

Evaluating land and agrarian reform
in
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5

Municipal commonage

Megan Anderson and Kobus Pienaar

Evaluating land and agrarian reform in South Africa is a project undertaken by the Programme for Land and Agrarian Studies (PLAAS) to respond to the need expressed by civil society organisations for independent research to evaluate progress in, and inform debates on the future of, land and agrarian reform. The reports in this series are:

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List of acronyms and abbreviations

Act 126	Provision of Land and Assistance Act 126 of 1993
CPA	communal property association
DLA	Department of Land Affairs
DoA	(provincial) Department of Agriculture
DPLG	Department of Provincial and Local Government
FHH	female-headed household
HH	household
IDP	Integrated Development Plan
LED	local economic development
LRAD	Land Reform for Agricultural Development programme
LSU	large stock unit
MTEF	Medium Term Expenditure Framework
NGO	non-governmental organisation
PLRO	Provincial Land Reform Office
SLAG	Settlement/Land Acquisition Grant
SPP	Surplus People Project
SSU	small stock unit



1. Introduction

This paper compares the performance of the Municipal Commonage Programme of the Department of Land Affairs (DLA) with the objectives stated in the White Paper on South African Land Policy (DLA 1997). This paper will review the extent to which the state has met its obligations under the Constitution to take legislative and other measures, within available resources, to advance persons disadvantaged by unfair discrimination (Section 9(2)), to enable them to gain access to land on an equitable basis (Section 25(5)), including municipal commonage, and to ensure that their tenure to such land is legally secure (Section 25(6)). The paper provides a definition of municipal commonage and its origin, reviews the development and current status of DLA's commonage programme, assesses its implementation and outcomes, draws conclusions, and makes recommendations aimed at increasing the positive impact of the programme of land reform in South Africa.¹

DLA adopted a Municipal Commonage Programme in 1997 and, in its White Paper (DLA 1997), outlined the way in which municipal commonage could, and should, play a role within a larger land reform programme:

In large parts of the country, in small rural towns and settlements, poor people need to gain access to grazing land and small arable/garden areas in order to supplement their income and to enhance household food security. The Department of Land Affairs will encourage local authorities to develop the conditions that will enable poor residents to access existing commonage, currently used for other purposes. Further, the Department will provide funds to enable resource-poor municipalities to acquire additional land for this purpose (DLA 1997:50–51).²

To date, commonage accounts for the greatest transfer of land attributable to any one programme within the greater land redistribution programme. Of the total of 1 348 940ha transferred by early 2003, 420 812ha (31%) can be attributed to the commonage programme (DLA 2003). However, there are substantial differences between provinces. About 74% of the land transferred through the commonage programme (312 777ha) was transferred in Namaqualand – an extensive rangeland area with low carrying capacity. Commonage constituted 67% of all the land redistributed in the Northern Cape, but no land was transferred for commonage in Limpopo and KwaZulu-Natal. The average percentage per province of commonage as a proportion of land transferred is 16%.

The acquisition and transfer of additional or 'new' portions of commonage land to municipalities picked up momentum from 1998 to 2000. However, municipal commonage appears to have been de-emphasised as a type of land reform after the ministerial review process of land reform which took place in 2000. In 2002 only 2% of land transferred within the redistribution programme was for municipal commonage. The Medium Term Expenditure Framework (MTEF) budget guidelines for 2003–2005 show that municipal commonage has been allocated a mere 3% of the total requested for land reform over this period – some R13 million.

The steps taken by DLA to assist municipalities to acquire additional or 'new' land for commonage purposes must be distinguished from the steps envisaged in the White Paper to 'enable poor residents to access existing commonage'. Significant portions of commonage land are registered in the names of local municipalities. A 1996 survey identified 314 371ha of such land in the Northern Cape alone. A survey of local municipalities of the

Karoo region of the Northern Cape indicates that locally-driven processes have resulted in black residents acquiring as much as a third of the land that was municipal commonage before 1994 (SPP 2003).

2. Land rights in respect of municipal commonage

Municipalities throughout the country are empowered to set aside land they own for the pasturage of stock and for the purposes of establishing garden allotments. A municipality may make by-laws to regulate and control the use and protection of commonage land and the kinds of stock which may be depastured, restrict the number of stock per householder, restrict or prohibit the use of certain of the council's lands for pasturage, and prescribe appropriate charges for use of lands. Municipalities may also regulate and control land that is used for common pasture whether the municipality owns the land or not.³ This commonage has been defined as follows:

Commonage or common pasture lands are lands adjoining a town or village over which the inhabitants of such town or village either have a servitude of grazing for their stock, and, more rarely, the right to cultivate a certain portion of such lands, or in respect of which the inhabitants have conferred upon them by regulation certain grazing rights (Dönges & Van Winsen 1953:303).

In the past, access to such land was regulated either by way of servitude registered as a title deed condition against a residential, site or by way of municipal regulation. Because the land was specifically 'set aside' for public use, a municipality is not entitled to charge inhabitants more than the costs of administering the user rights and maintaining the land. Inhabitants therefore acquired a right to use such land for a specific purpose according to set rules. Where a municipality merely leases land to a user or group of users in terms of a contract of lease, it is not making the land available for commonage purposes.

In accordance with the White Paper (DLA 1997), we distinguish here between two types of municipal commonage lands, namely, existing or 'traditional' municipal commonage land and 'newly acquired' commonage land. 'Traditional' municipal commonage refers to land set aside by the state at the establishment of a town. This land was usually granted to municipalities by the state in the 1800s, in ownership and free of charge.⁴ This land is distinct from land the municipality may have purchased (free of 'public benefit' conditions of title) in that stringent legislative and title deed conditions specified that the land be for the use and benefit of the public and that the municipality could not sell the land. Users may not be charged market rates, they may only be charged the costs of the administration and maintenance of the commonage.⁵

Put simply, if the municipality wishes to lease its portion of 'traditional' commonage to a tenant, the approval of the Premier needs to be obtained because such a lease would allow the tenant to use the land to the exclusion of other members of the public.⁶ Entering into such a lease means that the commonage land has been privatised – made available for commercial purposes rather than 'commonage' purposes. The income derived from the lease must be used for the promotion of a special public purpose and may not be used to subsidise the ordinary expenditure of the municipality. The land that was granted in this manner and set aside for



grazing, or other use, accordingly acquired a distinctly public character (Dönges & Van Winsen 1953:290–2).

The restrictions on the sale of commonage have been successful. A 1996 survey of commonage established that there is 314 371ha of municipal commonage in the Northern Cape and 8 643ha in the West Coast District of the Western Cape (Anderson 1996). DLA's Public Land Support Services has information on all municipal commonage land holding, though this is not readily accessible.

Historically, 'traditional' commonage provided a place for town residents to keep their transport animals, milking cows, animals for slaughter and butcher's stock. Stock being moved between grazing lands could depasture on the commonage. Commonage regulations made detailed provision for these different uses.

