

TENURE SECURITY, LIVELIHOODS AND SUSTAINABLE LAND USE IN SOUTHERN AFRICA

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INTRODUCTION

Land tenure may be defined as the terms and conditions under which land is held, used and transacted. Land tenure reform is a planned change in the terms and conditions: e.g. an adjustment in the terms of contracts between landowners and sharecroppers; the conversion of informal tenancy into formal property rights; the establishment of local committees to organise and supervise the use of common rights.

A fundamental goal of tenure reform is

Box 1 Land rights

For the purposes of this discussion paper, land rights may include one or more of the following:

rights to occupy a homestead, to use land for annual and perennial crops, to make permanent improvements, to bury the dead, and to have access for grazing animals, gathering fuel, poles, wild fruit, thatching grass, minerals etc.;

rights to transact, give, mortgage, lease, rent and bequeath areas of exclusive use;

rights to exclude others from the above-listed rights, at group and/or individual level; and, linked to the above,

rights to enforcement of legal and administrative provisions in order to protect the rights holder.

(Adams *et al*, 1999)

An important component of tenure security is the confidence with which one can transact one's land rights. In pre-capitalist societies, the transaction of property rights may be of limited importance. With population growth, specialisation and the incorporation of rural areas into market economies, the importance increases. So also does the potential for distress sales and loss of land-based livelihoods in times of drought and other natural disasters. Market transactions can, however, include leasing and rental arrangements, which need not lead to permanent loss of land rights.

The right to transact land may or may not include the right to sell land. There has been much debate in African countries, as wide apart as Ethiopia and Botswana, as to whether freehold rights should be introduced so that land can be bought and sold. However, freehold rights are not a pre-condition for the development of a land market. For example in Botswana, all land is either vested in the state or the land boards. Customary land grants of tribal land from the land boards cannot be bought and sold –only improvements. On the other hand, one may obtain a common-law lease in a rural area or a state grant for a fixed period in an urban area. Either of these can be used to raise a mortgage and can be bought and sold, but eventually the land rights revert on expiry of the lease of fixed period. Freehold rights, which were introduced in the colonial period and cover about five per cent of the land area of Botswana, are gradually being phased out. Freehold land is being purchased either by the state or the land boards and incorporated in tribal or state land as appropriate.

Box 2 Critical tenure-related livelihood questions

Given the inherent complexity of land tenure systems, the limited capacity of the State and the costs tenure reform, is reform necessary for reducing poverty and securing sustainable livelihoods? What kinds of reform are appropriate? How should tenure reform be phased?

Political: How is tenure reform linked to governance and pro-poor economic and social policy reform in the wider sense? Do political conditions enhance or constrain the feasibility of tenure reform? Do the proposed reforms concentrate on the new institutions of land management at the expense of the old institutions, which had been cast adrift by the reform? How is land tenure administered at national, regional and local levels and how appropriate and effective is it? How are land tenure and land administration linked to local government?

Economic: How do tenure systems affect agrarian and other sources of production and income? What forms of economic activity take place using common property resources? How does the land tenure system intersect with markets for land, capital, labour, inputs and outputs? Does lack of clarity about land rights discourage investment?

Social and cultural: How are rights to land embedded within wider social and cultural relationships? What is the impact of the structure of land rights on gender inequality? Are tenure systems associated with class, racial, ethnic and/or other forms of inequality? Are rights to land an important source of asset-based security for the poor? What are the indigenous tenure forms and how have colonial and post-colonial laws affected them? How do reform policies interact with informal evolutionary processes?

Legal: Do constitutional and legal frameworks affect tenure? Are there appropriate and legally secure options for rural and urban situations? What is the legal basis of common property arrangements? When and where are titling and registration programmes appropriate? Do group forms of ownership require titling and registration?

(Based on the work of Ben Cousins)

The nature and strength of property rights profoundly condition economic decision-making. This is because of their effects on people's expectations of a return on their investments of labour and capital. This is as true in rural settings as in the urban sector of the economy. Whether the frame of reference for the system of land tenure be communal or individual, there is widespread evidence that secure property rights are

linked to a higher propensity to invest in tree planting, manuring, soil and water conservation and other permanent improvements. Conversely, insecure tenure is associated with the rapid destruction of natural resources and land degradation.

