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LAND TENURE REFORM AND RURAL LIVELIHOODS IN SOUTHERN AFRICA

Martin Adams, Siphon Sibanda and Stephen Turner

This paper reviews land tenure reform on communal land against the background of the repossession of private land occupied by white settlers. The purpose and scope of the proposed tenure reform in the former homelands of South Africa are described, as well as the attempts by South Africa's neighbours to resolve tenure problems in the Communal Areas.

Policy conclusions

- The sensitivity and complexity of tenure issues and concentration on land redistribution have caused some governments in the region to neglect tenure reform.
- Land tenure reform must be built on a thorough understanding of the livelihood strategies of those intended to benefit. It should not be assumed that the inadequacies of tenure laws and/or administrative support constrain livelihoods in practice.
- Tenure reform measures for communal land should underpin the adaptability and responsiveness of existing customary systems and not constrain local coping strategies.
- Land tenure reform policy should be flexible and gradualist with regard to the role of traditional authorities.
- As far as possible, responsibility for land rights management should be devolved to the rights holders.
- Land tenure reform must pay special attention to the legal status and economic activities of women and the poor, who are often disproportionately dependent on the commons. Despite the complexities, tenure reform to sustain their access to the commons is essential.

- Land tenure reform is a time-consuming process requiring thorough public consultation and careful preparation. The necessary institutional development is likely to take decades. Long-term budgetary commitment is needed from governments and (political sensitivities permitting) from donors. External support is likely to be conditional upon appropriate constitutional and legal frameworks.
- To keep it in context, policy to reform land tenure must be developed alongside policies, resources and financial incentives to help the building of more sustainable livelihoods, including non-land based activities.
- Interventions may have to focus on the more densely settled areas and be phased to give priority to situations that are a direct threat to livelihoods or political stability.

What is land tenure reform?

Land tenure may be defined as the terms and conditions on which land is held, used and transacted. Land tenure reform refers to a planned change in the terms and conditions (e.g. the adjustment of the terms of contracts between land owners and tenants, or the conversion of more informal tenancy into formal property rights). A fundamental goal is to enhance and to secure people's land rights (Box 1). This may be necessary to avoid arbitrary evictions and landlessness; it may also be essential if rights holders are to invest in the land and to use it sustainably. In South Africa, tenure reform is a component of a national land reform programme which also embraces the restitution of land, to people dispossessed by racially discriminatory laws or practices, and land redistribution to the poor.

In southern Africa, tenure reform must address a range of problems arising from settler colonisation and dispossession. Many of the areas referred to as communal were deliberately created to further colonial policies. They served as reservoirs for cheap migratory labour. Proposals for the reform of customary systems must accommodate livelihoods that continue to be spatially fragmented. In South Africa and Namibia, a factor complicating attempts to dismantle the apartheid map is the complex and unstructured nature of the legislation governing the communal areas (CAs), much of which has yet to be repealed. The differing systems of property rights pertaining to private and communal land are a related problem.

Box 1. Land rights

Land rights may include:

- 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 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 community and/or individual levels; and
- linked to the above, rights to enforcement of legal and administrative provisions in order to protect the rights holder.

The dual racially-based system of land rights introduced by colonial regimes continues to prevail in southern Africa. Laws involving arbitrary racial distinctions have been repealed, but land in the former reserves continues to be registered in the name of the State. An ‘across-the-board’ conversion of subservient statutory rights (e.g. permits to occupy) into more secure property rights would not be possible. Overlapping rights and boundary disputes have to be resolved before land rights can be confirmed. Tenure reform must grapple with overcrowding in the CAs and overlapping land rights, as well as cases of exploitation by traditional leaders, officials and politicians and extortion by ‘warlords’. Finally, resources for establishing and/or revitalising land administration have to be procured from increasingly hard-pressed government budgets.

