sales markets are likely only to be used by the poor to sell their land in the face of economic hardship and instability, their distress exacerbated by the permanence of such a transaction (PRR 2003: 96-98). In view of this reality however, any steps taken to "reduce transaction costs that would increase the barrier to participation" (PRR 2003: 98) are likely only to facilitate such sales rather than promoting access (Quan 2000: 47). Although the Bank accepts that "public intervention in land sales markets might, in principle, be justified" (PRR 2003: 98), it continues to view policies affecting the operation of markets affecting land sales as amounting to 'distortions' and advocates the "elimination" of policies affecting the operation of markets affecting land sales as the "most important way in which governments can help improve the functioning of financial markets" (PRR 2003: 98). As long as the Bank maintains this position, the much-needed policies adopted specifically to change the power relations which result in such inequality and to discriminate positively in favour of those who have been unable to participate in the markets to purchase land, are unlikely to be considered acceptable, and such markets will continue to reproduce inequality. The trade-off between the likelihood of such a rise in inequality and the "efficiency" benefits (PRR 2003: 98) and the "emergence of a reliable and robust financial system" (PRR 2003: 98) which will result from the "land markets' ability to transfer land" (PRR 2003: 97), appears to be acceptable to the Bank. This can be seen particularly in its discussion of "the imposition of *high* land ownership ceilings" and "restrict[ions on] the transferability of land" (PRR 2003: 122 (my italics)) which together amount to the two "possible exceptions" to its position advocating the "elimination" of policies affecting the operation of markets (PRR 2003: 122).

Looking first at the Bank's position in relation to restrictions on the transferability of land it again resorts to the (red herring) access to credit argument to argue that "restrictions on land mortgages can be counterproductive" (PRR 2003: 122) rather than considering the possibility of raising sources of revenue through other forms of credit. It concedes however, that such restrictions "can also help to reduce undesirable social externalities from driving some people into destitution" and "are unlikely to be harmful" (PRR 2003: 124) provided that "transparent mechanisms for decisionmaking are available and local communities bear the costs of their decisions" (PRR 2003: 122) and "the group has transparent mechanisms for changing the land tenure regime" (PRR 2003: 124). This is a welcome concession as is its recognition of the importance of "ensuring ["small landowners" ...] have access to output and credit markets and to technical assistance, and ... providing safety nets during disasters to avoid distress sales" (PRR 2003: 122). The Bank does not however, clarify either why local communities should "bear the costs of their decisions" or how such costs could possibly be calculated (PRR 2003: 122).

Although the Bank recognises that land ownership ceilings might have "strong economic and social justification" (PRR 2003: 124), its stance in relation to such ceilings is much less concessionary than in relation to sales restrictions. As in its analysis of interventions in land rental markets, it highlights the difficulties involved in restricting the operations of sales markets so as to limit their negative effects, but such analysis appears only to consider those problems which might arise for those whose operations are restricted, rather than for the beneficiaries of such restrictions (PRR 2003: 124, 125). For example, it refers to the case of the Philippines where "existing land ownership ceilings restrict the functioning of land markets" (PRR 2003: 124) – arguably the very intention of the ownership ceilings – and again refers to the credit argument (PRR 2003: 125). More revealingly it indicates that where such ceilings have been applied to plantation crops, this "has been linked to reduced investment and employment generation by landowners who were above the ceiling, as well as by new investors who were able to get access to the land they required only through long-term leases from a large number of smallholders" (PRR 2003: 125). Such

considerations appear to be more important than those relating to tenure security and poverty reduction, both of which supported its previous arguments promoting rental markets and smallholder farming. It does however, draw attention to the inequality which may have resulted had such ceilings not been in place and makes the concession that "ceilings above, say, 1000 hectares" may be justified (PRR 2003: 125). It is not however, clear how this number was chosen nor whether it is a 'rule of thumb' to be universally applied in all countries but in any case it is arguably set at too high a level to address such issues of inequality.