Box 3 Tenure categories in Amhara Region, Ethiopia

The rural landscape can be divided into three broad categories:

‘the holding’: land possessed and used relatively exclusively by individuals or households for residential, arable cultivation or some other business activity (the ‘holding’ may also be part of the ‘commons’ some of the time, notably during the dry-season grazing period after the harvest);

‘the commons’: land shared by multiple users for grazing and for gathering natural products (fuel, building poles, medicinal plants, etc.) may be broken down into: **controlled access** - a commons over which a group exercises control, at a minimum having the ability to exclude non-members; possibly also regulating use of the resource by members; and **open access** - which implies an absence of control, such as imagined by proponents of the ‘tragedy of the commons’;

‘the reserve’ is a land area, the use of which is prohibited by the group. The church compounds in the Amhara Region of Ethiopia provide an example. Churches are particularly important as guardians of valuable indigenous tree species long since cleared from individual holdings and the commons, primarily due to endemic tenure insecurity over the last thirty years.

TENURE INSECURITY IN AMHARA REGION OF ETHIOPIA

Land tenure arrangements in rural Ethiopia have undergone frequent change since 1975. In that year, a proclamation of the Derg transferred privately held land to the state without defining the user rights of the rural population and increased the number of families entitled to farm plots. More land was newly claimed for cultivation from the traditionally protected communal forest and grazing land and from privately held protected areas. The policy forbade peasants to sell their labour - locally or through traditional seasonal migration - and forced them to remain in their locality. The policy destroyed traditional sources of off-farm income and forced the entire community to exploit their labour and scarce land resources in order to survive. The management of the commons moved from ‘controlled’ to ‘open’ access (see Box 3).

Under the Derg, the Peasant Associations at village level repeatedly redistributed holdings among households. Although the process was based on a concern for equity, security of tenure was seriously undermined. In 1987 in South Wollo in the course of the villagisation programme, for example, the farmers who were forced into villages responded by cutting down trees and hedges around their former homesteads and by abandoning the regular maintenance of soil conservation structures on their former holdings. During the period 1985-89, donors provided substantial funds for soil conservation, tree-planting and hillside closure and regeneration as part of its assistance to Ethiopia’s post-drought recovery programme. Sadly, much of the evidence of this investment has long since vanished. User rights to the conserved areas were never defined. Armed guards were recruited to protect the hillsides. Local people perceived the re-established vegetation in the hillside enclosures to be owned by the government. With the fall of the Derg, the assets were rapidly stripped and harvested.

Degradation now extends from the highlands South Wollo to Gojjam and to the downstream reservoirs on the Blue Nile in Sudan, which are choked with silt. A rigorous investigation has recently concluded that Gojjam, the traditional bread basket

of Ethiopia, is now at very high risk due to soil degradation (Zeleeke, 2000). Ploughed fields and grazing lands are commonly dissected by gullies. Almost all natural forests have been cleared and put under cultivation, irrespective of steepness of slope. The loss of plant nutrients with eroded sediment from cultivated lands is extremely high. The study concludes that, assuming the continuation of the present trend of degradation, about one third of the currently cultivated lands in Gojjam will be below critical soil depth in less than half a century.

Tenure insecurity as a result of enforced land redistribution has continued under the current government following the defeat of the Derg. According to Birhanue (2001), who quotes the relevant proclamations of 1996 and 1997, the aim of the most recent redistribution was to:

- do away with the imbalance of holdings created as a result of land taken by bureaucrat'farmers and members of agricultural co-operatives who were involved in Derg politics;
- confiscate land from tenant feudal'farmers and rich farmers who were holding large tracts of land during the imperial regime;
- erode the economic and political influences of former Peasant Association members;
- and to improve the economic status of the least privileged sector of the rural community.

He describes the grave inter-generational tensions and the distress suffered by those who were dispossessed.

TENURE INSECURITY IN SOUTHERN AFRICA

In Zimbabwe, Namibia and South Africa, much of the land that is referred to as communal was deliberately set aside to further colonial policies. The communal areas served as reservoirs for cheap migratory labour. Over large areas, the state is the legal owner of communal land (Box 4).

