'Capitalist collectivisation'? How inappropriate models of common property are hampering South Africa's land reform

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Abstract

South Africa's land reform programme has been dominated by the redistribution of sizable properties to large 'community based' groups. Emerging evidence suggests that newly created communal property institutions are widely failing to carry out their functions in terms of land administration, and that as the result, many land reform projects are failing to deliver the expected benefits to their members. Drawing on recent national surveys, and case studies from Limpopo province, this paper explores the difficulties being experienced by new communal property institutions and possible reasons for their lack of effectiveness. Particular attention is paid to the policy framework implemented by the Department of Land Affairs which is oriented towards the preservation of the structure of large-scale commercial agriculture and hostile to the subdivision of properties for household, use. As a result, large community groups are typically required not only to hold land communally, but also to use it as a collective. This paper argues that sustainable common property institutions in South Africa's land reform will require a new and more differentiated approach to land use and scales of production.

Key words: *Land reform, community, South Africa, restitution, communal property association, farming, property rights.*

1. Introduction

South Africa's land reform programme aims to redress the country's racial imbalance in land holding and secure the property rights of historically disadvantaged people. The *Constitution of the Republic of South Africa* sets out the legal basis for land reform, particularly in the *Bill of Rights,* which places a clear responsibility on the state to carry out land and related reforms, and grants specific rights to victims of past discrimination. This the state has addressed through largely discrete programmes of restitution, redistribution and tenure reform, although all aspects have fallen far short of their stated targets (Department of Land Affairs 1997; Lahiff 2007).

Common property, in various forms, is central to much of the South African land reform effort. This is most evident in attempts to reform the diverse and often highly contested system of communal tenure that prevails in the so-called communal areas (approximately 13% of the national territory) where most land is nominally owned by the state. There, policy debates have centred around models of land ownership, the role of

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traditional leaders (chiefs) and definitions of 'community' (Cousins 2007; Ntsebeza 2006; Claassens 2003). New forms of common property have also been created, however, under both the redistribution and restitution programmes, with the transfer of substantial areas of land to large groups of people. These land reform 'projects' remain distinct from the existing communal areas both geographically – they are typically located outside of the former African 'homelands' or 'coloured rural areas' – and legally; whether state- or privately-owned to begin with, such land is, as a matter of policy, transferred in freehold title to corporate structures representing the members (beneficiaries) – either Trusts or Communal Property Associations.[2]

The combination of a private property regime – modelled on the prevailing system of freehold in South Africa[3] - and group ownership creates multiple tensions, which to date have barely been acknowledged in South African policy debates. A number of recent studies have identified widespread problems with group resettlement projects, including the failure to identify clearly the rights and responsibilities of individual members *vis-à-vis* the group to which they belong and the failure to establish effective systems for allocation of plots, sharing of costs and benefits, democratic and transparent decision making and holding leaders to account. Particular problems have arisen from attempts to use land collectively, for both livestock and crop farming, as encouraged by state planners and private-sector consultants.

This paper argues that the emerging model of land holding under land reform has been shaped by contradictory tendencies within policy which have not been thought through (at least not in the public discourse) and have given rise to unintended consequences, of which 'capitalist collectivisation' of agriculture is the most notable. 'Capitalist collectivisation' here refers to state-imposed pressure on groups of land reform participants to use agricultural land in a collective manner, reminiscent of socialist collectivisation of agriculture, but with explicitly 'market-oriented' objectives and in the absence of any obvious socialist tendencies on the part of either the state or (most) participants.

2. New forms of common property under land reform

Both the official restitution and redistribution programmes aim to transfer land to previously disadvantaged (i.e. black) persons as a means of redressing specific instances of dispossession and shifting the racial imbalance in land holding more generally. While these programmes are open to both groups and individuals, most land has, in practice, been transferred to groups, many comprising hundreds (or even thousands) of households.[4] As noted above, virtually all land transferred to groups is

[2] Together, these tend to be referred to as communal property institutions (CPIs) or, more colloquially, 'legal entities' (see below).

[3] See Lahiff 2006; Carey Miller 2000; van der Walt; 1999, for discussion of the South African freehold system and its centrality in land reform policy.