Over large areas, the State is the legal owner of communal land. This can be an opportunity or a difficulty, depending on how tenure reform is perceived to affect the interests of those with power and influence. Tenure reform often confers formal recognition on established occupants and/or resource users. The CAs where reform may be required are extensive **(Box 2)**.

A notable exception in southern Africa is Botswana, where considerable progress has been made through the integration of traditional tenure with a modern system of land administration for both customary and commercial forms of land use. The changes proposed in South Africa are consistent with the pragmatic and gradualistic approach recommended by Platteau (1996) that re-institutionalises indigenous land tenure arrangements (where appropriate), promotes the adaptability of existing arrangements and avoids a regimented tenure model.

Tenure reform in the context of land reform in the region

In all countries of southern Africa which have experienced enforced land alienation at the hands of Europeans, the repossession of alienated land by African citizens remains a central national and agrarian objective. Land acquisition for redistribution and restitution has been given priority. Tenure reform in the CAs has had to take second place to the redistribution of white farms. So dominant is the imperative to repossess land, that insufficient attention has been devoted to post-settlement planning and support. Thus the livelihoods and the land rights of incoming settlers have too often remained insecure.

Tenure reform is, in most cases, a complex and uncertain undertaking. The economic and other benefits flowing from it are difficult to predict, and the necessary administrative costs therefore difficult to justify. It invariably threatens powerful vested interests: land owners and commercial farmers on private land; and traditional leaders or other structures in the CAs. Yet, the costs of taking no action may be high. For local people, tenure reform may be a more acceptable and realistic measure than participation in some far-off government settlement project. However, measures to tackle insecurity of tenure in the CAs should not be seen as a substitute for land redistribution, but a complementary measure by which tenure reform can be linked to the acquisition and settlement of neighbouring private land.

A common dilemma is finding the funds for tenure reform. The funding of an effective system of land rights management is a precondition for securing the land rights of poorer citizens, both in the CAs and on private land. While communities can be expected to allocate their own resources for this purpose, government should ensure that adequate measures are in place to protect people from exploitation by elites. At the outset, when systems are being established, funds also have to be found for public information, the training of officials, community facilitation, dispute resolution, etc.

Box 3. Critical tenure-related livelihood questions

Given the inherent complexity of land tenure systems, the limited capacity of the State and the costs of 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: Is land ownership distinct from jurisdiction, i.e. is the tenant in a feudal relationship with the landowner? How is tenure reform linked to land reform in the wider sense? Do political conditions favour tenure reform? How effective is the administration of land tenure at national, regional and local levels?

Economic: How do tenure systems affect agrarian and other sources of production and income? What economic use is made of 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? How have indigenous tenure forms been affected by colonial and post-colonial laws? 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)

Sustainable rural livelihoods

The sustainable livelihoods framework put forward by Carney (1998) helps analysis of the strengths of particular systems of land tenure, and of their evolution (Box 3). The framework is useful when considering options for change and their likely impact on people's asset status. Their access to capital assets, including finance, land, natural resources and social capital, determines how and how far livelihoods can be enhanced. Where financial resources are lacking, social capital can provide the basis for a range of livelihood opportunities, including customary access to land and natural resources and opportunities for the poor to sell their labour.

For those relying largely on local rural resources for their livelihood, a secure place to live, free from threat of eviction, with access to productive land and natural resources are essential for rural livelihoods in the region. These elements are broadly located in the customary land tenure categories: 'the holding' and 'the commons' (Box 4). However, many people in the region continue to obtain their livelihood from places far apart. The reform of residential tenure may be more important for households whose main source of livelihood is pursued outside a rural area but who return regularly. Tenure reform in peri-urban areas becomes more important as populations migrate longer term to informal settlements, often on communal land (Box 5). The poorest households may not be involved in migratory labour and may benefit more from the reform of tenure arrangements for arable land and the commons in the village-homestead setting. In all these cases, tenure security, sustainable economic opportunities and good governance are the components that tenure reform should aim to deliver.