Box 4 Land tenure in southern African countries (approximate % of national territory)			
	Private/Freehold/Lease hold	Communal/tribal/customary	Conservation/minerals/water catchment reserves and other state land
South Africa	72	14	14
Namibia	44	43	13
Zimbabwe	41 ¹	42	16
Botswana	5	70	25
Swaziland	40	60 ²	-
Lesotho		95 ³	5

¹ includes small-scale farm leases and resettlement up to 1999
² includes Swazi Nation Land (SNL) held under customary tenure and SNL land leased to companies by the monarch
³ includes leases in urban areas (all land in Lesotho is vested in the monarch in trust for the nation)

In the communal areas, tenure reform must grapple with overcrowding and overlapping land rights, as well as cases of exploitation by traditional leaders, officials, politicians and extortion by shack landlords' in informal settlements. Tenure insecurity is most

acute among those using land to generate income, especially women (Cross, 1998). Profit making from agriculture and small business activity in the communal areas are not clear rights. As soon as informal land markets become accepted, people with allocation authority - usually men with connections to those in power - emerge as squatter patrons or warlords. Mounting uncertainty makes economic land use too risky to entertain for increasing numbers. In peri-urban areas in southern Africa the land market is open to exploitation by unscrupulous administrators and chiefs who sell occupation rights on communal land, which brings them into conflict with adjacent urban councils. Studies of land rights and land administration in the former homeland areas demonstrate the increasing breakdown of customary management arrangements.

The consensus is that at present, there is a complex and often dysfunctional mixture of old and new institutions and practices. People are often confused about the real extent and nature of their rights or about what institutions and laws affect them. Matters are further clouded by local and national political conflicts over land management rights and roles in the communal areas. The corruption by former regimes often persists in new forms to pervert land allocation and management. (Turner, 1998)

All these features lead to the inescapable conclusion that insecurity of tenure in the communal areas is real and widespread. However, it is also true that in many areas people do enjoy day-to-day *de facto* tenure security and do not express great anxiety about their long-term future on the land. Many existing systems, often 'informal' in the sense that they are not recognised by law, work reasonably well. However, when development planning begins or investment projects are proposed underlying conflicts come to the surface. In addition, there are chronic problems of inefficient land use and ineffective management of common property resources due to the lack of clarity in relation to rights.

Thus we can characterise tenure insecurity in communal areas as comprising:

- a relatively small number of *high profile* cases where tensions or conflict have emerged or development is clearly stalled; these are now increasing in number as local level development planning begins;
- a chronic, *low-profile* condition in which lack of certainty and weak legal status constrains the land-based livelihoods of the majority.

(Adams, *et al*, 2000).

Tenure reform is, in most cases, a complex and uncertain undertaking. In South Africa and Namibia, a factor complicating post-transition attempts to dismantle the apartheid map is the complex and unstructured nature of the apartheid legislation governing the communal areas, much of which has yet to be repealed. The economic and other benefits flowing from it are difficult to predict, and the necessary administrative costs more difficult to justify. Finally, resources for establishing and/ or revitalising land administration have to be procured from increasingly hard-pressed government budgets. Reform is invariably politically sensitive and governments have shown a marked reluctance to grapple with it. In South Africa, government's efforts to fast track development on the Wild Coast have been frustrated by uncertainty as to how tenure rights to communal land should be held; whether it should be by individuals, community trusts, companies, tribes or traditional authorities (Kepe, 2001).

With the possible exception of one country, namely Botswana, very little progress has been made in providing tenure security for poor people. Even in Botswana, there are discouraging signs.

Country-by-country assessment

With 1% of farmers (mostly white) holding nearly half the available agricultural area and the bulk of the fertile land, **Zimbabwe** inherited a highly skewed pattern of land distribution. The repossession of land alienated by whites has dominated land policy and little progress has been made with tenure reform in the former tribal trust lands. Government has periodically transferred the authority to allocate land, to and from the chiefs. The Communal Land Act of 1982 shifted the authority from the chiefs to District Councils and to Village Development Committees (VIDCOs). In 1996, Cabinet accepted the advice of the Rukuni Commission' (GoZ, 1994) that this should be reversed. However, the recommendations were never followed through. Imaginative new proposals for tenure reform in the communal areas, involving decentralisation of land administration under a National Land Board as a statutory trust to hold all non-village lands (GoZ, 1998), were publicly debated in Harare in June 1999. The implementation of these proposals has no doubt been delayed by events taking place in the commercial farming areas and by numerous knock-on effects.

