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TITLE : WADING IN: THE REALITIES OF LAND TENURE REFORM IN THE COMMUNAL AREAS OF THE EASTERN CAPE PROVINCE, SOUTH AFRICA.

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Abstract

The African National Congress (ANC) government's Land Reform Programme, as articulated in the 'White Paper on South African Land Policy' of 1997 (DLA 1997), has moved beyond debate and policy formulation to actual implementation. As a key agent of change in these land reform processes, the policies and actions of the state will remain the subject of on-going, critical analysis. The aim of this paper is to examine the usefulness of those areas of tenure reform policy which appear to draw on insights from models of common property systems. The paper explores how closely conditions in the 'communal' tenure areas in the Eastern Cape approximate 'functioning' common property systems and how useful it is to use common property models as a basis for policy-making and tenure reform interventions in these areas. In examining these issues, the paper looks at one of many cases of 'spontaneous' land reform taking place in the province, with a view to offering insights into the likely effects of implementing land reform policies on social relations and resource management systems in rural areas subjected to 'communal' land tenure systems. It concludes that while the circumstances that prevail in these areas bear some resemblance to models of common property, few of management features of common property systems seem to have persisted in these areas.

1. Introduction

With the publication of the government's 'White Paper on South African Land Policy' (DLA April 1997), the land reform programme has moved from being primarily a debate and policy formulation exercise to a programme of implementation and action. The 'White Paper' itself is the 'culmination of a two and a half year process of policy development, consultation and lessons from early implementation' (DLA 1997:v). Briefly, what are the central motivations for adopting a land reform programme in South Africa? Government policy stresses that land reform must address:

- * the injustices of racially based land dispossession of the past
- * the need for a more equitable distribution of land ownership
- * the need to reduce poverty and to contribute to economic growth
- * security of tenure for all
- * provide a system of land management which will support sustainable land use patterns and rapid land release for development (DLA 1997:7).

These multifarious objectives make it patently clear that the land reform programme is expected to fulfil a wide range of social, political and economic goals. As the literature on international experience in land reform amply demonstrates, actual processes of land reform are likely to be drawn-out, 'messy' and to have a number of unintended consequences. In most cases, they are also likely to create complex new arena for contestation between the various 'stake-holders' involved in processes of accumulation around land and rural resources.

2. Government policy on land redistribution and tenure reform

The overall vision of the Department of Land Affairs is 'a land policy and land reform programme that contributes to reconciliation, stability, growth and development in an equitable and sustainable way' (ibid). To realise this vision, the Department has designed a land reform programme that has three main thrusts: land restitution (which will not concern us here), land redistribution and tenure reform.

The **land redistribution** thrust 'aims to provide the disadvantaged, the landless poor, labour tenants, farm workers and emerging farmers with access to land for residential and productive purposes in order to improve their livelihoods and quality of life' (DLA 1997:9,38). Redistributive land reform will take place on the basis of 'willing-buyer willing-seller' land purchases, with the government assisting 'in the purchase of land, by making land acquisition grants available (set at R15 000-or close to US\$3 000-per household) and by supporting and financing the required planning process' (ibid:38).

Given that the Bill of Rights in the (recently adopted) Constitution guarantees existing property rights, critics have argued that the land redistribution programme has fallen victim to the neo-liberal economic paradigm that is contained in the government's growth, employment and redistribution (GEAR) economic strategy.¹ What this means, they argue, is that fiscal constraints will make it very difficult for the government to achieve the goal it set for itself of

¹ Critics have styled this strategy as nothing other than 'self-imposed structural adjustment' which embraces wholesale liberalisation of what are still relatively uncompetitive South African industries, a scenario that may slow economic recovery and result in increased unemployment.

redistributing 30 per cent of the land within five years. Government has admitted that this goal is unattainable given the many constraints it faces and the complexities of the task at hand.