[4] Most of the estimated 80,000 land claims have, in fact, been settled not through the return of land but by means of cash compensation. Claims that have been settled by means of return of land have mostly been large 'community' claims; smaller individual (or family) claims have been concentrated in urban areas, and

registered in freehold title in the name of a 'legal entity' created especially for this purposes, usually either a Communal Property Association or a Trust.[5]

Trusts are a long-established institution (governed by the Trust Property Control Act 57 of 1988) and have been set up for many resettlement projects, but they are often considered unsuitable for land reform projects because they vest ownership in non-beneficiaries (the trustees) who are not democratically accountable to the beneficiaries (DLA 1997; CSIR 2005). Trusts can be regulated only by the Master of the Supreme Court, and are therefore not open to interventions by agencies such as the Department of Land Affairs (DLA) should they experience difficulties.

For this reason, the DLA developed a new model of collective land ownership, the Communal Property Association (CPA), to be governed by the provisions of the Communal Property Associations Act 28 of 1996, specifically aimed at communities obtaining land under the land reform programme. The CPA Act sought 'to enable communities to form juristic persons to be known as communal property associations, in order to acquire, hold and manage property on a basis agreed to by members of a community in terms of a written constitution' (Communal Property Act 1996: Preamble). Section 9 of the Act prescribes principles to be included in every constitution (which echo general principles contained in the Constitution of South Africa). These principles are:

- fair and inclusive decision making
- equity of membership
- democratic processes
- fair access to property
- accountability and transparency
- security of tenure
- sustainability
- compliance to legislation and constitution.

In addition, the schedule of the Act specifies the matters that must be included in any CPA constitution for it to be officially recognised and registered – namely, a definition of membership and of members' rights, a definition of the property concerned and the procedures for decision making (Cousins and Hornby 2002: 3). In practice, most CPAs have failed to live up to this ideal, and Trusts, although governed by different regulations, would appear to suffer many of the same problems. While the promulgation of the CPA Act can be seen as evidence of the state's commitment to addressing tenure arrangements with resettlement schemes, the prolonged failure to implement the

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have tended to opt for cash compensation. CSIR (2005) estimates that 75% of resettlement projects (restitution and redistribution) have involved the formation of communal property institutions.

[5] Other possible legal entities for groups are companies (regulated under the Companies Act No. 61 of 1973), close corporations (small companies without share capital, regulated by the Close Corporations Act No. 69 of 1984) and so-called 'Section 21' companies (not-for profit companies as defined by Section 21 of the Companies Act), but none of these have been widely used for land ownership under the land reform programme. Land transferred to individuals can, of course, be registered in the name of natural persons.

monitoring and regulatory aspects of the Act, along with a general failure to provide support to CPAs or their members, has effectively reduced the CPA to just another form of ownership – collective freehold . The implicit assumption that freehold is the optimal solution in all cases has received little critical attention from either policy makers or land activists to date.

By July 2006, a total of 2.2 million hectares of land had been transferred under the redistribution programme and the disposal of state land, in approximately one thousand projects. A further one million hectares has been transferred under restitution.[6] Much of the land transferred under the restitution programme has, however, been transferred in nominal ownership only, as it remains incorporated into nature reserves and state forests and, in terms of restitution agreements between claimants and the state, is not accessible for direct use by the restored owners. As with other areas of the land reform programme, however, detailed statistics on beneficiaries and the quality of land acquired are generally unavailable.

Where land is transferred to a group there is often an expectation that the land will be worked collectively by all the members (or beneficiaries) and the benefits shared equally amongst them. Indeed, this is commonly made a condition of transfer that is enforced by state agencies such as Provincial Land Reform Offices and Regional Land Claims Commissioners. Although Section 2(4) of the Provision of Land and Assistance Act 123 of 1993 waives the applicability of the Subdivision Act 70 of 1970 in the case of land reform project, there appears to be no practical, accessible legal mechanism whereby groups can formally subdivide their land among their members after transfer to the group, and no example of such subdivision has been reported (Lahiff 2007; van den Brink et al 2006).

Some examples of informal (*de facto*) subdivision may be found, but this tends to be associated with the collapse of collective institutions (legal entities) and highly inequitable outcomes – although some examples of a more orderly and egalitarian allocation of individual plots have also been reported (Manenzhe 2007; PLAAS 2006). Collective ownership of land and attempts at collective production - encouraged by state policies, but with little practical guidance or support to make them work - create conditions whereby access to land and related resources, and an equitable share in benefits, may be subject to complex institutional processes. Particularly problematic is the position of women, who are often represented by households 'heads', who tend to be overwhelmingly male, leading to the exclusion of women and other household members from decision-making processes (Cousins and Hornby 2002; Walker 2003).