In **Namibia**, the topic of land tenure reform in the communal areas has been on the development agenda since before Independence. As in Zimbabwe, the acquisition and redistribution of freehold farms has received higher priority than tenure reform in the communal areas. Many of the recommendations of the National Conference on Land Reform and the Land Question in Windhoek in June 1991 related to the resolution of land-related issues in communal areas: *inter alia* the need to guarantee land to locals; to abolish land allocation fees demanded by chiefs; to grant land to women in their own right; to establish a system of land administration; to control illegal fencing of grazing areas; and to move the herds of wealthy farmers to commercial farms. Very little progress with implementation has been made. Ten years later, the largest illegal enclosures in the northern communal areas are those of the political elite. Some are equipped with government boreholes drilled with drought relief money and are in receipt of free government diesel for their pumps.

The proposed law touches on issues that are sensitive among a large and powerful rural constituency, including traditional leaders and the Oshivambo-speaking people who have their roots in the relatively densely populated communal areas in the north and provide the bulk of SWAPO support. The Communal Land Reform Bill was passed through the National Assembly in February 2000 to the second chamber, the National Council, where it was referred back for more work. It was reported that the proposals from communal area farmers, particularly on the composition of the land boards, had been ignored. Elected regional councillors clearly felt that the proposed law did not deal adequately with illegal fencing already erected on communal land. Opponents of the bill argued that the legislation ran contrary to the government's decentralisation policy and initiatives by the Ministry of Environment and Tourism.

As in Zimbabwe and Namibia, the majority of the rural population in **South Africa** is still concentrated in the former African reserves, where about 2.4 million rural households (about 12.7 million people and 32 per cent of the total population) occupy

about 13 per cent of the country. Because people were forcibly moved out of white' South Africa to the bantustans' without reference to the wishes of the established inhabitants, there is a legacy of severe land pressure and land-related conflict, which has grown in severity since the disbanding of the apartheid system of land administration.

In the period of the first democratic government 1994-99, an effort was made to develop the necessary legal and administrative reforms, which would dismantle the apartheid map and secure the land rights of those living in the former homelands. During that period, the debate moved from the transfer of land in ownership to tribes to the granting of statutory rights to people using and occupying the land. The tenure reforms envisaged in the White Paper on South African Land Policy (DLA, 1997) were to have been provided for in the Land Rights Bill. The draft legislation was developed from numerous commissioned studies, workshops and meetings. The work attracted considerable interest in other countries of the region. International land tenure specialists commented favourably on the innovative nature of the proposed reforms, which sought, among other things, to upgrade customary rights by giving them statutory recognition without changing their essential customary character.

Immediately following the general elections in June 1999, the draft Land Rights Bill was shelved. The ostensible reasons for this change in direction were to place greater reliance for land administration on the traditional authorities and thus reduce the burden on the state. Legislation was to have been prepared to transfer state land in the former homelands to tribes. However, this was not forthcoming and in April 2001 the Department of Land Affairs once again took up work on the draft Land Rights Bill. In recently announced plans, government is to give priority to assisting progressive African farmers in the former homelands, which will once again bring the issue of tenure reform to the fore.

To the above list of countries could be added Swaziland and Lesotho where land policy and tenure reform processes are in train. **Swaziland** embarked on a land policy process in 1996, which progressed fitfully until the beginning of 2001 when the land debate was enlivened by high profile evictions by traditional leaders. This was followed by a land conference in February when civil society reviewed the draft Swaziland Land Policy and began to grapple with the issues (CANGO, 2001).

The post-independence land policy process in **Lesotho** has a chequered history. It was restarted recently with a Land Policy Review Commission appointed by the Prime Minister, which reported in September 2000 (KoL, 2000). The Commission came up with some extraordinarily radical (and impracticable) proposals, including the abolition of customary land tenure forthwith. The Commission's report is currently being reviewed and revised and is expected to appear as a draft white paper later in 2001.