The Bank has acknowledged the problems arising in the operation of land markets but its policies promoting the removal of restrictions on their operation and the reduction of transaction costs hindering their operation are unlikely to achieve its stated goal of poverty reduction. Its view that "[t]he conditions under which land sales markets would cause significantly negative effects are ... likely to be quite localized and time specific" (PRR 2003: 121) is highly contentious in the face of evidence from all over the world including Southern Africa which contradicts this position. The Bank's policy promoting the removal of restrictions on sales markets, undermines its argument that "land sales markets are likely to be much less active than rental markets" (PRR 2003: 120). The argument is based upon the "higher transaction costs, difficulties in accessing long-term capital to finance land purchases, and insecurity about future economic developments that would significantly affect land prices" (PRR 2003: 120). All of these will indeed undermine the ability of the poor to *purchase* land through such markets but those very insecurities are not only likely to drive speculative purchases by the rich but also the *sale* of land by the poor (PRR 2003: 120; Platteau 2000: 64, 65). While its policy promoting security of tenure is desirable, in a climate of economic instability, with the huge levels of poverty and hunger that currently exist across SSA and Southern Africa, and with policy biases favouring large landholdings over small, so long as the Bank interprets "greater transferability ... as more secure tenure" (PRR 2003: 46), its statement that "increasing the security of property rights does not require making them transferable through sales markets to outsiders" (PRR 2003: 76) lacks credibility.

V – WORLD BANK CRITIQUE – REDISTRIBUTION

The Bank has acknowledged "that in many ... situations [where there is an "extremely unequal and often inefficient distribution of land ownership",] one cannot expect markets alone to lead to land redistribution at the rate that would be required to maximize efficiency and welfare outcomes" (PRR 2003: 143). In such cases, land redistribution might be justified (PRR 2003: 143). The colonial legacy on landholdings and smallholder agriculture across Southern Africa followed by post-independence policies that have contributed to the marginalisation of smallholders and the landless, indicate an ever pressing need for such redistribution. As recognised by the PRR, "[i]n most cases, the primary motivation for undertaking land reforms has been political rather than economic" (PRR 2003: 146). Zimbabwe provides us with a current example of the heights of political tension which can drive such a need (see for example, Lahiff 2000). Recent support for redistribution of land by the Bank will be discussed in the light of the political tensions which such policies are designed to dispel.

The PRR recognises four models of Land Reform which include, "expropriating land, mostly with compensation; privatizing state land; auctioning off land owned by bankrupt enterprises; or providing potential buyers with a grant that can be financed out of general revenue" (PRR 2003: 153, 154). Whatever form of Land Reform chosen, a number of preconditions are viewed as essential by the Bank. Many of these deal with important, but less controversial, suggestions such as the need to establish "clear rules at the local level" (PRR 2003: 149), to "encourag[e..] participation by civil society" (PRR 2003: 149), to provide "a systematic program of training and preparation" (PRR 2003: 149) and that "such programs [must] fit into a broader policy aimed at reducing poverty and establishing a favorable environment for the development of productive smallholder agriculture by beneficiaries" (PRR 2003: 154). Other aspects of Land Reform also viewed as essential by the Bank cast more light on its policy stance in this area. These include the need to "select truly under-utilized lands with minimum side effects for lands that are well utilized" (PRR 2003: 149) and to "carry out an ex ante assessment of the viability of the activities to be undertaken by beneficiaries" (PRR 2003: 154). Importantly these are both aspects of the fourth model of land reform, "providing potential buyers with a grant that can be financed out of general revenue" (PRR 2003: 153, 154), otherwise labelled "Market-Led Agrarian Reform, or MLAR" (Borras: 367). The Bank also indicates that it considers that "[t]he implementation of any land reform program should be decentralized" (PRR 2003: 156) which provides further implicit endorsement of this last model which is considered to be "a more decentralized mechanism than the others" (PRR 2003: 154). MLAR has been devised by the Bank over the last ten years and it has been involved in such programmes in Brazil, Colombia and South Africa (Borras). In all three cases, the implementation of the Land has received extensive criticism elsewhere (it may be useful to refer to studies undertaken by Borras on such programmes (Borras 2003; see also El-Ghonemy 1999)). In contrast, the discussion received by such cases and their theoretical underpinnings, in the PRR can only be described as brief (*PRR 2003*: 147, 148, 150).