The 'White Paper' recognises that the **tenure reform** thrust will involve the particularly thorny issues of attempting to change or formalise entire systems of land holding and forms of land ownership. This will of necessity entail 'social engineering'-type interventions that are likely to have far-reaching socio-economic and political consequences. Government has committed itself to supporting and developing a range of tenure options, including group based and individually based ownership systems, from which people can choose.

A central component of the tenure reform programme will be the development of mechanisms for upgrading *de facto* vested interests in land into legally enforceable rights (DLA 1997:64). This will include a 'rights enquiry process' that will ascertain and assess all current and overlapping vested interests (rights) in land. The key proviso is that all tenure systems must be consistent with the Constitution's commitment to basic human rights and equality. Despite these guidelines, there are fears that as pressures mount for 'delivery' to be stepped up before the 1999 elections, government officials -and contracted facilitators-involved in land reform may be pressured into neglecting the critical processes of consultation, facilitation and 'capacity-building' around tenure reform interventions.² It is particularly in projects that involve the granting of group rights to land, that any curtailment of these processes will seriously jeopardise the long-term chances of success.

3. The official take on 'communal' tenure systems

Our interest in this paper is with the conceptual thinking encapsulated in the official discourse on communal tenure systems. These systems are discussed in considerable detail in the 'Green Paper on South African Land Policy' (February 1996), and much of the discussion below will draw on the arguments which were first presented in the 'Green Paper' and subsequently summarised in the 'White Paper'.³

² The 'White Paper' also recognises that the land redistribution programme is not without environmental risks [and that] one of the challenges of land reform is to relieve land pressure without extending environmental degradation over a wider area.'

³ The 'Green Paper' was the government's discussion document which preceded and informed the 'White Paper'.

The following are verbatim excerpts from the ‘Green Paper’ (DLA 1996) :

“Historically, land in the former homelands was held communally in terms of customary law. This land was held in trust and administered by traditional authorities on behalf of the community.....[Q]ualified landholders within the communal tenure system often enjoyed highly secure tenure rights to land for a home and to plots for crop farming, and had rights to graze livestock on community commonages. Communal tenure typically prohibited alienation of land rights through sale, particularly to persons from outside the local community. The powers of traditional authorities were generally limited toallocation of land rights and mediation of disputes..... Communal tenure systems had provided secure access to land for millions of black South African families [although women could not hold land in their own right]. However, post colonial and apartheid government laws and policies as well as pressure on land availability contributed to growing disorder in communal land allocation and management systems throughout the country, resulting in widespread tenure insecurity. The reasons for this include the forced relocation of millions of black South Africans into the former homeland areas, resulting in severe overcrowding.....The combined effect of overcrowding and administrative disorder is that many landholders under communal tenure are vulnerable to arbitrary loss of rights, to the sale of common lands historically used for grazing, and to other practices that result from tenure insecurity. Communal tenure systems have become increasingly informal, unsystematic and localised (DLA 1996:21,22).

‘For many communities, communal tenure is likely to have continued relevance because it provides access for the poor to land for residential and agricultural purposes, at little or no cost, and as a social right. Systems of communal land tenure, by providing low-cost and secure access to land, can make an important contribution to land reform and poverty alleviation in many parts of the country (ibid:45).

‘Legislation aimed at the privatisation of communal land was based on the belief that the communal use of resources, especially grazing, leads inherently to overuse and to land degradation and that both these problems would be solved by converting unalienable communal rights to individual freehold rights...[The ‘Tragedy of the Commons’] has been used to argue against land redistribution to common property institutions on the grounds that groups are unable to enforce rules and that individuals have no incentive to invest in land improvements because they cannot exclude ‘free riders’.....[R]esearch has shown that open access in common property tenure tends to result from pressure on resources such as population increases, technological change and a decline in the authority of traditional management.....[I]n order to conserve environmental resources, circumstances and conditions of use permitting ‘open access’ should, as far as possible, be avoided (DLA 1996:48-49).