The nature and content of the rights of commonage users to 'traditional' commonage were afforded in different ways to white settlers when villages were established during the early to mid-1800s and residential sites in such areas were allocated and transferred in ownership. The initial practice was to afford persons to whom sites were transferred a right of access to depasture a set number of stock on the commonage in terms of a condition contained in the title deed of a village erf. If the erf was transferred, the new owner of the erf acquired the right or 'servitude'. As the village grew it became necessary to limit access to the commonage.

During the early 1900s it became standard practice to regulate access to the commonage of a village in terms of municipal by-laws. As a rule, each village council adopted a set of prescribed standard by-laws to determine the content and nature of user rights, to provide for the allocation and ongoing administration of such rights, and to provide for the maintenance of the commonage. In the former Cape Province, such regulations were promulgated in terms of the Cape Municipal Ordinance 10 of 1912. Holders of servitude rights and other inhabitants were therefore only permitted access to the commonage in terms of the regulations.

With technological change (such as motor vehicles and refrigerators) and increased wealth, white inhabitants became less and less dependent on the commonage, which was increasingly leased out to commercial farmers at market rentals to generate income for municipalities. These significant tracts of 'traditional' commonage land were therefore no longer made available as 'commonage', since the public character of the land is extinguished once access is afforded through market-related rental. This is probably in breach of the legal conditions on which the municipality acquired the land.

Racial discrimination was formally and informally regulated and implemented by local authorities from before the turn of the 19th century and resulted in the benefits of the town not being shared with the residents of the 'location' (black residential area). Before 1994, commonage for the use and benefit of inhabitants of municipalities was, with a few exceptions, set aside for whites. Political change has enabled the demand by black residents for access to this land to be heard. Commonage may provide for a range of land uses: grazing, food gardening, burial of animals, firewood collection, plant harvesting, 'banking' (allowing people to 'bank' extra cash in livestock for times of need), and cultural purposes, such as keeping stock for funeral or marriage ceremonies.⁷

'New' commonage acquired by a municipality in terms of the DLA Municipal Commonage programme refers to land purchased from private owners after 1994 with public funds for land reform purposes – land which is transferred in ownership to a municipality. Upon transfer, a new set of conditions is registered against the title deed, which stipulate that the municipality must ensure the property is used as commonage for the benefit of the residents, with special emphasis on the poor, and that the land may not be sold without state permission. Should the municipality fail to make such land available for land reform purposes, the land could be taken over by the province (DLA 2002d). These conditions are strikingly similar to the stringent conditions imposed by the state when granting 'traditional' commonage.

As was the case with 'traditional' commonage, 'new' commonage is also granted to a municipality free of charge. Municipal commonage, old and new, thus denotes land owned by a municipality which is made available to inhabitants for commonage purposes in terms of the conditions of title. A material difference with 'new' commonage is that the title conditions make it clear that the land was not set aside for the use of inhabitants in general, but that it must be earmarked for use by the 'poor and less privileged'.

These conditions of title also oblige the municipality to establish a management committee that will include representation of people using the commonage, and a member of the relevant Department of Agriculture (DoA). The committee must formulate a land use management plan to set out conditions of use, how commonage use will be monitored, and how rules and regulations will be enforced. The regulations in terms of which access to 'traditional' commonage was regulated have not been repealed. These sets of tried and tested regulations have remained intact and could still be used. However, with the notable exception of four local municipalities in the Namaqualand district and the Karoo Hoogland municipality, municipalities have not drawn from the legal history and administrative practice that has evolved over more than 150 years.

3. The DLA Commonage programme

The role of commonage in land reform

Policy makers realised that commonage would provide opportunities for land reform because it is state land, which would not need to be acquired, and because residents have certain rights in law to this land.⁸ Land reform requires three primary ingredients: land, identified beneficiaries, and institutions to own and manage the land. With respect to municipal commonage, these elements were, to a large extent, already in place (DLA 1997:28–9).

Township residents need land adjacent to the town for their livestock. Municipalities are in possession of substantial tracts of land. Well-developed regulatory frameworks for the ownership and management of municipal commonage land are in place. A municipality is empowered to take on the control, management and maintenance functions of such lands. Facilitation processes could be set in motion to afford township residents access to land without costly steps to acquire and transfer land, resettle farmers, devise a regulatory framework, and build institutions.

What was done on a large scale for the benefit of white residents during the 1800s and first half of the 1900s could now be done for poorer, black residents previously excluded from



municipal commonage. The only difference is that the commonage now needs to be made available in terms of pro-poor criteria.

1997–2000: The White Paper Commonage Policy

In 1996, DLA started its first municipal commonage project in Pofadder, Northern Cape. DLA agreed to buy out an existing commonage lease concluded with a commercial farmer on condition that the Pofadder municipality undertook to make the commonage available to members of a small farmers' association. The members of the association were both needy and previously disadvantaged. A pro forma grazing agreement (rather than a public by-law/regulation) was prepared and entered into, allowing individual users to access the land (see DLA 2002a; 2002b).

In 1997, DLA adopted the Municipal Commonage Programme as part of its redistribution programme. Policy and implementation guidelines have been developed. The DLA commonage manual (DLA 2002c; 2002d) gives a detailed overview of the policy, legislative framework and delivery mechanisms, and provides an extensive overview of the evolution of the programme and the adjustments that have been made over time. While the manual is an important tool, it proposes that access to commonage should be regulated in terms of commercial lease agreements. This serious flaw is discussed below.

Funds to buy new or additional commonage land are made available by DLA in terms of the Grant for the Acquisition of Land for Municipal Commonage as provided for in Section 10(1)(c) of the Provision of Land and Assistance Act 126 of 1993, (commonly referred to as 'Act 126'). This allows the Minister to grant an advance or subsidy to a municipal council to acquire land to be used as commonage. A condition of title is that the land must be used for the benefit of poor residents. The objective of the commonage grant is to acquire land to create or extend a commonage, in order to establish schemes involving the productive use of the land. A broad range of potential land uses are to be promoted, including food gardens, cultivation, grazing, wood fuel and other veld products and eco-tourism (DLA 2001b). Departmental policy offers assistance for the development of appropriate policy at the provincial and municipal level. It also offers support to municipalities wishing to acquire new land for commonage purposes or to set aside land they already own for such purposes.

The current level of the grant for the acquisition of municipal commonage land is set at the value or selling price of the land in question, while the infrastructure development grant is set at a maximum of 25% of the value of the land (documents 6a-d DLA 2002a; 2002b). However, no provision has been made for a planning grant. Municipalities are obliged to devise budget-linked plans for the use and development of commonage land as part of the local integrated development planning (IDP) process as stipulated in the Local Government: Municipal Systems Act 32 of 2000. To expect municipalities to develop land use plans for commonage without additional state support to do so is to saddle them with 'unfunded mandates'.

2000–2003: Implications for commonage of the shift in land reform policy

When Thoko Didiza was appointed Minister of Agriculture and Land Affairs in June 1999, she ordered a review of the land reform programme. At issue was the perceived lack of performance of existing programmes. The commonage programme was viewed as under-performing with regard to post-transfer land use and management (Van der Merwe, pers. comm.).