A number of factors contribute to the emergence of this common model of collective production. First is the manner in which land is acquired. Under restitution, much land

[6] In a study conducted in 2005-06, the Community Agency for Social Enquiry (CASE) estimated that a total of 179 rural restitution projects had been implemented involving land restoration (cited in PLAAS 2006). The number has certainly increased since, but is unlikely to exceed three hundred projects.

has been claimed by (self-defined) communities, based on historical rights, and such land is usually, therefore, restored to the group as a whole. Under redistribution, the limited value of grants provided, relative to the purchase price of land (exacerbated by the very large size of typical South African farms), has forced land-seekers to organise themselves into groups and pool their resources, a solution actively encouraged by official policy. Second, African traditions of *ubuntu*, or social solidarity, and communal landholding, have undoubtedly made collective action and ownership attractive (or at least acceptable) to many, especially poorer, participants. Third, and most important, however, is official reluctance (and often outright refusal) to countenance the break-up of existing farm properties and an insistence on 'commercial' forms of production – in other words, an official preoccupation with the *appearance* of large-scale commercial farming. This preoccupation – evident across all aspects of South Africa's land reform programme – suggests that while South African policy-makers, and the conservative agricultural establishment of mainly white farmers and agri-businesses, may have accepted the need for 'deracialisation' of landholding, they have certainly not accepted a need for more radical restructuring of the sector – in particular, a transition from large-scale commercial farming to smaller, low-input, family-based production that would include at least a proportion of self-provisioning.[7] Large-scale, capital intensive agriculture for the market thus remains the exclusive state-sanctioned model for land reform beneficiaries, no matter how many, how poorly resourced or how hungry they might be.

A refusal to sanction the restructuring of large farms, and a preoccupation with orthodox models of 'commercial' agricultural production, poses a dilemma for policy makers faced with often large groups of poorly resourced participants. The crude solution to this has been to insist that such groups behave in a manner that resembles a single owner-operator (e.g. the former white owner). Farm planning – usually carried out by private-sector consultants appointed by the national Department of Land Affairs or one of the nine provincial departments of agriculture – develop 'whole farm' plans, using economic and management models drawn from the large-scale commercial sector, with which participants are expected to comply. This leads to a variety of often-perverse outcomes, including cases where management of a farm is turned over to a professional (usually white) farm manager, and some (usually a minority) of participants are employed as workers on their own land. In cases where high-value farms have been restored to communities under the restitution programme in Limpopo province, the Commission on Restitution of Land Rights (CRLR) has imposed a model of 'strategic partnerships' whereby farms are turned over to commercial management companies for a period ten years or more, in return for rent, a share of profits and opportunities for training and employment (Derman et al 2006). The most common experience to date, however, is that large groups have been simply incapable of implementing the imposed business

[7] The response by the state to the problems reported from large group projects has been to promote even more 'commercially' oriented projects, by targeting larger grants towards better-off participants, under both the LRAD programme of 2001 and the LARP programme of 2007. This has allowed a small minority of beneficiaries to acquire entire farms as individuals or small family groups, and thus avoid many of the problems associated with collective production in large groups. This conservative approach by the state, however, does nothing to address the needs of existing group projects, or of the vast majority of the rural poor and landless who remain unable to acquire small plots for their own use.

plan, and strongly discouraged from exploring alternative models of land use, with the result that resource use, and benefits to participants, have fallen far short of expectations.

3. Resource Use and Benefits

The available evidence suggests that most, if not all, group land reform projects are confronted by major challenges regarding the use and benefits of resources, (PLAAS 2006). Groups generally appear ill-prepared for the task of land administration, and difficulties are greatly compounded where attempts are made to engage in collective production or, as is increasingly the case, commercial deals with external bodies (Mayson 2003; Derman et al 2006). The available evidence suggest that matters of group dynamics, organisational development and commercial management present major challenges to large groups, dominated by relatively poor and poorly-educated people. Generic CPA constitutions generally provide inadequate guidance on how CPAs might function in practice, and little or no organisational support is provided to such institutions by official agencies after transfer of land.