Long recognised for its competence in the administration of customary tenure, **Botswana** frequently receives parties of officials from other countries in the region that are wrestling with land tenure reform. Some 70 per cent of the total area of the country is tribal land, which is vested in 12 decentralised land boards, originally based on tribal territories. They were formed in 1968 under the Tribal Land Act, the underlying purpose of which was to wrest control of land from the chiefs and tribal authorities and to democratise land administration.

Unlike the other countries in the region, it has not, until now, produced an overall land policy paper. Rather, it has proceeded with periodic commissions prior to amending and improving the Tribal Land Act of 1968. These amendments have adapted the forms of tenure and the composition and procedures of the land boards. Customary grants continue to be made on tribal land without charge to adult citizens in perpetuity for residential occupation and agricultural purposes, but not for grazing which is communal. Common law leases are now issued to citizens for residential and business purposes, including livestock production.

Numerous adjustments have been made to the areas of jurisdiction and composition of land boards since 1970. The functions of the main land boards are set out in the Tribal Land Act. These include: the granting of rights to use land; the cancellation of grants; the hearing of appeals confirming or setting aside decisions of subordinate land boards; and the imposition of restrictions on the use of tribal land. The most recent amendment (1993) replaced tribesmen' with citizens' and provided for a tribunal for dispute resolution (rather than appeals to the minister). The last-mentioned, a type of land board ombudsman, is an important development that will be of interest in the region.

The land boards are often held up as a fine example of democratic decision-making and decentralization. However the independence of the land boards are limited by the fact that the Minister both directly appoints members and, in the case of those elected in the village assembly (*kgotla*), the Minister confirms appointments. The Minister is also empowered to dissolve land boards and to overturn their decisions. The land boards are dependent on central government for 95% of their income.

Although Botswana continues to have a very high standing when it comes to land administration, its record in protecting the rights of the poor is not beyond question. It is pursuing an agricultural policy that is undermining the rights of rural people to have access to the commons, although unlike Namibia the process of range enclosure is not illegal. Several cases are pending in the High Court under which the new land owners are claiming exclusive rights to land and seeking to evict poor people who have used the area for generations. Land boards that have decision-making powers in these matters are reported to be ignoring the needs of small farmers.

DISCUSSION

What can be learned from this collection of cases to illuminate the central problem – post-transition land tenure reform in southern Africa?

A study of the implementation of land reforms the world over leads to the conclusion that the essential components are: (a) centralised political power and a robust commitment to land reform on the part of government, (b) the existence of strong support in the countryside and (c) the administrative capacity to see the process through.

Even if the changes described in Ethiopia may have been the antithesis of land tenure reform, Ethiopia's capacity to deliver has been remarkable. Despite great poverty and scarce financial resources the authorities were able to reach into the furthest corners of the countryside. No doubt, Ethiopia's way of doing things has much to do with its revolutionary political organisation and has few lessons for the countries of southern Africa, which (with one exception) are struggling to bring about land reform by due legal process. Perhaps there is a lesson to be learned about political commitment. Many

proposed land reforms have faltered because they were conceived in order to mobilise support at a critical time in the life of a government (or an aspiring government).

In southern Africa, some fundamental obstacles stand in the way of land reform. My comments apply to land reform in the broadest sense. I include land distribution as well (Box 5).

Box 5 Land tenure and redistribution in southern Africa (2000)					
	Total Area (sq. km 000)	Private Freehold Leasehold (%)	Communal Tribal Customary (%)	Private land acquired for redistribution to small farmers since majority rule (ha)	Private/Freehold/ Leasehold land Acquired (%)⁵
South Africa	1221	72	14	821,134 ²	1.0 ⁶
Namibia	824	44	43	500,000 ³	1.4
Zimbabwe	391	41 ¹	42	3,600,000 ⁴	22.5

¹ Includes small-scale farm leases and resettlement up to 1999, excludes commercial farms gazetted since 1999

² Department of Land Affairs, Annual Media Briefing, November 2000

³ Prime Minister Hage Geingob, Media Conference, Swakopmund Cabinet Retreat, *The Namibian*, 13.12.2000

⁴ Moyo (2000)

⁵ Excludes land acquired by commercial farmers under affirmative action programmes in Zimbabwe and Namibia