A number of shifts in policy and in emphasis within and between the various programmes emerged from this review process and the new Land Redistribution for Agricultural Development (LRAD) programme was launched in August 2001 as the 'engine' of land redistribution. LRAD's emphasis is on the settlement of black commercial farmers – a shift in emphasis from the commonage objective of facilitating access to land by poor people, with indigence as a key criterion for eligibility.⁹

In 2002, DLA published an updated and extensively re-stated commonage policy and related operational manual. This addressed issues of programme performance in that it sets out a detailed outline of how commonage projects should be implemented, and it includes relevant guidelines. While the primary pro-poor objective of the commonage programme remained in place, the 2002 policy statement indicates that the LRAD shift in emphasis also affects commonage policy. The statement notes that 'the primary aim of commonage is two fold: providing access to land for supplementing income (subsistence user system), and as a stepping stone for emergent farmers (emergent farmer system)'.

Commonage accounted for only 2% of land redistributed during 2002, pointing to a decline in the relative importance of commonage as a land reform mechanism. Officials in the Northern Cape Provincial Land Reform Office (PLRO) told us that, while there are no restrictions placed on their use of the commonage programme, officials are encouraged to prioritise the delivery of LRAD. The number of commonage projects implemented over the last two years is half of what it was in the period 1998–2000 (Table 1).

Table 1: Delivery of commonage projects 1996–2002

Year	1996	1997	1998	1999	2000	2001	2002	Total
No. of projects	1	4	20	33	18	11	11	98

Source: DLA annual reports 1996–2002

The decline in the number of commonage projects needs to be viewed against a general decline in delivery of land reform projects. Households receiving DLA project approvals dropped from 17 000 in 1999 to 5 700 (*Business Day*, 4 May 2001). Budget targets provide, however, insight into the relative importance of different land reform programmes within the broader redistribution goals of government. While actual budget expenditure is driven by Provincial Land Reform Offices, and DLA budgets are not ring-fenced, these national targets provide a broad indication of the DLA commitment to the various programmes within land reform.

National and provincial medium term budget targets point to an average allocation of 3% of budget toward commonage.¹⁰ This includes land acquisition and infrastructure development. The proportion of funds allocated towards commonage in the Medium Term Expenditure Framework indicate that it is envisaged commonage will play a far smaller role in land reform in the future.



Table 2: Commonage, equities and other Act 126 programmes as a % of redistribution targets

	Budget 2002/03 ('000)	Budget 2003/04 ('000)	Budget 2004/05 ('000)	Budget 2005/06 ('000)
Commonage, equities and other Act 126 projects	26 000	22 000	22 000	23 000
Implementation of LRAD	118 000	102 000	108 000	114 000
Total budget targets	257 477	216 000	243 000	244 000
Commonage, other Act 126 projects as % of total budget targets	10%	10%	9%	9.4%
LRAD as % of total budget targets	45.8%	47.2%	44.4%	46.7%

Source: DLA 2002b

4. Programme outcomes

The programme is assessed on the extent to which the programme has enabled poor residents to access commonage, or acquire additional land for this purpose. A range of indicators are examined: extent of land accessed (through land transfer or land access acquired), geographical spread of the programme, number and profile of beneficiaries, rights secured and livelihood benefits reaped.¹¹ As noted from the outset, the extent to which the implementation of the programme has given rise to ensuring legally secure rights to persons who use commonage land is a central theme.

Statistics from DLA (2003) have been used. Information gathered from key informant interviews and relevant documents have also been used as a basis for assessing programme outcomes.

Transfer of land and/or land access acquired

In terms of the initial objectives of the programme, DLA has, by its own admission, not tackled the area of encouraging local governments to make existing ‘traditional’ municipal commonage available to poor residents to bolster livelihoods (DLA 2002c; 2002d). As noted, substantial areas of this land could, with limited input from the DLA, provide an important land reform opportunity.

Figures from the Northern Cape provide insight into the significant amounts of ‘traditional’ commonage available (Table 3). Poor residents in some places have accessed ‘traditional’ commonage through the work of civil society, NGOs and municipalities, but there is a long road to be travelled before complete reform of this public resource in land in favour of black residents is achieved.

As much as a third of 'traditional' commonage has been accessed for land reform purposes in four municipalities of the Karoo region, Northern Cape, with the remainder still in the hands of white commercial farmers. The acquisition of this land predominantly relied on NGO facilitation services, rather than services provided by DLA as per the policy document. Where access to commonage is provided, it provides for a relatively quick and inexpensive land reform opportunity. This opportunity has not been fully grasped by DLA.

Table 3: Access by black residents to traditional commonage in Karoo region, Northern Cape

Local municipality	Town	'Traditional' commonage (ha)	Traditional commonage accessed by black residents (ha)	'New' commonage
Karooberg	Carnarvon	9 226	5 409	
	Van Wyksvlei	8 440	0	
	Vosburg	6 349	236	
Hantam	Brandvlei	19 311	5 710	
	Calvinia	1 250	1 250	
	Loeriesfontien	19 722	12 000	
Ubuntu	Nieuwoudtville	606	158	
	Victoria West	5 808	800	
	Loxton	10 522		
Hoogland	Richmond	3 620		
	Williston	7 000	500	4 639
	Fraserburg	14 142	0	5 187*
TOTAL	Sutherland	3 678		7 567
		109 674	26 063	17 393

Source: SPP 2003; Cartwright et al. 2002

* = not yet transferred

Based on DLA figures for land redistribution between 1994 and 2002 the total 'new' commonage land transferred amounts to 420 812ha (DLA 2003).¹² Total land transferred within all land reform programmes during the same period is 1348 940ha. Commonage thus represents almost a third – 31% – of all land transferred. Table 4 shows the amount of 'new' commonage land transferred relative to land transferred within the other major programmes of redistribution. Land transferred under the Extension of Security of Tenure Act and other Tenure Directorate programmes is not included due to inadequate data. The figures also do not include data for the Free State.

The commonage programme has been the mechanism through which the highest percentage of land has been redistributed within the land reform programme – nearly a third of all land



transferred has been through this programme and it accounts for 44% of land transferred within the major redistribution programmes. The proportion of commonage as a component of redistribution per province is an average of 16%.

Table 4: Commonage as a % of land transferred under the land redistribution programme, 1994–2002*

Programme	Number of projects	Hectares	% of total land
SLAG	249	343 826	39%
LRAD	121	124 140	14%
Equity share schemes	41	25 060	3%
Commonage	78	380 819	44%
Total	489	873 845	100%
Commonage as a % of total	16%	44%	44%

Source: DLA 2003

* Excludes Free State and excludes land transferred under Tenure Directorate programmes

The extent of land transferred is not necessarily an indicator of the effectiveness of a programme in terms of outcomes to beneficiaries. For example, in Namaqualand, where 312 777ha of commonage was transferred, the productive capacity of the land is very low – 10ha are required for a single goat in most parts. Land extent also tells us nothing of what rights have been acquired, how effectively these are managed and thus how livelihoods may have been affected. The substantial extent of land transferred within the commonage programme, does, however, provide a strong indication that the policy and mechanisms for land transfer within this programme are effective.