Box 4. Customary tenure categories and rural livelihoods

Most African landscapes can be divided into two broad categories: '**The holding**': land possessed and used relatively exclusively by individuals or households for residential, farming, or some other business activity;

'**The commons**': land shared by multiple users for grazing and for gathering veld products (fuel, building poles, medicinal plants, etc.) may be broken down into:

Controlled access – 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'.

NB The 'holding' may be part of the 'commons' during the dry-season grazing period.

The case for tenure reform in the Communal Areas

A major dividing issue has been the relative merit of indigenous customary tenure systems and those based on western concepts involving the registration of individual ownership. In the 1980s, the policy debate on the individualisation of tenure focused on economic development. In the 1990s, the focus has turned to the sustainable use of land resources.

Both of these arguments tend to underestimate the importance of customary land tenure systems, which are an integral part of the social, political and economic framework. Above all, they overlook the unintended effects of undermining land tenure systems, which protect poor and vulnerable members. They also tend to disregard the empirical evidence that traditional tenure systems can be flexible and responsive to changing economic circumstances. With population pressure and commercialisation, individualisation has occurred autonomously (Migot-Adholla et al., 1994).

The case for government intervention undoubtedly varies greatly throughout southern Africa. The extent to which rural people are able informally to adjust tenure to suit their livelihood purposes is likely to depend on the extent to which land rights have been disrupted by past interventions and by enforced overcrowding under colonial and apartheid regimes. In parts of South Africa, the 'informal' situation on the ground is getting out of hand and effective reform is urgently needed. On the other hand, in rural Lesotho where there are more modest expectations about official systems and the rule of law, all kinds of arrangements are made and informal tenure systems are not a significant constraint on rural livelihoods, though they are on urban and peri-urban ones. There is need for more information about how people around the southern African region are 'muddling through' and how functional or dysfunctional each situation is.

There are undoubtedly 'tenure hot spots' where, if the rights of the more vulnerable members of society are to be protected, change must not be allowed to take place in a legal and administrative vacuum. Moyo (1995) describes how, in Zimbabwe, competing and ineffective attempts by both government and NGOs, frustrated by weak local administration and disingenuous central government interventions, have failed to resolve land tenure problems in the absence of constitutional and legal principles governing land in the CAs. Studies in South Africa demonstrate the increasing breakdown of customary management arrangements and the often dysfunctional mixture of old and new institutions and practices. People are often uncertain about the nature of their rights and confused about the extent to which institutions and laws affect them. Matters are further clouded by local and national political conflicts over land management roles in the CAs and by continuing corruption. Tribal commonage is passing to open access and rights to homestead plots and fields are increasingly insecure. Studies in the Eastern Cape have shown that productive small farmers wishing to expand have faced increasing difficulties in borrowing under-utilised arable land from others who are fearful of not getting it back. There is an increasing area of potentially productive land that is not used.

Tenure insecurity is most acute among those using land to generate income, especially women. Profit making from agriculture and small business activity in the CAs 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 for many (Cross, 1998). In peri-urban areas in southern Africa the land market is open to exploitation by unscrupulous administrators and chiefs who sell off communal land, which brings them into conflict with adjacent urban councils.

Box 5. Tenure needs in informal settlements on communal land

Individual family needs include: assurance that they will not be evicted without compensation; assurance that they can improve their house to protect themselves against weather, thieves, etc; assurance that their children can inherit the property; the ability to sell or otherwise transfer the property; the ability to borrow money using the property as collateral; a reduction in property related disputes; properties to be serviced with such things as water, electricity and the upgrading of roads; and an inexpensive and easily accessible system of administering property rights.

The government needs the system to be: nationally uniform and sustainable; a basis for implementing local taxation, land use and building control and for the provision of infrastructure; a flexible means of administering property rights, e.g. the ability to accommodate individual and group rights, the rights of the middle class, business and poor people; a basis for land titling which is accessible, user-friendly, not perceived as inferior, and capable of upgrading to freehold; a basis for delivering social justice in relation to land reform and resource allocation.