Prior to the MLAR model, Land Reform has historically involved expropriation by the state of particular lands earmarked to be redistributed in response to political pressure (Deininger 1999). Such forms of Land Reform have received much criticism on a range of levels by the Bank (Deininger 1999; PRR 2003: 146, 147, 151, 152). The MLAR model enables eligible beneficiaries, "willing buyers", to choose and buy land to be 'redistributed', from "willing sellers" (Borras 2003: 372). The difference between such beneficiaries receiving a grant to buy land and receiving the land itself from the state depends upon a variety of considerations. Buying land involves choices, but these will be based upon factors such as the intended use of the land, the buyer's monetary means and personal capability, reasons for the purchase, the availability of land, its quality and that of the surrounding infrastructure, and similar factors relating to the seller. These considerations, as well as economic and socio-political factors, will also determine the price of the land agreed upon. When the willing-buyers' and willing-sellers' relative bargaining positions have been determined by a historical legacy of colonial landholding and agricultural policies which have created a dual agricultural economy, further affected by subsequent agricultural and economic policies and a highly skewed international system, the very idea of bringing them together in a marketplace which is presumably based upon theoretical assumptions of equality of information and resources is incongruous. Furthermore, the likelihood of an improvement in equity deriving from such bargaining is remote (El-Ghonemy 1999: 13).

Instead of the unwieldy machinery of state, MLAR was touted for restricting "the government's role ... to establishing the necessary framework and making available a land purchase grant available" (Deininger 1999: 3). The Bank itself has been involved in "establishing this necessary framework" in its continuing involvement with macro-economic policies attached to SAPs and PRSPs, "programs to adjust and eliminate agricultural subsidization" (PRR 2003: 151). It interprets such programmes as having "created a better basis for the productive operation of smallholder farms growing high-value crops" (PRR 2003: 151). Against the background of this involvement, which (as argued in the first part of this article) has contributed to growing inequality and a greater bias against smallholder production, giving a grant to the buyer is unlikely to be sufficient to redress such disparities. Moreover, as it is intended that the landowner will be paid the full market price for the land, this will not redress subsequent policies which have further undermined smallholders and the landless and enriched large landowners, and will therefore be unlikely to dispel the political tensions fuelled by such a legacy.

Redistributive Land Reform appears to be promoted by the Bank as a mechanism for increasing productivity. Rather than considering smallholders and the landless as the subjects of such reforms and ensuring that their needs are met, including the need to redress past injustices and policies, it appears to see them simply as components of that mechanism. With the promotion of productivity being its central concern, it is preferable that "[t]he rule of law ... [is] respected" rather than acknowledging that existing property rights recognised at law may have come to be held by particular individuals over others or may even have come into existence as a result of unjust and undemocratic policies (whether colonial or otherwise) which have institutionalised those 'rights' in law (PRR 2003: 156). This model is unlikely to alleviate the political tensions which are rising in the face of conditions of increasing poverty, inequality and food shortages across Southern Africa. It is instructive that in Zimbabwe, a country which has seen increasing state withdrawal from the provision of social services over the last 10 years, high levels of indebtedness and poor levels of political governance, the Land Reform programme embarked upon by the government has resulted in corruption and violence and in a breakdown in the production of food and export crops (Lahiff 2000; Bush & Szeftel 2000; Moyo et al 2000). The conditions there are not unique and its neighbour South Africa has greater levels of inequality in landholding and in living standards (Cheru 2001; UNDP 2000; Aliber 2003). Moreover, the redistribution programme in South Africa, based upon the MLAR model, has failed to date to redress the recent injustices of apartheid (PRR 2003: 150; Aliber 2003). While the PRR has contributed to an important analysis of the reasons for past problems encountered in the implementation of state led Land Reform and it is crucial that lessons are learnt from such analysis, the theoretical objections to the MLAR model should also be taken seriously and its failure in appeasing political tensions not just put down to bureaucratic and inadequate state structures. As Robin Palmer has argued, "we ignore Mugabe at our peril – not that Mugabe is doing things correctly, but instead that Mugabe reflects a real felt need for just redistribution of lands that have been seized" (Palmer 09/01/03).