Geographical spread of commonage land rights acquired

The presence of 'traditional' commonage varies from province to province due to the different colonial histories of provinces and the particular historical development of each town. DLA does not have figures for the total amount and location of all municipal commonage land, its information is limited to the commonage land acquired under the land reform programme as per Table 5.

There is a large variation between provinces about extent to which commonage has been used as a redistributive mechanism, although the programme has been used in all provinces except KwaZulu-Natal and Limpopo. Various reasons for this vast regional differentiation may exist: a lack of information and knowledge about the programme amongst some PLRO officials, lack of local government political support for the programme, lack of local demand, and the pre-existence (or lack thereof) of historical commonage use (Wegerif, pers. comm.).

Number and profile of beneficiaries

The number of households (HHs) benefiting from the commonage programme is recorded as 4% of all households in land reform projects. This probably represents a degree of under-

Table 5: 'New' commonage as a proportion of land redistribution per province, 1994–2002

	Eastern Cape	Free State	Gau- teng	Kwa Zulu- Natal	Limpo- po	Mpu ma langa	North Cape	North West	Western Cape
Total commonage (ha)	26 117	34 648	912	0	0	3 626	340 868	7 849	5 844
Total redistributed (including commonage)(ha)	101 129	246 703	6 446	167 964	67 273	95 142	509 884	74 072	80 327
Commonage as % of total	26%	14%	14%	0%	0%	4%	67%	11%	7%

Source: DLA 2003

Table 6: Percentage of total households and female-headed households benefiting from different land reform programmes

Programme	No. of projects	No. of HHs	Programme HHs as % of all HHs	No. of FHHs	FHH as % of all HHs	Programme FHHs as % of all HHs
SLAG	249	67 214	75	6 337	9.4	90
LRAD	121	5 649	6	297	5.2	4
Equity share schemes	41	12 871	14	363	2.8	5
Commonage	78	3 407	4	22*	0.6*	0.3*
Total	489	89 141	99	7 019	18	99.3

Source: DLA 2003

* DLA information on female-headed households in commonage projects from Mpumalanga alone. In this province 22 of 498 households were female-headed.

reporting, which in turn probably points to the lack of effective commonage administration. The figure for female-headed households (FHHs) benefiting from commonage is, however, recorded in only one province, pointing to a lack of gender monitoring in the programme. Still, the picture is rather bleak: it appears that commonage is failing to benefit FHHs.

Except for single cases concerned with poultry and pigs, and reference to small vegetable production attempts in the Karoo region, only one case was found where commonage land has been made available for crop cultivation – in Vredendal, Western Cape. Commonage projects seem to cater predominantly for grazing purposes and interviews with NGO staff and PLRO officials indicate that grazing projects across the commonage programme tend to involve men. Newly acquired commonage lands are frequently situated some distance from towns. Given the extremely limited access to 'traditional' commonage, it is fair to conclude that the dual effect of distance and lack of resources to purchase and maintain stock effectively rules out participation by the poor, notably women.¹³

Apart from the massive gender imbalance with respect to commonage use, commonage users represent a highly varied group with very diverse needs. Users are divided between



strong farmers and resource-poor farmers; commercial, part-time, income-supplementing and subsistence farmers; middle-class residents with additional stock investments, poor *inkommers*¹⁴ from the farms and migrant workers using the commonage to 'bank' income. The varied profile of potential commonage users produces a high degree of conflict and struggle to capture the benefits of access to the commonage.¹⁵

Box 1: Gender and commonage livelihood benefits

To date, commonage projects are predominantly grazing projects from which women are politically and culturally excluded. Other agricultural projects, such as a food security project in Clarens, the Vredendal tomato project, and chicken production projects being developed in the Karoo Hoogland, have been more successful in proactively drawing in women as beneficiaries of the programme. In the Eastern Cape, the Department of Social Development is involved in some commonage projects where they work towards establishing women's projects looking at food security and stock fodder production.

Improving women's livelihoods through commonage requires a multi-pronged approach. Allocation criteria stipulating women as beneficiaries need to be enforced. Investigations into women's priority needs with regard to land should form the basis of commonage project development planning. Where women are more readily able to gain access to commonage, through, for example, vegetable and poultry production, support should be provided. Input costs for these enterprises are high. Forms of subsidisation should be explored, such as a subsidy on electrification of women's agricultural and development projects.

The struggle for women's access to the key resource of grazing needs to be supported. The experience of an NGO worker in the Karoo who has actively supported the development of women within stock farming projects defies any simple 'cultural' explanation of the absence of women in this farming sector. At the heart of the matter lies women's inability to access credit, and thus stock. In rural areas men tend to have jobs that enable them to gain access to additional cash to acquire stock, or, credit records that enable them to acquire credit from institutions such as the Land Bank. Credit facilities specifically designed to support women need to be developed and/or made readily accessible to rural women.

Source: Cartwright et al. 2002:30–3; 37

Securing user rights

The picture that emerges around commonage is that, with the notable exception of Namaqualand, the Karoo Hoogland municipality and the Colesberg initiative, insufficient attention has been paid to ensuring that the rights of individual users are clearly defined. A 2003 questionnaire survey conducted by Surplus People Project (SPP) on commonage use in the Northern Cape in the Hantam, Ubuntu, Hoogland and Karreeberg municipalities indicates that, in many instances, black residents gained access to commonage without any process in terms of which rights were allocated and without appropriate contractual or municipal regulatory arrangements having been put in place. This appears to be the case in the Brandvlei, Fraserburg and Vosburg municipalities in the Karoo Hoogland, and various municipalities of the Matzikamma district of the West Coast and in Free State commonage projects.

As illustrated in the case of De Aar (Emthanjeni case, Box 2), where agreements for land use are in place, a general free-for-all situation has emerged (Cartwright et al. 2002:30–3). Ndabula (no date) points to a similar situation in the Free State.

Box 2: Emthanjeni Local Municipality, Karoo

The Emthanjeni Local Municipality comprises the demarcated municipal areas of the towns De Aar, Britstown and Hanover. These three towns have a total of 20 420ha of commonage land, which can potentially support 2 500 small stock units (SSU).

Table 7: Commonage inventory of Emthanjeni Local Municipality

Town	Traditional commonage (ha)	DLA-acquired commonage (ha)	Commonage accessed by black farmers (ha)	No. of black-owned small stock units (SSU) (ha)	No. of black-owned large stock units (SU) (ha)	Other activities
De Aar	2 161	399	None yet, but will be 399	100	15	Pigs
Hanover	8 323	–	1 221	107	23	5ha vegetables
Britstown	9 290	–	1 241	138	12	Turkeys, chickens, vegetables
Total	19 774	399	2 462 (2861)	345	50 (or 300 SSU)	

Emthanjeni is typical of a number of commonage projects and points to critical issues facing the programme. A lack of management plans and structures, agreements and rules has resulted in a breakdown of commonage land management. An unproductive stalemate has arisen between users and the municipality, with neither party taking responsibility for infrastructure repairs, and a free-for-all exists on the land with non-payment of rental.