Information of the performance of CPAs and Trusts is found in a variety of case studies (mostly in the grey literature) and reviews .[8] The general picture that emerges is of a severe mismatch between the ideals of the CPA Act (and the constitutions of the various CPAs) and the reality on the ground. Recurring problems include a failure to define clear criteria for membership of the CPA or the rights or responsibilities of members, a lack of capacity for dealing with business and administrative issues, and a lack of democracy in both procedural matters and in terms of access to benefits. These problems tend to be greatly compounded where the CPA is involved in commercial or productive activities on behalf of its members as well as the usual activities of land administration. A general lack of oversight and support from the DLA – which is, in terms of the CPA Act, responsible for monitoring of CPAs, as well as the maintenance of the public register of CPAs – means that problems within CPAs are not easily uncovered and, if they are, few remedies are available.

The multiple problems confronting CPAs and other forms of group landholding (collectively referred to as Communal Property Institutions, or CPIs) are captured in the following extracts from two of the more substantial studies of the subject to date:

> *[T]he process for allocation of substantive rights is generally not documented in the constitution and varies from formalised to totally informal or self allocation in practice ... In some CPIs the intention is to farm "communally" as a collective farm i.e. a single entity sharing profit and labour. In this instance labour input and profit sharing was found to be poorly defined. It was found that insecure tenure for individuals (in particular women) is prevalent in cases where membership vests in the household (which is usually represented by the head who is usually*

[8] See Mayson, Barry and Cronwright 1998; Lahiff 2000; Cousins and Hornby 2002; Hall 2004; CSIR 2005; PLAAS 2006; Everingham and Jannecke 2006; Kleinbooi et al 2006; Maiesela 2007; Manenzhe 2007.

> *male) … The majority of CPIs are partly functional from an institutional perspective but are largely or totally dysfunctional in terms of allocation of individual resources and the defining of clear usage rights, responsibilities, powers and procedures for members and the decision making body. Transparency and accountability is also often below what is required.* (CSIR 2005: Executive Summary)
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> *The present institutional context in which CPIs are established is plagued by a number of problems. Firstly, the DLA does not provide support to CPIs once they have taken transfer of land. This is because it has no legal authority to do so in the case of trusts, and inadequate human resources to undertake its legal obligations in terms of the CPA Act. Secondly, the DLA has not created the institutional support for managing CPI records and/or registration of individual household land holdings and rights, and thus has no basis for intervention in rights disputes …[M]any communities have disregarded their constitutions and have adapted or created local institutional support for themselves. As a result of this, there is concern that multiple allocatory and adjudicatory procedures will create overlapping de facto rights that elude both official and legal resolution, creating fundamental insecurity of tenure.* (Cousins and Hornby 2002: 17)

Thus, while specific problems of disorganisation or abuse can be identified in many CPIs, it would appear that these are merely symptoms of wider weaknesses that have their origins in the way that CPIs in general are designed, regulated and supported.

CPAs are required to register with a central Registrar of CPAs, based in the Tenure Directorate in the DLA in Pretoria, where the Constitution of each association is lodged, along with a list of members and details of property owned. In practice, the process for registration has been poorly developed to date and the quality of information available on CPAs is questionable. The CPA Register consists of one-page summary information on each CPA, including beneficiary information, property description, postal and physical addresses, date of adoption of constitution, and the policy programme under which the CPA acquired land. Many recently registered CPAs do not appear on the register and among those that do, there are major gaps in information, as well as inconsistencies in what information is captured. From this partial information it is not possible to determine how many CPAs have been registered nor, for those CPAs appearing on the register, in which districts or provinces they are located, how many hectares they own or how many members they have. There is insufficient information in the CPA register to correlate it with land reform project lists at a national or provincial level, and it seems not to be possible to determine which CPAs were established in which land reform projects (Hall 2003). The lack of an accurate and accessible CPA register makes it virtually impossible to verify details of a CPA's membership or regulations in the case of a dispute, but also indicates the failure to put in place any effective regulatory framework.