(based on Alberts et al., 1996)

In South Africa, private investment projects on State Land, part of the government's Spatial Development Initiatives, have been delayed two years because of uncertainty over land rights. While local communities demand the recognition of their rights and wish to enjoy some of the benefits – instead of being just landless employees – potential investors require the assurance that their investments will be secure. Throughout the former homelands, agricultural, forestry and eco-tourism projects are on hold because it is not clear who can authorise such developments to proceed, or who should benefit. Currently, proceeds from the sale or lease of nominally-owned State Land must go back to the State treasury.

Box 6. Benefits of tenure reform in the rural CAs of southern Africa

Tenure reform can contribute to economic development and sustainable livelihoods by strengthening rights in the CAs, by removing uncertainty, and by encouraging:

actions by rural households to: increase production of agricultural goods; lease, rent and share crop land; manage and use natural resources for household provisioning (food and fuel), medicinal plants, craft production, building; invest in local economic development via small enterprises; participate in development projects jointly with private investors; adopt peaceful and legal means for resolving land related disputes rather than resort to land invasion and violence;

actions by government at different levels to: provide infrastructure and services, and invest in development projects, particularly housing; and, on the understanding that their investment is secure, encourage **actions by the private sector**, to invest in eco-tourism, forestry and agricultural projects.

Tenure reform in southern African – country case studies

South Africa, Namibia, Zimbabwe and Swaziland, countries of widespread settler colonisation, encounter tenure problems different from those in Botswana and Lesotho, which have profited from a more flexible and gradualist approach with regard to the role of the traditional authorities.

South Africa: The Restitution of Land Rights Act was the first law to be passed after the elections in April 1994. Land redistribution kicked off promptly in late 1994 with a national pilot programme. By early 1999 some 35,000 households had acquired rural land in the former white areas by means of government subsidies. The government has introduced tenure reform primarily on privately held land. Land tenure reform in the CAs has lagged behind.

In 1996, the Interim Protection of Informal Land Rights Act was passed as a short-term measure to protect people with informal rights and interests from eviction, until more comprehensive tenure legislation, i.e. the Land Rights Bill (DLA, 1998) was in place. The Bill aims to provide for far-reaching tenure reform in the rural areas of the ex-homelands by repealing the many and complex apartheid laws relating to land administration, by recognising customary tenure systems and by bringing tenure law into line with the Constitution. The full text of the draft bill has yet to be published for public comment. The Bill is expected to benefit four to five million black households by providing for a broad category of protected rights holders who have established occupation, use or access rights to land. It will provide for the transfer of property rights from the State to the de facto owners and devolve land rights management to them. Rights would be vested in the people, not in institutions such as traditional authorities or municipalities. The proposed law would recognise the value of both individual and communal systems and would allow for the voluntary registration of individual rights within communal systems. Where rights exist on a group basis, they would have to be exercised in accordance with group rules and the co-owners would be able to choose the structures which manage their land rights. The envisaged law would be neutral on the issue of traditional authorities, supporting them where they were popular and functional, and allowing people to replace them elsewhere.

The law would address the apartheid legacy of over-crowding, overlapping rights and increasing land-related conflict by providing for additional land as well as dispute resolution in the event of overlapping

rights. It would provide for new government functions to support implementation – principally statutory Land Rights Boards located at district level, comprising traditional leaders and municipal councillors and other nominated members. Government-employed Land Rights Officers would ensure that decisions relating to land rights were taken in accordance with the law. The costs of the programme would be of the order of US\$5.0 per household per year. In terms of the positive impact on household income and on economic growth generally, the economic benefits of the proposed reform are expected to far outweigh the costs.