Access to land

'Traditional' commonage in Emthanjeni represents a substantial resource in land. Similar to the Karoo municipalities, black residents have only gained access to one-eighth of the available land. It is estimated that 15% of Emthanjeni's municipal income comes from the lease of 'traditional' commonage to white commercial farmers. Due to the culture of non-payment for urban services, however, commonage revenue actually contributes 40% to 50% of actual income received (Cartwright et al. 2002:17). For this reason, the municipality is reluctant to make these lands available to poor residents.

The rental income from commercial farmers is R320 729.07 per year. According to municipal officials the rental income from emerging farmers should be R26 280.00 per year but these rents are not paid at the moment. There are no official, up to date, commonage lease contracts with emerging farmers.

Two farms, totalling 399ha, have been acquired in Emthanjeni (De Aar) through DLA for commonage purposes. The land was transferred to the municipality subject to the imposition of the DLA's standard commonage servitude conditions concerning 'poor and disadvantaged residents who want to engage in productive activity on this land' (Cartwright et al. 2002:17).

Allocation of rights

Despite acquiring the new commonage land in 1999, no process to allocate rights to users has yet been put in place. In other towns in the Emthanjeni area, the commonage agreements are signed between the municipality and the emerging farmers' association, which must then allocate grazing rights.

The emerging farmers' association in De Aar claims that access to the land is restricted to those who pay membership levies (R5/SSU/month) and mark their stock, but monitoring appears to be poor and there is no agreed-upon sanction for non-compliance. There are also no agreed methods for controlling stock levels within the group. Individuals with financial means have an incentive to increase stock size as quickly as



possible and utilise grazing before fellow members do the same the stock numbers are spiralling in spite of evidence of overgrazing.

In Hanover, the emerging farmer group has 23 SSU and 97 SSU. Cattle are grazed communally but owned privately. The group have access to only 970ha of commonage, on which there are four boreholes, two of which have dried up since 1999. The group has not paid any rental. The group is adamant that it will not pay more than R100 a year for use of the commonage in spite of suggestions that it could pay more. The R100 is based on what the emerging farmers pay for commonage at Richmond. The group feels strongly that, as emerging farmers, they should be given subsidised/ free access to the land. They do not want to have to compete with commercial farmers.

Land management

Municipal officials in Emthanjeni report that they have neither the time nor skills to manage the commonage effectively. The emerging farmer organisations say that they would be willing to take responsibility for the repairs and maintenance of the commonage infrastructure if a suitable agreement detailing responsibilities, fees and costs were in place between themselves and the municipality. The parties appear to have deadlocked for a number of reasons: fees acceptable to the farmers would represent an unacceptable loss for the municipality, the new, amalgamated municipal structures have placed additional burdens on municipal staff who feel removed from the centre where decisions are made, and the combination of frustrations have lead to a general breakdown in communication between the parties.

Until the process for the allocation and subsequent administration user rights and management and maintenance of the land is placed on a sound contractual or regulatory base, commonage projects such as those within Emthanjeni Municipality are likely to lead to land degradation, net commonage losses for the municipality, and frustration among users and the municipality, with few benefits to those desperately in need of the resource for livelihoods purposes.

In the cases where the terms and conditions for commonage access to both 'new' and 'traditional' commonage were considered, the general approach was to provide access in terms of marginally adjusted commercial lease agreements without any attention being paid to the allocation and administration of individual user rights. However, in Colesberg, Fraserburg and Sutherland, users access the commonage in terms of grazing agreements that have been concluded directly between the municipality and the user. These agreements entitle the user to keep a set number of stock at a fee per head. The individual user is directly liable for paying the municipality. It is only in Namaqualand where four local municipalities have promulgated grazing regulations (see Box 3).

The result has been self-help, dominance and exclusion of women and the poor, non-payment of user-fees, land degradation and severely reduced or minimal benefit to the few who manage to gain access. The failure to secure rights for users is a major shortcoming in the commonage programme and the absence of guidelines to provide for this is a serious shortcoming (DLA 2002c; 2002d).

Livelihoods benefits from commonage

Livelihood benefits from access to commonage are difficult to define, particularly as commonage serves various purposes, ranging from subsistence to the development of skills among emergent farmers. Until the amount of commonage made available to black farmers has been quantified, and the number of stock being grazed and number of beneficiaries have been counted, any calculations regarding benefits of the programme will largely be descriptive, rather than quantitative. It is also important that any analysis of benefits looks at figures with an

Box 3: Linking commonage land rights administration to IDPs in Namaqualand

Four municipalities in Namaqualand have promulgated grazing regulations in the provincial gazette (between June 2001 May 2002) which link commonage management to integrated development plans (IDPs) in terms of the Local Government: Municipal Systems Act. These regulations were the outcome of lengthy facilitation processes between user groups, local authorities, DoA and DLA and determine the allocation, administration and management of land use rights. The grazing regulations make specific provision for the formulation of a budget-linked mini-IDP for commonage management to ensure financial sustainability.

In Namaqualand the total area of trust land that the communities had access to prior to 1994 amounted to 1 016 897ha. New land that was purchased and transferred in terms of the DLA commonage acquisition grant programme in the period 1997–2003 amounts to 245 550ha. The existing or traditional commonage for the local towns of Garies, Springbok, Kamieskroon, Port Nolloth, Pofadder and Soebatsfontein amounts to 12 024ha. New land acquired in terms of the commonage programme for these five towns amounted to 73 752ha. The overall total of 'new' land acquired in the Namaqualand region through the redistribution programme in the period 1997–2003 amounts to 312 777ha. The acquired land is held subject to the commonage servitude conditions set by DLA.

The Legal Resources Centre and Surplus People Project have been assisting residents in Namaqualand district to design regulations for the economically and environmentally sustainable use of the 1.7 million ha of communal land in the Namaqualand area. The process for the formulation and steps taken are written up in SPP 1999. The draft regulations have taken into account community rules and sets of regulations that have been in use over the past 100 years.

The aim of the projects has been to transform commonage management from a system based on top-down, remote rule making and enforcement to a system based on participative rule making in which management is guided by a five-year, budget-linked management plan, and in which users are held accountable for the payment of the management and maintenance costs of the commonage. The management plan will meet the requirements of an IDP and will form part of the plan.

User participation in the management of the commonage is effected through commonage committees and, in terms of the regulations, commonage committees are tasked with preparing commonage management plans for consideration and approval by the municipality. A number of these have been incorporated in the IDPs of the municipalities.

The municipalities will now take steps to re-establish the commonage committees for each area as municipal entities in terms of Section 82(2)(a) of the Local Government: Municipal Systems Act. The commonage committees will then be able to conclude service delivery agreements with the municipality in terms of section 76(b)(l) of the Act. The municipality will then formally devolve some or all of its land management functions to the committee, which will then act as the agent for the municipality in terms of the grazing regulations.