The review of CPIs by the CSIR (2005: 58) made the following observations on the role of DLA:

"DLA has an obligation to monitor and evaluate CPA functions. Section 11 of the Act requires that CPAs furnish prescribed documents. Regulation 8 says that this must be done annually within two months of the AGM. Section 11 also makes provision for the Director-General to access CPA information for inspection purposes. Forcing the CPAs to be accountable to an outside body is also very beneficial to the CPA members as it can help prevent illegal activities of committee members, and ensures that the committee maintains its accountability to its members. DLA also has a responsibility under section 17 of the Act for the DG [Director-General] to submit an annual report to the minister on the functioning of CPAs in regard to the extent to which the objectives of the Act are being achieved. To meet this obligation the DLA will have to monitor individual CPA performances."

According to the CSIR, however, this responsibility is being neglected by DLA:

"No annual reporting on CPA functioning in general as envisaged under section 17 is currently taking place. No annual monitoring of CPAs as specified under section 11 and regulation 8 is currently taking place … DLA is not requesting, nor are CPAs providing the information as specified in the regulation … the norm is that there is poor internal accountability and transparency."

Dysfunctional CPIs would not, perhaps, be a major cause of concern if the situation was temporary (while the CPI became more established) or if CPIs gradually shed responsibilities (e.g. if there were a transition to *de facto* individual landholding and its duties were reduced to the bare bones of nominal land ownership). The reality, however, appears to be that CPIs are not becoming more functional over time and that this is having major negative implications for the tenure security and livelihoods of their members. First, weak or dysfunctional CPIs are often incapable of ensuring equitable access to land and other resources by its members, or of protecting the property from use or damage by non-members. This is leading in some cases to monopolisation of resources by group leaders or other relatively powerful individuals, for example in the settled restitution cases of restitution cases of eMpangisweni, and Klipgat (PLAAS 2006; see also CSIR 2005). Secondly, it is hampering development, as individual members are reluctant to invest their efforts and resources in an uncertain environment and, without effective leadership and procedures, groups are incapable of brokering support from external agencies, including the state agencies specifically tasked with providing such support (PLAAS 2006). Notable examples include the Shimange restitution case in Limpopo province (Manenzhe 2007) and the LRAD projects on the Vaalharts Irrigation Scheme in the Northern Cape (Maisela 2007). The net result in many cases is under-utilisation of resources and minimal benefits for the group members. In a review of the available literature on group projects under restitution, PLAAS (2006) identified widespread problems of inadequate and inappropriate planning of resettlement projects, a chronic lack of support from state agencies and a general failure to make effective use of land for the benefit of group members. With regard to six detailed studies of restitution projects on agricultural land, the PLAAS study highlighted the lack of material benefits to members of community restitution claims:

> *The most striking finding from the case studies is that the majority of beneficiaries across all the restitution projects have received no material benefit whatsoever from restitution, whether in the form of cash income or access to land.* (PLAAS 2006: 16)

The CSIR review, which focused mainly on redistribution projects, found similar problems, and emphasised the inability of CPAs to manage their own affairs without external support:

> *"…CPIs do not have the capacity to undertake sound land management. A high number of CPI members are not receiving tangible benefits from CPI membership and this has and will lead to disillusionment with CPIs. … A major concern of this study is that DLA seem to have no long term commitment to assist communities in tenure management and consider their job completed once land is transferred to the CPI. DLA's core business cannot be only transferring land, but if it intends to achieve secure tenure rights for individuals within CPIs, then an ongoing departmental function must be about supporting group tenure systems and land administration."* (CSIR 2005: Executive Summary).

Such findings signal a systemic failure to adequately conceptualise property rights within group resettlement schemes. The provision of land in freehold title to a communal property institution is seen by policy makers as sufficient in itself, without regard to the means by which individual members might gain access to such land, safeguard their land rights over time and create functional institutions for the administration of common property. As shown by numerous studies, failure to give meaningful content to the rights and responsibilities of both individuals and the groups to which they belong leads not only to tenure insecurity but also to a loss of opportunities and material benefits that land reform participants anticipate. As Cousins and Hornby (2002: 1-2) argue:

> *"Securing tenure of individual members of CPIs, rests upon the clarity and accessibility of procedures for the assertion and justification of property rights and institutional mechanisms for realising and enforcing these rights".*

Without such procedures there is likely to be little tenure security and, as the studies cited here demonstrate, little or no material benefit either. There is clearly a need to revisit the policy framework for group resettlement, with particular attention to the means by which members gain secure access to land and its benefits, the type of development that is encouraged (be it household, collective or joint ventures with external partners) and the institutional arrangements for the provision of external support in the areas of both land administration and production.