⁶ This figure increases to about 1.3% if the settlement of restitution claims is included

(Source: Adams and Howell, 2001)

- It is in the nature of things that land tenure systems, traditional or modern, will be manipulated by the powerful in their own interests and will disregard the well being of the rural poor. In other words, politics cannot be legislated out of existence and in places like southern Africa where power and wealth are concentrated it is difficult to conceive of how new laws will protect the interests of those without power. Politicians may tolerate bottom-up participatory processes in other areas, but not in matters that require them to relinquish control over land allocation. Consideration of the prospects for land reform, including tenure reform, should not be divorced from an analysis of the political processes at work and the opportunities for mobilising the support of those who are otherwise likely to stand in the way of progress.
- A well-trained civil service could provide the counterweight to the politicians, but inadequate administrative capacity is a recurring problem in land reform. A numerous and widely deployed army of well-trained staff, with the necessary administrative and legal support is essential. For a number of reasons, the capacity of the public service in southern African countries does not seem to be improving. Needs tend to be greatest where technical capacity is weakest.¹

¹ It is indeed ironical that the apartheid governments of South Africa exhibited far greater capacity to compulsorily acquire land for homeland consolidation than the post-transition governments have for redistribution.

- If land reform measures are to be successfully implemented and contribute to the livelihoods of rural people, the pace of reform cannot run ahead of advances in other related government functions, especially those for providing infrastructure (water, power and communications) and technical support services to small farmers –credit, input supply, marketing, extension and adaptive research. In short, unless it is accompanied by other expensive undertakings, land reform is unlikely to make much difference to the poor.

If political, administrative and cost considerations all militate against success, why try? The answer to this question must be the same in 2001 as it was in 1980 in Zimbabwe, 1990 in Namibia and 1994 in South Africa. Although not in itself a guarantee of economic development, land reform is a necessary condition for a more secure and balanced society and to avert the type of insurgency witnessed in Zimbabwe, currently the world's fastest shrinking economy.

Land reform is an extremely difficult process to carry through. Recognising that governments have other priorities (education, health, water-supply, housing, etc.) it is perhaps necessary to adjust our sights and be more realistic about targets. The adoption of unrealisable targets merely sets us up for failure. Finally, it is necessary to acknowledge that the responsibility for bringing about a just and equitable land reform in southern Africa is the responsibility of everyone, governments and civil society.

CONCLUDING COMMENT

Despite the Zimbabwe land crisis, which came to a head in March 2000, there is very little evidence yet of progress in land reform in the region. There is an unbridgeable gap between the public statements of politicians about land reform and the capacity of governments to deliver. International donors want to help with funding but the ability of the public sector to manage and use those funds constructively and responsibly is declining. At the same time, civil society organisations, which have been working with governments on land reform over the last decade, are losing staff for lack of funding. This applies to university departments, private service providers and NGOs. The capacity to respond to the deepening land crisis in southern Africa is diminishing.

Against this volatile and unpredictable background in the region, NGOs in the land and rural sector have been struggling to obtain donor assistance for core functions of land reform advocacy, capacity building and project implementation. The reluctance of donors to support the NGOs reflects the difficulties faced by donors in obtaining agreement on bilateral programmes that incorporate support to organisations that may be critical of government policies. This timidity on the part of donors is part of a much larger problem of donor - government - NGO relations.

Unlike other sectors (e.g. education, health, water supply), assistance to land reform presents problems arising from its volatile, cyclical and politically sensitive nature. Assistance is likely to be always needed, but the nature and intensity of support varies from time to time. It is difficult to predict. Donors can't walk away when things turn sour. They must lie low, tread carefully and maintain a base flow of support.

Land reform is a long-term iterative process, needing feedback, learning and involvement of many stakeholders. It is also a highly contested one, particularly in the

unequal societies of the region. As everybody now knows, unequal ownership of the land is an increasing threat to political stability in the region.

A good understanding of the emerging situation in the countries of the region is important if donors are to respond promptly to requests for assistance. Civil society organisations are a major source of knowledge. Strengthening civil society during periods of government inaction is of value for what follows. The history of land reform supports the theory that civil society can be vitally important in giving a kick-start to a new government initiative – just as it was in South Africa in 1994.

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