CONCLUSION

In this article, I have raised issues relating to the shaping of property relations, and markets on both a local and a global scale, and the interaction between these levels. The process of the construction of a legal interpretation of a system of customary tenure is inherently conflictual. Sub-Saharan African systems of customary tenure involve 'rights' which evolve over time according to socially embedded processes responding to socio-political and economic change. Such change has involved the growing incorporation of those large landowners able to compete, in the global economy, further widening the gap between them

and the small scale farmers and landless peasants of Southern Africa who are living in conditions of rising poverty and hunger. Furthermore, when the values which are promoted by the constructed legal 'rights' themselves conflict with the socially embedded systems, the law will become merely a means of controlling the conflicts that arise as a result. Those being played out in Zimbabwe demonstrate the outcome when such laws break down, and the depth of the problems which such laws are to control. With incorporation into the world economy being played out on an increasingly unequal global playing field, structured by GCCs, regulated by international law and strengthened by policy prescriptions of IFIs, the opportunities for changing the conditions of poverty and hunger for the majority of those living in SSA seem to be ever more remote. This has been exacerbated by the contradictions played out at the level of the state responding to the exigencies of debt and the need to maintain its own legitimacy. Such exigencies have included those conditionalities of loans in the name of SAPs and PRSPs promoting liberalisation, so as to facilitate such countries' incorporation into the 'world market', but thereby weakening their very ability to shore up any kind of social legitimacy. In such conditions, it is no surprise that the Bank's proposals for land redistribution are based upon 'decentralisation' and markets (Campbell 2001). The likelihood of their promoting redistribution with its potential for unleashing extreme reactions, in a way other than trying to use such mechanisms in an attempt to depoliticise the issues, is very remote.

On a global scale, with the current conjunction of ideas, institutions and material capabilities all supporting neoliberal globalisation (Cox 1981), it is unlikely that the Bank's policies will significantly change. On a national scale on the other hand, those conflicts which have arisen in Zimbabwe provide a salient example of the pressure from such extreme inequality proving too extreme for legal mechanisms of suppression. Recognising property rights based upon these conditions will reaffirm that inequality so that the creation of land markets also based upon them will simply provide a means for its reproduction rather than a mechanism for its redress. Certainly there is a need for tenure insecurity to be made secure, the position of particular groups discriminated against to be enhanced and inequality of land ownership to be remedied, but the measures proposed by the Bank are unlikely to achieve this. While it is significant that the Bank has recognised the need to respect customary rights, it nevertheless sees individualistic rights of ownership of land as those which represent the most 'modern' form of landholding. But such rights are based upon an alien conception of 'property' and are likely to be limited in their ability to control the conflicts referred to above. Rather than its acceptance of 'customary law' being based upon its recognition of those limitations of control in the face of extreme inequality, this acceptance seems only to be based upon considerations of "efficiency" relating to those customary systems, which in any case will be weakened as a country or community 'develops'. In such cases it sees individualistic rights of ownership as essential for security. But, with rising prices of agricultural inputs and poor infrastructure, registering such rights at law will hardly be sufficient for viable smallholder production and it is more likely just to reaffirm the power of commercial landholders and those connected with, and thereby supported by, global capital. Instead, any land reform which is introduced must be based upon a recognition of, and geared to tackling, the structural and other reasons for such current inequalities, and must also recognise that the land question will be inextricably linked with processes of change taking place at both local and global levels.