Namibia: As in South Africa, the need to resolve tenure problems in the CAs, particularly in informal settlements, has been overshadowed by a debate about the restitution of ancestral lands and the redistribution of white-owned ranches. Namibia is a sparsely populated arid country, about 44% of which is made over to freehold, fenced ranches, mainly white-owned in central and southern Namibia. Another 43% of Namibia is communal land, most of it unsurveyed and unfenced, mainly in the fertile north of Namibia. The more fertile land to the north, where at least half of the population lives, was not occupied by white settlers. Pastoral and mixed farming systems remained more or less intact, but the CAs in the north were seriously disrupted by the war preceding independence.

On coming to power in 1990, the SWAPO government announced its intention of transferring land to the landless majority but agreed to a constitution in which the property of citizens could not be taken without ‘just compensation’. With the support of the opposition, it conducted a national consultation on the land question, culminating in a National Conference in Windhoek in June 1991. Broad agreement was reached that the restitution of particular areas of land to specific tribal groups was not feasible because the land used by the various pastoral groups had overlapped for centuries and could not be identified with accuracy. With regard to the inequity of freehold land ownership, the meeting recommended that foreigners should not be allowed to own farms, that absentee landlords should be expropriated and that ownership of very large farms and/or several farms by one person should not be allowed.

Almost half the meeting’s recommendations relate to the resolution of land-related issues in CAs: *inter alia* the need to guarantee land to local people; 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. Neither the national conference nor the briefing papers by NEPRU (1991) gave guidance on the options for a future land tenure system.

In the years following the conference, land reform received little attention. The Ministry of Lands, Resettlement and Rehabilitation (MLRR) remained weak. Contrary to the recommendations of the conference regarding the fencing of grazing in the CAs, the Ministry of Agriculture (MoA) went ahead with a credit scheme to help farmers subdivide the communal land.

In 1995, shortly before the general election, the Agricultural (Commercial) Land Reform Act was hurried through. It provided for the acquisition of excessively large, under-utilised and foreign-owned freehold farms for redistribution, but with inadequate attention to how they should be identified or settled.

Unlike this Act, the National Land Policy and the proposed legislation for the CAs have been through a process of public consultation. As Werner (1997) observes, the Communal Land Bill touches on issues that are sensitive among a large and powerful rural constituency, including traditional leaders and the Ovambo people who have their roots in the relatively densely populated CAs in the north and provide the bulk of SWAPO support.

Namibia has been slow to respond to the need for tenure reform. After several years, the Communal Land Bill has still not been gazetted. It is expected to provide for the establishment of Regional Land Boards and define local powers in relation to the CAs. It remains to be seen whether the Bill will provide for tenure reform in peri-urban areas in the northern CAs, where the resolution of tenure problems is most pressing, and whether resources for its implementation will be forthcoming.

Box 7. Zimbabwe: Cabinet's response to the Rukuni report

Cabinet accepted the advice that the communal land tenure system be maintained, and that legislation should be amended to accommodate existing practices, including the inheritance of land rights. It did not accept that the State should relinquish de jure ownership of communal land, but agreed that village communities should instead have perpetual usufruct. Cabinet accepted that authority to administer land should be shifted from the VIDCOs to a formal local land, water and natural resources board, to be elected by the village assembly. Members of traditional villages, under a traditional village head, would be recognised as the basic unit of social organisation in the CAs. Cabinet also supported the proposal that village boundaries be surveyed to minimise boundary disputes, that Land Registration Certificates be issued to households for all arable and residential land, and that village grazing be held in trust by the kraalhead.

Zimbabwe inherited a highly skewed pattern of land distribution, with 1% of farmers holding nearly half the available agricultural area and the bulk of the fertile land. How far the tenure system in the CAs is indigenous or was created by the colonial government, to facilitate indirect rule, has been much debated. It is clear, however, that governments have periodically interfered with it, transferring 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 (Government of Zimbabwe, 1994) that this should be reversed (Box 7). However, the recommendations on the CAs that were endorsed by Cabinet have yet to be followed through. The resources needed for the formalisation of village boundaries have yet to be made available.