‘In many settings, the individualisation of common property resources would further marginalize the poor. It may be more appropriate in such cases to help repair or construct local-level systems of rules that govern access to communal resources and regulate levels of use, so as to ensure social stability and sustainable management’ (Ibid:50).

The ‘White Paper’ (DLA 1997) also stresses the social ‘safety net’ functions of the communal tenure system, but makes the following observation :

‘Many communal systems are suffering from internal breakdown. Individuals flout group rules and there is [sic] no means to discipline them, partly because of legal uncertainty in respect of the status of the group’s rights, partly because old authority systems have broken down and there is nothing legitimate with which to replace them....Communal ownership of land needs.....legal and administrative support to enable it to function effectively’ (DLA 1997:32).

Discussion

The excerpts quoted above indicate how strongly the authors of government policy on the dynamics of communal tenure areas have drawn on the concepts and insights generated by common property theory.⁴ But as some of the excerpts also indicate, the authors are aware of the ‘internal breakdown’ that characterises many communal systems and the fact that these systems often have more in common with situations of open access than with ‘functioning’ common property systems. This tension, of supporting common property models which are inherently more welfarist and supportive of the vulnerable categories of rural dwellers (than individual ownership models) on the one hand (see DLA 1997:33), and of recognising the overall ‘uncertainty and informality’ of land and resource management that exists in these areas -and that are a potential weakness of these systems- on the other hand, permeates much of the policy thinking and planning for communal areas.⁵

In this regard, it is worth noting Li’s (1996:504) argument that much of the common property literature constitutes an ideological project to influence a diverse audience of scholars, policy-makers and others in national and international agencies, by challenging the currently dominant neo-liberal discourse that advocates a shift towards ‘more efficient’ private property management systems (also see Mosse 1997:468; Peters 1994:3). In pursuing this objective, simplified representations of what are essentially ‘fragile’ (see Ostrom 1990:178) common property systems and rural ‘communities’, particularly when deployed in a macro policy context, can be more effective than emphasising the ‘heterogeneous, factional and stratified nature’ of these communities (Li 1996:504). I share Li’s concerns and suggest that it is

⁴ It is particularly in their challenging the ‘tragedy of the commons’ argument (the latter put forward by (white) agricultural organisations in their submissions during the consultative process around land reform policy formulation), that the authors take up a position that endorses common property systems.

⁵ The Communal Property Association model proposed by the DLA represents a concrete endorsement of the usefulness of common property systems (DLA 1997:66). Another tension that permeates the ‘White Paper’ is the need to co-ordinating overall, national policy and the desire to be sensitive to local needs; of setting national parameters, particularly in terms of notions of fairness and equity in respect of land access on the one hand, and allowing ‘local people’ to exercise their own choices in these matters on the other.

important to recognise and differentiate between the *ideological*, *theoretical* and *practical* ways in which common property systems are discussed and put forward as potentially suitable models for specific instances of resource management.

With respect to the appropriateness of applying elements of common property theory to the land reform policy, I argue that the proposed emphasis on rebuilding local institutions to administer common property systems may prove to be costly and ineffective (socially and ecologically) in the long-term, particularly if the state continues to lack the capacity (as is likely) to support and regulate (police) these systems. Critically, due and equal consideration needs to be given to developing outward and upward linkages between statutory and local ('informal') institutions at different levels. Devising effective ways of 'nesting' the various institutions involved in land administration and resource management is likely to remain as elusive as ever.

The goal of upgrading tenurial rights in communal areas, will require the identification and formalisation of the rights of land holding groups -including the complexities of the commitment to family-based land ownership. Despite a commitment to new forms of ownership that are flexible and can accommodate change over time, the processes involved in upgrading tenure may *in practice* result in the 'framing' of a snapshot of the circumstances that prevail in specific communal areas. This 'framing' will result from attempts to institutionally and legislatively circumscribe and legally define the membership and spatial parameters of specific administrative areas and resource management systems. One (unintended) consequence of this may well be to rob these systems of their social and environmental flexibility or 'fuzziness' that is key to enabling them to support large numbers of poor people and to their underpinning rural and urban accumulation strategies (see Ng'weno 1996).