The specific challenges within resettlement schemes must be seen within the wider context of how such schemes are designed and implemented – that is, how resettlement in its entirety is conceptualized. As argued elsewhere (Lahiff 2007), the ideology of 'willing buyer, willing seller' and 'demand led' reform based on the market not only absolves the state of responsibility for the outcomes of the land reform programmes but also effectively pre-empts key questions about the design of resettlement schemes that

ought to have been answered at the outset: notable among them the model of agriculture being promoted – individual versus collective, 'commercial' versus 'subsistence'. At the same time, major implications have flowed from interventions such as the imposition of orthodox models of farm planning where essential features – such as management skills, working capital and market access – are absent, the de facto prohibition on subdivision of land, and the failure to develop a comprehensive system of support to resettled farmers. Within this bewildering mix of state and market, individual and communal, tenure is deemed to have been secured by the granting of freehold title to legal entities representing groups of resettled farmers. The available evidence, however, suggests that the effective elements of tenure security – how individuals access and hold land – remain largely unresolved, whereas additional elements not generally considered as part of tenure reform have been introduced, notably the challenge of collective production and of holding community leaders accountable.

4. Conclusions

It is unlikely that tenure rights can be adequately secured within the existing quasi-collectivist models that have been established under land reform in South Africa. If form is to follow function, achieving tenure security must begin with a reappraisal of how the beneficiaries of resettlement wish to use and hold land. The formation of groups may well play a useful role in the initial acquisition of land, as collective action can potentially strengthen the hand of the poor in negotiations with land owners and state officials. It also appears that there is considerable popular support for ongoing 'public' or 'community' involvement in the allocation of land and mediation of disputes between neighbours or within families – as demonstrated with the communal areas today. Where there appears to little or no popular support is for collective forms of production. Collective farming has effectively been imposed as a result of land reform policy rather than arising as a spontaneous desire by intended beneficiaries themselves. Where collective production has been attempted, it has largely failed or has occurred in situations which do not actually involve collective use of land and can better be seen as joint business ventures.

The argument here is not necessarily for a more individualised approach in the sense of formal subdivision of land or registration of individual titles, but for a more balanced approach to group and individual rights, that would give less attention to formal ownership by the group and more to the means by which individual users and occupiers gain secure access to land and other natural resources.

To this end, resettlement should commence with an assumption that land use (i.e. production) will be individualised to a greater or lesser degree. Collectivisation of agriculture need not be ruled out, but should emerge only from a clear desire on the part of the beneficiaries rather than being imposed as a norm or as a condition of receiving land or supplementary grants. While the formation of groups may have value in the initial acquisition of land, it has to be asked whether they have an ongoing role once the initial allocation has taken place, especially if collective land use is not being considered.

Clearly, CPIs have a potential role in the management of communal resources, such as communal grazing lands, woodlots and the like, as they do in the older communal areas, but, as these areas show, this does not necessarily imply collective forms of production. A further question that arises is whether the group that is formed in order to acquire land (and which is typically shaped by the size and cost of the particular farm that is available for purchase, as least under the redistribution programme, and may lack any organic unity) is in the best position to manage such communal resources. Although the concept of community is prevalent across much of South African life, when it comes to the administration of land it coexists with other levels of authority, usually associated with the state. While this had some negative connotations, the idea that communities in publicly-funded resettlement schemes should be left entirely to their own devices does not appear reasonable, and does not appear to be what is demanded by most beneficiaries. The challenge, therefore, is to find a suitable balance between three levels – individual (or household), group and state – in a way that secures rights, promotes sustainable development and delivers benefits to individual members. This may imply a greater role for the state in the demarcation and allocation of individual plots, and in the administration of resettlement schemes over an extended period. This was the case in Zimbabwe from 1980 at least up to 2000, where the state retained ultimate ownership of land on resettlement schemes, and responsibility for group infrastructure lay with local officials, although agricultural production was in the hands of individual plotholders.