A solution of the tenurial (and potential degradation) problems of the CAs is inseparable from an extensive programme of land acquisition and resettlement of adjacent private farms. But the proposed resettlement raises concerns about the tenure security of the many farm-worker families already living on commercial farms. The current (late 1998) controversy surrounding land acquisition has not been favourable to the search for integrated solutions.

Systematic research on resettlement schemes has established that the performance of small farmers has generally been good, both in terms of farm production and household income. Incomes have been higher than those left behind in the CAs. The tenure rights of settlers have, however, remained weak. In recent years, the system of settlement permits has fallen away. Names have simply been entered in a scheme register, with no record being given to the settler. The Cabinet accepted the advice of the Rukuni Commission that long term leases (minimum of 10 years with options to purchase) be issued to settlers. This proposal has yet to be introduced leaving settlers with no legal rights to remain on the schemes.

Swaziland: Since the settlement following the Anglo-Boer war, a central objective of the Swazi monarchy has been the return of land lost through alienation to settlers. At the beginning of this period, Swazis held only one third of the land. By the 1980s they held two thirds. It had been repossessed with funds raised by taxes on Swazis and with grants from the UK. Land which has been acquired in this way is held by the king ‘in trust for the nation’.

There are two main types of land tenure in Swaziland: freehold or Title Deed Land (TDL) and Swazi Nation Land (SNL). This can be subdivided into: land held under customary tenure, which may not be sold, mortgaged or leased and is under the control of the chiefs; and land which is leased, or held in trust by private companies controlled by the monarch. As Levin (1997) points out, there is considerable ambiguity surrounding the legal definition of Swazi Nation Land. In his carefully documented study of land tenure in Swaziland, he charts a history of depressed peasant farm production, exploitation – particularly of women – and forced removals on SNL, with the tacit support of those in power. He argues that, while in the abstract, ‘communal tenure’ may have allowed for democratic involvement, in the tribal context it has proved a misnomer because it conceals the power relations which underlie it and control land use and allocation.

Guarded steps – in the Swazi tradition of gradual adjustment – are being taken to move forward from this feudal position. Whether or not the recent draft National Land Policy, including its thinly disguised proposals for reining in the powers of the chiefs, will be accepted by the monarch is not clear. Much will depend on progress with wider democratic reforms in the Kingdom. In this respect, the Swazi Administration Order of 1998, which extends the sentencing powers of the chiefs, is a setback. It reinforces the link between land ownership and jurisdiction.

Lesotho: The ‘Mountain Kingdom’, a constitutional monarchy, suffers from an acute shortage of arable land. By 1986 it had shrunk to 9% of the land area and 25% of the rural population were landless. Taking into account continuing peri-urban sprawl and soil erosion, the arable area must now be far less. Claims for the restitution of ancestral lands pose international relations problems, since they fall in South Africa.

Land is owned by the ‘Nation’. Tenure reform is the subject of debate between those in favour of the traditional system and modernists who believe that land should be tradable. Box 8 sets out the former view. In line with the Land Act, 1979, all land in urban areas is eventually to be converted to leasehold at the point of transaction. Urban leases are allocated by committees appointed by the Minister of Local Government (with the exception of the Principal Chief who takes the chair). Rural land is allocated by each of the 1,600 Village Development Councils, comprising the chief of the area (ex officio) and seven

other members, elected in a public meeting. Lesotho has moved one democratic step beyond Swaziland. Chiefs are no longer alone responsible for land allocation.

Box 8. Land in Lesotho – some basic principles

- (a) Access to land is a birthright of the Basotho people.
- (b) Land shall remain inalienably vested in the Basotho nation, administered by the State for the Basotho people.
- (c) The provisions for a leasehold system established in the Land Act 1979 and subsequent legislation are currently sufficient for Lesotho, and an adequate basis for improved land use and agricultural and rural development.
- (d) 'Freehold tenure', as such, may not be necessary at the present time.