4. How does this 'official' view of communal tenure compare with the situation in parts of the Eastern Cape ?

First, it is important to recognise -as indeed government policy does- that there is considerable variability on the ground with respect to social, institutional and ecological conditions in rural areas under communal tenure systems. This is the case both on a national scale and at the provincial level, where, for example, the authority of 'traditional leaders' may vary from place to place: in the former Transkei section of the Eastern Cape, chiefs and headmen generally exercise more authority over communal land allocation and management than in most areas of the former Ciskei bantustan section.

Second, much of the land-use in communal areas of the Eastern Cape takes place at a subsistence, and in some drier areas, sub-subsistence level. There are numerous reasons for this, among them the neglect suffered by black agriculture under the apartheid regime and the migrant labour system which depletes rural areas of their labour supply, but the implication of this is that the livelihoods of the vast majority of rural people are *not* tied to production off the land. Rather, to buffer themselves against the risk in uncertain agrarian, socio-economic and political environments, rural people adopt multiple livelihood strategies that allow them to diversify their sources of income (Ainslie 1998:43).

This is in contrast to the situation in many other sub-Saharan countries⁶ where, despite widespread urbanisation and economic integration, the rural population is still heavily involved in agrarian production. While communal land in the Eastern Cape undoubtedly still has potent symbolic and social value (especially for residential purposes), the decreased dependence of people on the productive value of the land has also contributed to an overall decrease in their incentives to engage in 'community' level resource management practices.⁷

Third, in rural areas of the Eastern Cape, marked socio-economic stratification appears to be widespread and it is argued that 'rural communities are fundamentally heterogeneous in nature' (May et.al. 1995). De Wet (1995:57) lists a number of factors that may contribute to this situation: the local economic role of remittances from relatives employed in urban centres, the payment of old age and disability pensions by the state, the domestic cycle of households, differential education levels, the length of residence in an area, access to arable land and livestock, as well as access to political and bureaucratic power and patronage. In the face of a decline in the authority of local institutions, this stratification has a critical impact on the ways in which the allocation and use of rural land resources are negotiated, and in many cases, contested by various sections of the 'community.' These processes tend to impact negatively on the 'fairness' with which the (nominally) common property system works in practice.

Fourth, 'robust' institutions, a feature of 'long-surviving, small-scale' common property systems (Ostrom 1990:88-102), are virtually absent in the former bantustan areas of the Eastern Cape. In some areas, this dates back to the mid-1850s, when the indigenous institutions involved in land administration in these communal areas of the Eastern Cape began to be 'integrated' into the legislative frameworks of the colonial and apartheid state. Significantly, however, the inability of the state to entirely supplant pre-existing, local forms of institutions engaged in land ownership and management has had the effect of fostering the

⁶ And elsewhere in South Africa, for example parts of Kwazulu/Natal province, which enjoy a higher rainfall.

⁷ The livelihoods of the poorer sections of rural dwellers remain closely tied to the exploitation of the natural resources on the commons (Ainslie 1998).

existence of layers of ‘informal’ or ‘unofficial’ systems. This state of affairs allows rural people to circumvent the (weak) statutory institutions and to pursue alternative strategies concurrently or sequentially to achieve their particular objectives in relation to institutions engaged in land management (see Ainslie 1998:87-122).

Fifth, common property systems in the Eastern Cape have been rendered vulnerable by increased demographic pressure (cf. Ostrom 1990:220). Increased population densities tend to create competition and tensions that cannot easily be resolved with the institutional mechanisms in place. A related factor is the penetration of market linkages that result in the commercialisation of resources and pressures for privatisation. Market linkages act together with increased population mobility, including practices such as labour migrancy, to remove economically active people from rural areas, blur the criteria for membership of common property systems and negatively affect efforts aimed at collective resource management in rural areas. The spread of markets also tends to accentuate rural socio-economic stratification. The growth of rural people’s reliance on the disbursement of pensions by the state tends to act as a disincentive to collective action.