The CPI review carried out by the CSIR contained many useful recommendations, mainly connected with the need to formally specify the rights of members within group schemes and the provision of ongoing support by DLA.:

> *DLA's core business cannot be only transferring land, but if it intends to achieve secure tenure rights for individual within CPIs, then an ongoing departmental function must be about supporting group tenure systems and land administration.* (CSIR 2005: Executive Summary)

The CSIR report also calls for changes to the way resettlement projects are implemented, including changes to the grant size, subdivision of land, smaller groups, and separation of business entities from landholding entities. I would go somewhat further, and suggest the basic principle of acquiring and managing land as a group should be critically re-examined, and treated as one possibility rather than the normal way in which poor people gain access to land.

An alternative vision of tenure security within resettlement schemes should address five broad areas, as follows.

Land Acquisition
The state should play a central role in the identification and acquisition of land, and the initial allocation of individual plots, working closely with interested groups and individuals and encouraging self-organisation among intended beneficiaries.

Land Allocation

Land acquired should not be limited to individual farm properties, but should be greater or less than one farm where appropriate. Similarly, allocation of individual plots should not be overly influenced by existing farm boundaries. In other words, consolidation and subdivision of existing holdings should be facilitated in order to match demand. This should include options for low-cost surveying and support for allocation of rights to households for residential and cropping land, accompanied by low-cost registration of these rights, maintenance of decentralised land rights registers and support for dispute resolution. Systems need to be developed that allow for the entry of new members to group schemes, and the exist of old ones, so that the formal record corresponds as closely as possible to the situation on the ground.

Rights to individual plots

Rights to individual plots should vest in the approved occupiers, but not necessarily in freehold title which places full responsibility for maintenance of title on the plotholder, exposes them to the risk of forfeiture in the case of bad debts secured against the land and complicates the future re-allocation of land. A new form of leasehold may be required that allows nominal ownership to remain with the state for a period while vesting substantive rights in the occupiers. To protect the rights of women and other household members, land should be registered in the name of all adult members. The definition of occupier's rights and responsibilities, and the creating of an institutional framework that will actively support the rights of occupiers, should be the main focus of tenure reform in this area. There is a need for the development of a detailed, generic template as a basis for occupiers' rights under such circumstances, with provision for local adaptation, rather than expecting beneficiaries on every scheme to develop their own rules at the outset. Provision should be made for a transition to individual ownership at some future date, but this should not be seen as a necessary or inevitable outcome. Under this model, occupiers (effectively long-term tenants of the state, along Zimbabwean lines) are effectively independent of the group in so far as occupation and use of individual plots is concerned but are free to engage in collective forms of production or to cooperate in areas of common interest should they so decide.

Communal resources

Where it is appropriate to hold resources in common – perhaps in the case of grazing lands – this should be subject to decentralized (local) management, but not necessarily ownership. It might make sense for individual occupiers on a number of adjacent farms to share certain resources, and management should vest in structures representative of all the users, supported by state officials (as in the evolving models in the communal areas of Namaqualand, or as applied on former South African Development Trust lands in the past). Again, there is a need for a detailed generic template for land administration and land rights in these circumstances to serve as default until local modifications can be introduced by the users. This land could remain the nominal property of the state, as there is no compelling reason for transferring it in title to the group that manages it.

Collective agriculture

Specific provision should be made for resettlement schemes where there is a clear preference for collective land use, although this is likely to be in a small minority of

cases. If the resource is to be used collectively, or leased out for collective gain, then it makes sense that it be held collectively. If no individual use of land is envisaged, and this is accepted by the members of the group, then collective management of the resource *is* appropriate. As with other forms of common property, however, there will remain a need for external support to the group, both in terms of their business affairs and management of the collective resource and benefit stream. Again, it may be appropriate for nominal ownership of the land to remain with the state until the beneficiary group feels ready to take on this responsibility. Overall, however, a collective business venture – which, it must be stressed, is unlikely to be typical of land reform projects in South Africa - presents less of a challenge in terms of tenure reform than resettlement schemes based largely on individual (and possibly non-commercial) production, and may be better suited to outright ownership.

In summary, achieving tenure security on resettlement schemes, whether arising from the redistribution or restitution programmes, requires a reduced emphasis on ownership, a more active role for the state in the allocation of individual plots (and possibly as nominal owner of land where appropriate), development of a detailed generic template for protection of individual and group rights that can be modified over time, and a comprehensive support programme to resettled farmers. Without these measures, the land reform efforts currently underway are unlikely to lead to sustainable benefits for participants or significant reductions in rural poverty and inequality.

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