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ⁱ Bernstein has recognised an equivalent trio of interventions as belonging to the "long postwar boom". Although the emphasis of such policy prescriptions may have changed to such an extent that, as argued by Bernstein, a 'break' with such interventions has occurred (Bernstein 2002: 445), it is more useful here to trace these ongoing interventions to the present day. This also presents a more nuanced picture than the rather more general view that MNCs have been the "driving force behind the restructuring of the global food system" (Heffernan & Constance, quoted in Pupilampu and Tettey 2000).

ⁱⁱ Even though LDCs make up a special category which do not have to make reductions, the numbers of those requiring emergency food aid across SSA including for example Zimbabwe which does not fall within the category, indicates the applicability of such a dispensation to countries falling outside the LDC group, and renders such a categorisation meaningless for these purposes. (Stevens 2003b; Beierle: 2002)

ⁱⁱⁱ This particular point was on the agenda to be renegotiated set out in the "revised Harbinson draft, H1 (Rev.1)" which included proposals to reduce higher tariffs proportionately more than lower ones" (Stevens 2003a: 8, 9). Stevens has also convincingly argued that any SDT should instead focus on particular issues of specific concern to developing countries, such as food security, marketing, labour, safety nets etc which would allow such countries to continue to take measures to support and protect such sectors, and would constrain actions taken by developed countries (Stevens 2003b: 15, 16).

^{iv} While development expenditure is excluded, this must not be in excess of that decided during 1992 (Article 13(b)(ii); Stevens 2003b: 19).

^v Under this procedure, there is a presumption in favour of those claiming that measures amount to trade distortions (Gibbon 2002)

^{vi} Such measures must not be applied "in a manner which would constitute a means of arbitrary or unjustifiable discrimination between WTO Members where the same conditions prevail or as a disguised restriction of trade" (Gibbon 2002: 109; Laird 2002)

^{vii} The FAO/WHO Joint Codex Alimentarius Commission is known as 'Codex'.

^{viii} Since 1999, the Codex standards have included process as well as product standards, indicating specific procedures which should be taken at particular points in production at which SPS hazards will be most acute (Gibbon 2002; Laird 2002).

^{ix} While Article 8 does allow members "to adopt measures necessary to ... promote the public interest in sectors of vital importance to their socio-economic and technological development ..." such measures must also comply with GATT (Retallack 2001).

^x In 1999 the top five biotechnology firms, all of which were based in the US and the EU, controlled more than 95 per cent of gene-related patents (UNDP 1999) and many of these MNCs are also agro-chemical companies, producing particular fertilisers which are supposed to be compatible with particular seeds (Damodaran 1999; Shiva 2001)

^{xi} According to Zerbe, "in Malawi, Monsanto acquired the National Seed Company, the Ghana seed company declared bankruptcy and its assets were divided among other local businesses, Nigerian seed activities were privatised, and foreign corporations took over the management of Mozambique's and Zambia's seed industries ... [In Zimbabwe, where the government had previously entirely controlled seed production,] [t]oday four companies control the ... market" – op. cit. (Zerbe 2001: 664, 666)

^{xii} The line between the international trade and MNC categories is obviously a blurred one as has been seen particularly in discussion relating to the TRIPs agreement.

^{xiii} While the appropriateness of the use of these terms has been disputed, they nevertheless indicate that similar shifts have taken place in agriculture to those in other sectors, such as manufacturing and clothing (Raikes & Gibbon 2000; Daviron & Gibbon 2002.)

^{xiv} According to Daviron and Gibbon, institutional economics recognised that there was a difference between horizontal coordination which "denotes situations of use or operation of a common resource by several agents or entities", that is "collective action and 'good management' of common or public goods" and non-market transactions (linked to the division of labour) which are coordinated vertically as a hierarchy by a "chain driver" (Daviron & Gibbon 2002: 138, 140 157, 158).