Furthermore, since social and moral values must constantly adapt to dynamic, local social and economic circumstances (such as a large influx of people into the area), most categories of rural people are likely to resist outside attempts to codify and standardise land tenure matters, although changes towards codification will suit certain categories of residents. Instead, the aggregate of rural people in communal tenure systems are engaged in activities aimed at retaining *local* autonomy and dynamism, in short flexibility, in matters relating to land and natural resource management. This is not least because of the extensive rural-urban linkages that exist throughout the Eastern Cape which bind people in rural areas to those in urban centres and vice versa. Urban-based people of rural origin typically continue to enjoy, despite long absences, all the rights to land and resources as those who remain in the rural village. As Cousins (1993:37) points out, however, ‘the price of this flexibility [is] a legacy of deep-seated ambiguity’ over who has rights of access to resources and who is responsible for managing these resources.

To summarise then, it is apparent that upgrading tenure in the communal tenure areas of the Eastern Cape will present a considerable challenge, given that these areas manifest a complex heterogeneity of social, economic and political interests. Taken together, these interests act as powerful disincentives to the collective action that is critical to the maintenance of common property systems. Nevertheless, instances of land reform, whether part of the statutory land reform programme or otherwise (for example ‘land invasions’, privatisation of public land and other, locally-orchestrated ‘self-help’ land reform initiatives), are common-place around the province, in both rural urban settings. In overcrowded and (often) ecologically degraded communal areas, the residents of practically every rural settlement are engaged in on-going processes of contestation over rights of access to land. This is especially so where such settlements border on what local people perceive to be under-utilised land that is state-owned or privately owned. In the next section, I examine one example of ‘self-help’ land reform in Peddie district and try to show why even with the best of intentions, the government’s proposed tenure upgrading programme is likely to be exceptionally difficult to implement.

5. 'Self-help' or spontaneous land reform in Peddie district, Eastern Cape

In Peddie district, pressure on arable and residential land has been building since the 1950s. There was a large influx of people into the villages of Peddie district in the 1950-60s, when neighbouring commercial farmers started laying off their labour in large numbers. Between the years 1970-85, the major apartheid-inspired removals of people into the Ciskei bantustan saw the already overcrowded district experience a 49 per cent increase in population. Widespread labour retrenchments from the industrial sector of the economy were one result of the decade-long economic slump in the country. In rural areas, this meant further deprivation and more intense pressure on the natural resources available on the village commons.

In Gwabeni village, the problems of land-hunger were perhaps accentuated more than in other areas, as the sections of the village are situated on parallel ridges just below an interfluvial plain, with the result that land for settlement and cultivation was always limited by the topography of the area. To the northwest of the village is a high-lying and flat area of some 300 hectares, known as the Breakfastvlei Outspan that is state-owned land. The historical use made by the travelling public of the Outspan to water and graze their oxen overnight had long since fallen away and the area had served mainly as a buffer between the eleven (black) communal villages of Tyefu Location and the (white) freehold, commercial farmers to the north, south and west of the Location (see map 1).

When all the farmers neighbouring Tyefu Location left the area in 1981,⁸ local residents regarded their vacated farms, now the property of the Ciskei bantustan regime, as an important source of relief for the intense land pressure they were experiencing. They were to be sorely disappointed when the authorities decided to lease this land to individual 'emerging' (black) farmers, many of whom did not farm the land on a full-time basis. Not surprisingly, the livestock of people from neighbouring communal areas soon began to encroach onto the land that these 'farmers' were leasing.