This is not to say that municipalities will enforce rules, but they do undoubtedly stand a better chance of being able to do this than a private entity. A number of challenges face commonage land administration in Namaqualand. The new local municipalities include areas that previously constituted four separate municipalities. The authorities are distant, often unaware of local conditions, and unable to manage relations between people and their resources. A major problem in Namaqualand has been around payment of user maintenance fees. Incentives for stockowners to pay a maintenance fee are in the process of being created by applications that have been made to access DLA infrastructural grants for commonage purposes.

understanding of the subsistence approach to commonage use, rather than what is commercially 'economic'.

In Namaqualand where commonage land has been redistributed on scale and where access has been afforded to previously disadvantaged farmers in terms of grazing regulations, a picture of the livelihood benefits of commonage may be glimpsed. According to May (1997), a poor farmer with access to 33 sheep may expect an income of some R250/month from this activity.



While this may appear a small income, the money would be 'banked' over months until it was needed, representing an important resource for poor people. The 312 777ha that have been acquired by the four local municipalities in Namaqualand *potentially* represents R8 530 200 of additional income per annum based on carrying capacity (estimates from information contained in May 1997). Based on current stock figures, the estimate comes down to R3.4 million. These are initial estimates, but point to the need for a more detailed economic study of the benefits represented by commonage land.

For the majority of South Africa's rural poor, owning livestock acts as a buffer against destitution caused by unemployment or failure to receive sufficient income by other means.¹⁶ Seen in this context, the commonage programme's contribution may be substantial. Livelihood benefits from commonage have certainly been constrained by the absence of adequate rules and management of the land. The resulting open access situation is destructive of the land and also enables the politically, or financially powerful within the group to dominate access to the land. However, NGO, municipal and PLRO staff agree that commonage is critical for relieving poverty, particularly in areas where there are no other livelihood options.

In some areas of the Karoo, unemployment stands at around 50%, in the Free State, around 30% (Mayson, pers. comm.; Ndabula, no date). In these areas commonage is an extremely important livelihood resource, functioning as a safety net in times of retrenchments. Retrenchments from the mines in both Namaqualand and the Free State to some extent drove the establishment of commonage projects in those areas. Between 1996 and 2000, commercial agriculture in the Free State shed half of its employees. Commonage provided a vital safety net to farm workers forced into rural towns (Ndabula, no date). This echoes experience in Murraysburg and Oudtshoorn in the Karoo (Moses, pers. comm.).

Commonage has provided some limited opportunities beyond grazing. A pig production project on the Oudtshoorn commonage supports more than 40 households and, for some of these households, provides the only source of income (Moses, pers. comm.). A report on commonage management in the Karoo notes that there are a few hectares of arable land on the commonages, which are being used for small-scale vegetable production, with water from a windmill, borehole, or using flood irrigation. This provides food to families, as well as a small source of cash income. For the very poor, however, the costs of electricity needed to irrigate the land render it unaffordable (Cartwright et al. 2002:8).

5. Strategic policy direction: Issues facing the programme

The current status and conceptualisation of the commonage programme

The reduction of the commonage component within the land reform programme and its reconceptualisation as an entry point for LRAD raises a number of issues:

- individual private ownership of portions of land versus municipal owned commonage land holding
- commercial versus 'safety net' land uses
- the performance of commonage to date.

Individual private ownership vs municipal commonage

There is a widely held perception that land reform initiatives should give rise to transfer of land ownership. Transfer of ownership to private entities is considered to be first prize, whether the transfer is made to an individual or to a legal entity that holds the land on behalf of a group. From this perspective, access to municipally owned commonage land is seen as second prize.

However, in law as well as in practice, groups of people, or communities do not own land – the land is owned by a legal entity. Transfer of land to individuals or to private legal entities that represent groups without capacity to administer and allocate land has not ensured security of tenure for the members of such entities who are users of the land. In most cases of redistribution and restitution, land has been transferred before processes for allocation and rights administration were put in place. In many instances this resulted in self-help and grossly inequitable patterns of access. The outcome is that members of such entities are often not afforded access and, even if they are, they are not afforded legally secure tenure of their rights to use the land.

In commonage the municipality is tied into land holding and rights allocation processes. This should ensure that public support is provided for the administration of rights. The rights of users may be more secure in such a system than within a private land-owning legal entity where no legal frameworks for the administration and support of the land are in place. In all systems of group access to land, however, rights will only be secured if an allocation process and a system, in terms of which rights are defined and can be administered, are in place.

Municipal commonage is not the top-down, remote-controlled state land ownership that characterised black land use in the past. Rather, the emphasis is in taking the administration of the land down to the lowest level of interface between state and citizens, tying in public resources, while ensuring that users gain direct control of the resource. The Local Government: Municipal Systems Act provides for the further devolution of power by way of municipal entities that can manage commonage on behalf of a municipality.

Commonage as a form of land tenure further provides a low risk and low investment livelihood opportunity for the very poor as virtually no capital is required and the land cannot be sold if the user incurs debt. The municipality is not allowed to alienate the land and it thus remains a resource for the poor in perpetuity. Freehold tenure may offer an investment in land, but this may be a risky investment for the poor.

Commercial versus 'safety net' land uses

Subsistence agriculture on commonage land is not an incipient, or embryonic, form of commercial agriculture. Research shows that production objectives between commercial and subsistence forms of agriculture, and consequently management approaches, differ radically (Rohde et al. 2001:2).

Few commonage participants can in fact afford to access land through the LRAD programme, since they would not qualify for enough land for a viable commercial farming venture. This was noted by a number of NGO, PLRO and DoA interviewees in the Northern Cape, Eastern Cape and Free State. See also Rohde et al. 2001:17–20. Figures from Namaqualand (which is drier



than most parts of the country) give an indication of the size of farm needed to create an economically viable unit in that terrain: roughly 800ha would yield a monthly income of some R1 000. Commercial farming in Namaqualand is only viable if an individual has 5 000–10 000ha of land available. At about R150/hectare, a commercially viable farm of 7 500ha would cost R1 million – far beyond the reach of land reform beneficiaries (May 1997; May pers. comm.).

Ongoing demand for commonage, and the relatively few 'step up' cases from commonage into LRAD projects indicate that there is substantial demand for land for non-commercial purposes. These include the 'safety net' purposes of fuel collection, income supplementing through running stock, depasturing stock for sale for weddings and funerals, holding stock for sons' bridewealth, and vegetable production for food security and additional income. 'Non-commercial purposes' does not mean 'non-economic' – awareness of the economic value of these activities, and their contribution to the national economy, is increasing. According to Shackleton et al. (2000:59), the economic value of land and natural resource-based livelihoods in communal areas could be worth R13.3 billion a year.

The purpose of commonage needs to determine the kind of land to be acquired. Land closer to towns is often more costly than that further away. By definition there is also less of it and it is not always possible to acquire land close to towns. Land for commonage acquired far from the town works, however, to exclude the identified beneficiaries of the land in that the poorest cannot afford the transport and labour costs necessitated by the distance from town.