^{xv} The SPS Agreement is (nominally) supposed to outlaw non-tariff barriers to trade. This is inapplicable to MNCs which will often internalise such trade. Retailers however, have often set their own standards and in England and Wales under the 1990 Food Safety Act, are to demonstrate that they have shown due diligence in the manufacture, storage and preparation of food. This sets high quality and logistics standards for exporters and producers. (For the UK, see Dolan & Humphrey 2001) The legislation covers things such as pesticide use and their residues, and hygiene (Raikes & Gibbon 2000)

^{xvi} Berry (2001) has stated that it is not clear that this has happened in "any recorded case in the post-war period" – 129.

^{xvii} The World Bank term "Land Reform" is rather more generic than 'land redistribution' and is often used to refer to both reform of land tenure and redistribution of land, as it has been used in the title of this essay, but for these purposes, the term "Land Reform" is also used when referring to "land redistribution", so as to be consistent with the World Bank's PRR.

^{xviii} It should be noted however, that empirical studies show great diversity and complexity in factors affecting women's access to land (see generally Whitehead & Tsikata 2003).

^{xix} Birgit Englert's (reported) comment should be noted: "It was not matrilineality or patrilineality that were the crucial factors in determining the extent to which women manage to secure access to and control over land, but exposure to contacts with 'the outside' and informal business activities." (FAO/Oxfam GB Workshop; Yngstrom 2002: 29)

^{xx} Even in Western systems, the recognition of property rights at a particular point in time, depends upon the basis of claims made by those persons defending their 'rights', which will in turn depend upon the property in question and the social relations upon which those claims are based. Whether or not such claims are considered justified will be determined by an interpretation of those social relations and the interaction of those social relations with the property. Such an interpretation in Western systems is based

upon a belief in "freedom of contract" which in turn is based upon the assumption of self-interested rationality (see for example, Barry Jones 1988: 27; Gill & Law 1988: 41).

^{xxi} For a coherent critique of cost/benefit analysis, see generally Byrne 1987; Tribe 1972.

^{xxii} See for example, Feder & Feeny 1991: 139 and Feder and Noronha's comment on this point should be noted: "The rule that a person in possession of property has only a right of occupation, not genuine ownership, is not conducive to productivity. This is largely a matter of inference, for there are no detailed studies of the link." (1987: 158)

^{xxiii} As noted by Platteau however, "[i]n customary land areas, basic use rights seem to be sufficient to induce landholders to invest, so that the adding of transfer rights ... does not appear to improve investment significantly" and further, "investment [itself actually] enhances security" (Platteau 2000: 57)

^{xxiv} This can also be applied to studies indicating farmers' "willingness to pay" certain amounts for higher levels of land tenure security, such as the one in Zambia referred to by the Bank (PRR 2003: 37).

^{xxv} As has been pointed out by Walker (reported), her research in Kenya has shown that HIV/AIDS was "undermining tenure security, but not leading to a universal loss of land o[r..] land rights", as this is influenced by many other factors such as the severity of the epidemic and the stigma associated with it, cultural traditions and the tenure or status of those affected (FAO/Oxfam GB Workshop; Bookstein & Lawson 2002: 636, 637)

^{xxvi} It argues that "the bias in the allocation of land rights against women is not justified as the literature provides no evidence of inferior efficiency by women farmers" (PRR 2003: 58). This raises the interesting question as to whether the Bank would not consider redressing the bias in allocation of land rights if evidence was raised showing inferior efficiency by women farmers!

^{xxvii} The comment that "integration of the customary and statutory systems remains a major challenge for policy and more work is required ..." seems to be the Bank's parting shot on this issue (PRR: 65). The lack of progress by the Bank in this area has also been recognised as being of particular concern in relation to the position of the prior to the publication of the PRR (Whitehead & Tsikata 2003: 21).

^{xxviii} Such means might include the development of partnership schemes or the taking of security over future income streams supported by insurance (Platteau 2000: 61; Englert 09/01/03).

^{xxix} The Bank has referred, for example, to subsidies that increase the returns to land or speculation in land due to lack of investor confidence in money as a repository of value, both as amounting to 'distortions' (PRR 2003: 94)

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