The residents of Gwabeni have laid claim to the Breakfastvlei Outspan for most of this century. They claim their forefathers 'surrendered' their rights to this piece of land to the colonial government when the latter requested it to formally establish an Outspan in this area. They also argue that an agreement struck at that time made provision for the continued access of Gwabeni livestock to the grazing resources on the Outspan. But by 1940, the government had fenced in the Outspan and the area was 'out of bounds' to Gwabeni people. The grazing resources of this area were leased to a neighbouring white farmer on an annual basis. In this way, although Gwabeni people still regarded the Outspan land and its suite of resources⁹ as their own, the Outspan was effectively lost to them.

Anxious to have the problems of overcrowding and landlessness in their village addressed, Gwabeni residents continued to make requests for additional land, and specifically to the Outspan land. Instead the Ciskei government turned some of the farms vacated by the white

⁸ As a result of the 'independence' granted to the Ciskei bantustan, which meant that no white people could own land in Peddie district.

⁹ Including grazing, fuelwood, game, wild fruits and vegetables, as well as medicinal plants.

farmers and a large section of the Outspan into the L.L. Sebe Game Reserve and proceeded to deny the neighbouring villagers access to this area.

Attempts to reclaim the Outspan

Gwabeni residents had long wanted to reclaim the Outspan area, for both settlement and agrarian activities. The idea of moving to the Outspan was given impetus by the eroded state of arable lands and the exhausted grazing and firewood resources, which was more pronounced in certain sections of the village. Various attempts to reclaim this area had been unsuccessful until the late 1980s, when under the leadership of a younger generation of men¹⁰ from the village took up the challenge. These men were all members of the village who were worked and resided in Port Elizabeth, a regional centre some 3 hours from the village. For their occasional visits to the village and for their eventual retirement, they wished to establish their rural households in a more accessible area of Gwabeni, closer to the main road through the Location, and not on the eroded and more inaccessible ridges. Basing their campaign on the infrastructural upgrading and development of Gwabeni, they set about selling the idea of establishing a new village section on the Outspan to other working people based in Port Elizabeth. They emphasised the increased probability of services being provided by the government for a clustered settlement, rather than the scattered settlement pattern that characterises the older village sections. Their discourse was one of modernisation and the renewal of 'the community' of Gwabeni, against a backdrop of outmigration and official neglect, in a new village-section with all the amenities that 'we can be proud of.'

Their plan was thus to engage in a land reform project, to secure the state-owned Outspan land for residential and arable purposes, to be administered by local people in a variant of the 'communal tenure' model. The execution of the plan was not without opposition. The early opponents of their plan were the few senior men with livestock who, given their established households in the village, were unlikely to be interested in resettling on the Outspan. They regarded the group trying to reclaim the Outspan as young upstarts and disparaged their proposed block-plan settlement as evidence of a 'town mentality' that was not appropriate to the rural area. The men opposing the settlement adopted a 'community' discourse of their own: their community was that of the livestock owners of the whole of Tyefu Location, where

¹⁰ Younger men (25-35 years) are not regarded as established men (with families and livestock of their own), and thus are not formally involved in organising the affairs of the village.

grazing resources are common property in which all livestock owners have a keen interest. They argued that changing the Outspan (should it be released by the authorities) into a residential area, would be encroaching on the rights of all livestock owners in the Location.

Undeterred, the young men started to lobby the Ciskei government in the late 1980s, with a request that the Outspan be transferred to the Gwabeni community for the purposes of residential settlement. By this time, Gwabeni residents had mobilised in opposition to the statutory 'Tribal Authorities' that were regarded as oppressive organs of the bantustan state. In doing so, they had forced their 'headman' to stand down and, as a result, they lost their representation on the 'Tribal Authority.' This meant that there was no local statutory channel by which to pursue the Outspan claim. The young men enlisted the support of the headman in the neighbouring village for their project. With his sanction, a small delegation visited the relevant government minister and put forward their case. The minister turned them away, but two years later, their persistence paid off and word came that the Ciskei government would look into granting them the section of the Outspan that fell outside the Game reserve. A local committee was set up in Gwabeni, but this committee reported to the 'Outspan Sites Committee' (OSC) in Port Elizabeth. In the absence of a headman in the village, the responsibilities of allocating residential and arable sites had been taken over by the ANC-aligned Residents' Association (RA). The local 'Sites' committee managed to co-opt the chairperson of the RA onto the committee, thereby lending legitimacy to their plans to establish a new village section.