For all of these reasons it is important that commonage be considered, not as a nursery for commercial farming and freehold tenure, but as a form of tenure and resource for production in its own right. Municipal commonage is clearly not the mainspring for addressing major inequities in land holding in South Africa, but it has a critical and dynamic role to play in any land tenure system in South Africa. It may also provide useful lessons for systems of land management that could be applied to tenure reform in communal areas. Budgets and allocations for the programme should support this, as should training of personnel, particularly around agricultural land management. A concern has been noted that agricultural extension staff often approach commonage projects with a commercial mindset not applicable to subsistence, cultural and 'safety net' land use requirements (Ndabula, no date; Mayson, pers. comm.).

How effective has the implementation of commonage been?

Commonage has been an effective programme in terms of the transfer of land, but has fallen down in the area of post-transfer rights allocation and land management. This is cited by DLA's Redistribution Directorate as one of the reasons why commonage has been 'down-scaled' in importance. This is certainly a concern, but a significant number of other redistribution and restitution projects have encountered the same problems. In its favour, commonage has institutions and regulatory frameworks in place that may make the rights allocation and land management processes easier to solve than in the equivalent private landowning institutions (such as communal property associations – CPAs).

The substantial regional variations within the application of commonage as a land reform programme may also have contributed to the reduction in the scale of the programme. The effective and efficient use of the commonage programme, mainly within the Northern Cape

and Eastern Cape, may have been seen by the DLA as unevenly drawing DLA resources away from the newer LRAD programme.

Whether this regional variation is due to a lack of demand for this form of land holding, or a lack of information on commonage as a land option, requires further investigation. According to one opinion, the lack of demand has much to do with the general lack of information about the programme rather than any inherent lack of demand for commonage as a land holding mechanism (Wegerif, pers. comm.). A Western Cape PLRO staff member argues that local authorities' unsympathetic attitudes to the needs of poor, black residents prevent potential beneficiaries from benefiting from the commonage programme (Theunis, pers. comm.).

The breakdown in land reform delivery appears to be in the use and management of land, rather than the form of land holding. The circumstances affording beneficiaries the greatest degree of tenure security and full benefit of the land need to determine land reform mechanisms. If, as in the case of CPAs, rights are to be allocated and administered by a private committee – fulfilling what is essentially a public function – the chances for achieving certain and durable rights will be slim. Commonage has the advantage of being administered by municipalities which have, in certain cases if not all, the administrative capacity and a regulatory framework to manage the land as a public resource.

The recent emphasis on commonage being a stepping stone for LRAD has as its priority target group not just 'subsistence', but also 'emergent' farmers. The decrease in commonage projects over the past couple of years and the small MTEF budget allocation indicate that the importance of the commonage programme has diminished. Not only have fewer resources been made available, but the explicitly pro-poor focus has been diluted – the poor now have to share the available resources with wealthier farmers.

Commonage as a local economic development opportunity

Commonage provides an opportunity for DLA to draw local authorities into land reform processes, as outlined in the Local Government: Municipal Systems Act. It may also provide local authorities with an important local economic development opportunity. To date, few IDP processes have taken up the challenge of land reform and commonage planning, despite the fact that, in terms of this Act, plans and budgets for the use, management and maintenance of the land must be incorporated in the IDP of any municipality (Nel, pers. comm.; Isaacs, pers. comm.; Lotter, pers. comm.; Ntsume, pers. comm.). A leader in this regard is the Namaqualand district, as illustrated above.

A major concern of municipalities is the reduced income they will receive from commonage now leased out at market rates, if this is made available for land reform and local economic development (LED) purposes. This is a valid concern for resource-poor municipalities that may in fact use revenue generated from the commonage for social development purposes.

However, there is a trade-off between the benefit of this income and the benefits of supporting poor people's livelihoods directly through providing access to land. Evidence from Colesburg and the municipalities of the Hoogland Karoo indicates that, with sound management in place, black farmers can and will pay for commonage. The costs of not making the commonage



available for poor residents, such as health issues related to stock in townships and the potential food security from commonage, need to be taken into account. Finally, cross-subsidisation of urban services (to make up for poor fiscal management, a culture of not paying for services and poverty) by commonage rental is not in line with national fiscal management policy and the rural development focus of IDPs (Cartwright et al. 2002).

Local authorities have received little assistance in this issue and existing policy does not help municipalities to resolve the potential trade-off inherent in commonage development for land reform or LED purposes. The approach of DLA, particularly in relation to 'traditional' commonage, has been that policy development around commonage use is the domain of the various provincial departments responsible for local government. Municipal commonage is state land, however, and just as DLA is actively involved in establishing policy direction and providing facilitation services for national and provincial state land for land reform purposes, so its role should extend to providing these at the local government level.

Commonage, possibly even more than other land reform programmes, is a local development opportunity, responsibility for which resides in a number of departments and spheres of government. Implementation of commonage projects involving land acquisitions currently reside with the PLROs, with the municipality playing a secondary role in the planning process. As already acknowledged by DLA in its commonage policy documents (DLA 2002c; 2002d), this is problematic and it is critical that the relevant municipality be the driver of the project, assisted and supported by relevant stakeholders. On the other hand, projects involving providing access to traditional commonage that require no land acquisition by DLA frequently have no DLA involvement in planning and resource provision at all. Current role players in commonage projects also differ from province to province.

A number of issues surround local government. Many local authorities still do not see land reform as part of their competencies. Given the demands for housing and service provision and the low levels of capacity at the local level, this is not surprising. In other instances, local government does not have the political will to assist poor residents with commonage projects. This may be due to better off municipalities leasing the land to commercial farmers, or due to local elites having captured the resource for themselves. The wealthier towns of the Southern Cape – Knysna, George and Plettenberg Bay – refuse to make commonage available to poor residents, choosing instead to lease the land for profit. Nel (pers. comm.) and Ndabula (no date) both refer to infighting in Free State councils that has resulted in local elites capturing the commonage resource.

Commonage projects are agricultural, so the provincial DoAs therefore have a critical role to play in establishing the carrying capacity of the land, conducting feasibility studies, and recommending improvements on the land. These aspects are vital for sustainable management of commonage. A problem with agricultural extension support is that extension officers must travel long distances and, in some provinces, these officers have a low level of capacity. The concern about DoA personnel frequently approaching commonage projects with an inappropriately commercial mindset has been expressed above. In most instances, however, DoAs are seen as very positive partners. The success of projects if they have the deep

commitment of the relevant DoA is notable. Conversely it is frequently noted that difficulties occur in project implementation where the regional agricultural offices are not involved or are far away. Projects in Fraserburg, Colesburg and Carnavon all attribute their success to strong mentorship support from DoA officials. The distance from regional DoA offices and the lack of capacity to provide regular service has had a negative impact on projects in the Eastern Cape, Southern Cape and Karoo (Cartwright et al. 2002; Reuters, pers. comm.; Moses, pers. comm.; Mayson pers. comm.).

Commonage as a development task certainly falls between a number of national departments, specifically the Department of Provincial and Local Government (DPLG), DLA, and the National Department of Agriculture, but may extend to the Department of Water Affairs and Forestry, the Department of Social Development and the directorates of various other departments responsible for development and poverty alleviation. Assistance from these departments is sometimes forthcoming on a project-by-project basis. However, there is a lack of co-ordinated, proactive policy development and support services.