Source: UNDP (1993)

The Land Act of 1979 introduced the principle that, while land in urban areas should be in the form of leasehold, land in rural areas, with the exception of residential and commercial land should remain 'under allocation', although provision was made for voluntary conversion into agricultural leases. In addition, the inheritance rules were modified for arable land, giving stronger rights to individual families.

In 1987 a Land Policy Review Commission was established to investigate and review land tenure and land administration and advise on necessary legal changes. Although some deficiencies highlighted by the Commission were rectified, the legal, policy and institutional frameworks have not been modified. Solutions await a wider political settlement within the country.

Botswana: In Botswana freehold land covers only about 5% of the land area. It originated in the colonial period and still offers the only exclusive rights of agricultural use in Botswana. Tribal land comprises about 70% of the total land area. However, government continues to make purchases to augment tribal land as freehold becomes available.

The Tribal Land Act of 1968 transferred the authority over land from the chiefs to Land Boards, with the aim of reducing discrimination between tribes. District Land Boards were placed under the nominal political direction of the District Councils and comprised representatives of both traditional leaders and councillors. Freehold titles, originally granted by the Protectorate Government to European farmers, were excluded from the jurisdiction of the Land Boards.

The conditions endured by farm-workers employed on freehold farms and cattle posts in the CAs are

reported to be miserable. Many of them are drawn from the Basarwa (San or Bushmen) who have been consistently denied their traditional rights by other races occupying their ancestral lands. This failing apart, the land policy that has been pursued by Botswana may be described as one of careful change, responding to particular needs with specific tenure innovations (Box 9).

Box 9. Botswana's customary land tenure system

The Tribal Land Act, 1968, provided for the establishment of representative Land Boards and transferred all the land-related powers of chiefs to these. The functions of the boards include the allocation of land; imposing restrictions on the use of land; authorising change of use and transfer; and the resolution of land disputes. Tribal land belongs to the people. Individuals are granted rights to use some parts of the land. It may be held by the Land Boards, or by individuals or groups as customary grants, or under leasehold. The land may also be allocated to the state for public purposes. Although land holders do not 'own' land, they have exclusive rights to their holdings which can be fenced to exclude others. Grazing land and land not yet allocated are used communally. The Land Boards grant land rights under both customary and common law.

The holders of **customary rights** for residential and ploughing purposes enjoy a variety of rights guaranteed by a **customary land grant certificate** which are exclusive and heritable.

Common law leases for non-customary land use (i.e. residential, commercial and industrial) are limited in time and subject to eventual reversion to the community. They can be registered under the Deeds Registry Act and are mortgageable and therefore transferable without the Land Board's consent.

Key changes which have been introduced since 1970 include: the exclusion of other people's animals after harvesting and the fencing of arable lands; relaxation of the restrictions on land allocation to allow independent allocations of land to all adults; the charging of a price (agreed between seller and buyer) for transfer of developed land; the introduction of common law residential leases for citizens, foreign investors, commercial grazing, and for commercial arable farming.

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Martin Adams is an ODI Research Associate currently based at the Department of Land Affairs, Private Bag 833, Pretoria 0001, SOUTH AFRICA. [Email: madams@sghq.pwv.gov.za](mailto:madams@sghq.pwv.gov.za)

Sipho Sibanda is Director of Land Tenure Reform Policy for the Department of Land Affairs, Private Bag X833, Pretoria 0001, SOUTH AFRICA. [Email: ssibanda@sghq.pwv.gov.za](mailto:ssibanda@sghq.pwv.gov.za)

Dr Stephen Turner is with the Natural Resources Management Unit, Vrije Universiteit Amsterdam, and is currently based at the Programme for Land and Agrarian Studies, School of Government, University of Western Cape, Private Bag X17, 7535 Bellville, SOUTH AFRICA. [Email: sdturner@iafrica.com](mailto:sdturner@iafrica.com)

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**Overseas Development Institute
Portland House
Stag Place
London SW1E 5DP, UK**

Telephone +44 (0)171 393 1600

Fax +44 (0)171 393 1699

Email: nrp@odi.org.uk



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