In 1993, the Ciskei Department of Agriculture bought in bulldozers and cleared the vegetation off this section of the Outspan. They laid out roads and surveyed residential sites. The OSC decided that these sites, measuring 40m x 50m, would cost R100-00 each and, although people were allowed to choose their sites, no building on a site would be permitted before the sum was paid in full to the OSC. By presenting a case for well-planned and 'community-driven' villagisation, the OSC were sending a clear signal to the authorities that they were awaiting the imminent delivery of services like reticulated water and electricity to the Outspan sites. The OSC also made known its plans to collect funds from Outspan residents and to approach the government for assistance in building a creche and a junior school on the Outspan.

Those opposed to the scheme soon became more vocal in their their opposition, as they realised that the project was getting off the ground. Some local residents resented the fact that the Port Elizabeth-based men had acted unilaterally, without consulting local residents, and ignoring the village RA structures, had chosen to go in person to the government officials to negotiate for the Outspan. They also resented the fact that the local opposition to the Tribal Authorities, which was at times fraught with violence, had been so glibly overlooked by the OSC which had enlisted the help of the neighbouring headmen in pursuing their plan. Another objection concerned the OSC's unilateral acceptance of only a section of the Outspan, which substantially weakened the chances of a successful claim on the entire Outspan at a later date. People from established households in the village were very upset by talk that those who settled on the Outspan were likely to be the first (and, more controversially, possibly the only) people in the village to benefit from the provision of water and electricity, even though every household in the other scattered sections of the village is in dire need of these services. Disgruntled residents claim that people wanting to settle on the Outspan would remain largely

urban-based, i.e. they are unlikely to live in the village on a permanent basis and, by implication, are undeserving of being prioritised in respect of the provision of services.

For a year (1994), tensions simmered in the village over the proposed move to the Outspan. Eventually the young brother of an OSC member built a small room on the Outspan and moved there. He spent five anxiety-filled months living alone on the Outspan, before other people, realising that he was not going to be forcibly evicted by the opponents of the scheme, began establishing their new homes there.

Resistance to the scheme fell away slowly as first, and then when the OSC announced, in an effort to crush all opposition, that Gwabeni people had had long enough to purchase their sites and that they were going to allow people from other areas to purchase sites, the resistance crumbled as opponents of the scheme quickly sought out and bought sites 'for their children to establish their homes there.' Some of those previously opposed to the settlement, began to find employment opportunities opening up to them as other people began to construct houses and erect fences on their sites. Needless to say, they could not maintain their opposition to the scheme whilst themselves engaged in the development of the new settlement. By late 1997, 82 new sites had been purchased and about 20 houses had been completed.¹¹

Instituting operational rules for resource management on the Outspan

Settlement on the Outspan is open to anyone in Peddie district. When an 'outsider' applies to purchase a site, a meeting is called and the character of the applicant is assessed by all the people already settled on the Outspan. Those who know the applicant personally may be asked to testify to his/her good character.

The OSC has developed a set of rules regarding the purchase and development of sites : no-one may purchase more than two sites, because this would be 'unfair and would quickly take up all the available space if one person is allowed to buy it all.' This rule is difficult to apply in practice, as people are allowed to buy sites in the name of their (adult) children. The latter may not have the means to immediately build a house on the site purchased for them and the land will thus lie vacant or be used for extending the site of another family member.

Another rule is that speculative buying of sites will not be allowed. The OSC can demand that the site-owner suspected of being a speculator can be instructed to build on the site within three years or forfeit the site and receive a refund on the money paid for it. However, if one puts up a store room on one's site, then the site is being used and the purchase would not be considered a speculative one.

Buyers of sites are issued with a receipt for the money which they have paid, but no title deeds are available which can be issued to people purchasing sites. Recognition of their continued ownership of their sites rests on the authority of the non-statutory, (originally self-appointed) OSC and the endorsement of this authority by other Outspan residents. Should any disputes

¹¹ Gwabeni has a total population (i.e. rural and urban-based 'residents') of just over 660 people.

emerge in the Outspan settlement is administered, the legitimacy of the OSC could be called into question in such way that jeopardises the viability of the settlement.

Although people purchase their sites, it is not clear what rights attach to this sale. It is unclear, for instance, whether any conditions of purchase exist which govern whether or not people are allowed to sell their sites, or subdivisions thereof in future - and whether they may only sell to buyers who meet with the approval of the OSC - or what rules of inheritance and of alienation would apply in the event of a site owner's prolonged absence from the area. Essentially, the question that remains unanswered is whether the tenure system that applies to the sites in particular is one of freehold (private property) or a more conditional form of tenure. Moreover, the OSC has few specific strategies to manage the common property resources on and around the sites, including the livestock grazing resources in this area. Instead, they intend to 'do things as we have always done them here', an essentially open access 'system' which, in the absence of strong local institutions, has become both socially and ecologically unsustainable (see Ainslie 1998:47ff). They did, however, introduce one strategy concerning the excessive cutting down of trees when people cleared their sites. The OSC felt that at least some trees should be kept on the Outspan, and a meeting was called to address the problem. At this meeting, all the people present readily agreed to stop cutting down trees on the Outspan. No mention was made, however, of penalties that would be instituted against those who might subsequently be found cutting down trees, possibly because this would appear to be too authoritarian, and in any case, no-one was given the responsibility of keeping a check on the number of trees on the sites.

Conclusions

More detailed examinations of the prevailing circumstances in specific communal tenure areas of the Eastern Cape are particularly pertinent at this time, because official government policy on the issue of land reform and tenure upgrading in particular, includes explicit recognition and endorsement of the continued, if modified, existence of these systems. In fact, these policies suggest that the interests of 'disadvantaged and poor communities' in rural areas may be best served by communal decision-making and resource owning situations. The 'rights enquiry' aspect of tenure upgrading policy is especially fraught with difficulty, because, as is the case in the Outspan case-study, rights to land and resources are constantly being contested and renegotiated.

I have tried to argue that *in their present form*, many of the complex 'systems' operating in communal tenure areas, exhibit only some the features found in 'robust' common property systems. There is a need to guard against reifying the (ideological) desirability of what appear to be common property systems, whereas in fact, the workings of these systems *as they exist at present* may not be particularly welfarist and equitable. Instead, we need to recognise that most of the communal systems (in the Eastern Cape at least) function in ways that are 'messy' and more flexible than the 'ideal' theoretical construct of a common property system and that statutory codification and formalisation of these systems, would rob them of the flexibility which seems to be prized by many rural people.¹²

¹² This is not to suggest that *all* rural people would be prefer to be allowed to

contest access to resources locally and without government intervention-clearly this scenario does not suit all rural residents. Nor do I mean to suggest that rural people do not want government to provide them with much-needed services and employment opportunities. The point is that these people would like to be exercise some control over areas of government intervention.

Empirical studies of cases that resemble common property systems suggest strongly that these systems, are highly susceptible to disruption from a number of quarters. These quarters include socio-economic, demographic, political, institutional and ecological change that undermine the incentives and abilities of people to contribute to collective resource management. In the absence of major (and costly) institutional readjustments that can compensate adequately for these changes, such disruption tends to move common property systems in the direction of 'open access.' The (wishful) notion that within these communal areas, despite the overcrowding and institutional collapse, there exist latent or actual systems of common property management, which are premised on ideals of collective decision-making and collective action (and which can be 'empowered' or reconstituted to function democratically and equitably) is deeply problematic.

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