District-level committees set up by PLROs to screen projects have had a positive impact on inter-governmental co-ordination of land reform and are important vehicles for the promotion of commonage, as local and district level authorities represented here have been exposed to the programme. There is insufficient support to municipalities to fulfil their mandates as development agencies and insufficient power to draw in post-transfer support from the different departments. Success or failure of projects appears to be vitally linked to clarity around post-delivery support functions. The lack of support of the local government, or under-capacity of the relevant DoA to service commonage projects, are frequently cited as reasons for the breakdown of projects. Conversely, the Colesburg grazing project, which received a lot of attention from the local municipality and DoA, has been able to sustain itself for some six years.

The commonage policy review of 2000 proposed that district municipalities should be the site of delivery, in line with the expanded role of district municipalities as outlined in the Local Government: Municipal Structures Act 117 of 1998 and the Local Government: Municipal Systems Act. Clarity needs to be gained about what exactly DLA envisages the role of the district municipality to be. It is critical that *local* (as opposed to district) municipalities, as owners of the land, remain the key site of delivery, planning, budgeting and linked implementation.

A lack of stakeholder co-ordination can result in an absence of budget alignment between departments and spheres of government. This is well illustrated by the case of the Unicity Commonage Project in Cape Town which has a project budget of R6 million but for which DoA has not allocated any budget for agricultural support (Lotter, pers. comm; Ntsume, pers. comm.). As already noted, municipalities themselves and provincial departments of local government seldom have concrete budgetary allocations for land reform and commonage development within their jurisdiction.

Land rights allocation, administration and management

Potential commonage users are a highly varied group with very diverse needs. Often there is not enough land to go around, resulting in a high degree of conflict, and a struggle to capture



Box 4: Getting it right: Colesburg commonage land rights clarification process

In the late 1990s a portion of Colesburg's 'traditional' commonage was leased to the local Small Farmers' Association, which represents a group of previously disadvantaged residents with an interest in running stock. Problems of open access, over grazing and infrastructure breakdown soon emerged.

The municipality acquired an additional piece of commonage land through the DLA commonage programme in 2000. Based on the experience of management problems on the existing commonage, the municipality was determined, this time, to get it right. The starting point was establishing the criteria for allocation of the rights to commonage. This was done on the basis of DLA criteria as stipulated within the condition of title. The number of 'places' available on the commonage was based on the carrying capacity of the land divided into an estimated 'viable' number of stock per participant. 'Viable' was determined on a subsistence, rather than commercial, basis. This enabled the municipality to select 15 entrants to the new commonage.

A commonage committee was established to advise the council on needs and demands of potential users, the capacity of the land and how to set up legal arrangements. Grazing rights were advertised and applications assessed by the committee on the basis of set criteria. Excluding those with too few or too many stock further narrowed down the number who qualified.

The next step was to develop an agreement for each commonage user. The agreement stipulated the number of stock the user may keep, the length of the contract, the fee per head of stock, the rules and regulations of commonage use and it laid out the management responsibilities of each user and the council. A strict stock limit was placed on each user. Agreements were explained to each individual.

Council initially undertook maintenance of the commonage. During this phase it taught participants how to maintain infrastructure such as fences and windmills, with a view to this function being handed over to the commonage users. Maintenance is now a responsibility of the users, though the council supplies the necessary materials. The cost of materials is covered by the levies on the users. These levies are set at a rate to cover the costs of land maintenance and management, rather than at a commercial level.

The user group has formed itself into a committee and has two representatives on the commonage committee. They are responsible for stock counts. Stock are brand-marked before they may enter the commonage. The council has the powers and mechanisms to enforce the rules and regulations made in the agreement. This would initially involve a system of fines, but impoundment of stock may take place if non-compliance persists.

This project has been running smoothly since 2000 with no incidents of overgrazing or open access grazing. Although one participant has since left the project to farm commercially, the main thrust of the project is livelihoods-oriented and the municipality does not anticipate that many of the farmers will 'step up' in this way. The emphasis is on maintaining a stock ceiling for each user that results in all users having roughly the same number of stock on the land. In this manner the municipality has balanced a viable livelihoods stock number with ensuring that the commonage benefit is spread as widely as it can be. It also ensures that the interests of the group remain as cohesive as possible, resulting in effective group management.

The municipality is now planning to embark on applying this process to the existing, or historical, commonage. The de-stocking process will be extremely unpopular, but it will be made possible by the fact that residents have already seen the council working towards effective commonage management and ongoing land reform. The Colesburg commonage shows that commonage can be successfully managed. Critical in this is that rights allocation precedes access to the land and beneficiaries receive clear, observable rights – in this instance, through individual agreement. This could be further developed through municipal regulations. The struggle over the limited resource amongst potential users can be reduced through visible commitment on the part of the municipality to continue to address the issue of land hunger through land reform opportunities supplied by the commonage programme.

Source: Kapp, pers. comm.

the resource. Clear rights allocation processes and robust institutions to manage these are needed if open access is to be avoided.

At a local level the legitimacy and representivity (racial, gender and class) of groups that gain access to commonage is a major problem. In most commonage projects we investigated, no criteria for allocation of rights to the commonage are in place and agreements for commonage use are either non-existent, or extremely unclear in terms of the allocation of rights and responsibilities. This appears to be the case in the Matzikamma District of the West Coast, in the largest part of the Karoo Hoogland District in the Northern Cape, and in Free State commonage projects. This allows for networks of the powerful to monopolise public land and co-opt the institutions that govern the use of commonage (Cartwright et al. 2002:37). Theft and vandalism of commonage property may well be aggravated by ordinary people's anger as local elites begin to colonise the resource at the expense of the poor (Nel, pers. comm.). Until it is truly seen to be accessible and accountably managed, a sense of 'ownership' of, and responsibility towards, commonage will not become instilled in residents.

This is a critical breakdown in the commonage programme. Land transfer is effective, but post-transfer rights allocation and management are virtually non-existent, resulting in the array of problems commonly associated with land reform projects: open access to grazing land, dominance by political or financial elites, the absence of women, and land and infrastructure degradation.

The DLA's commonage manual of 2002 unfortunately pays no attention to the different options that exist for crafting regulations or grazing/ allotment agreements that could work to secure the rights of individual users of commonage (DLA 2002c; 2002d). The manual contains inappropriate advice on options for regulating access to municipal commonage. It promotes the idea that portions of commonage land should be leased to a user group on similar terms and conditions to which such land is being leased for commercial purposes. The manual does not promote the conclusion of grazing/ allotment agreements or even discuss options for regulating access in terms of municipal regulations. The manual does, however, contain an example of an outdated and early draft set of municipal regulations (see documents 14(a)-(c) of DLA 2002d). The lack of attention to how the rights of users need to be defined, allocated and administered is a major flaw. But, in spite of these fundamental flaws, the manual nonetheless constitutes an extremely important tool in many respects.

Municipalities need to determine and adopt criteria and rules for allocation of their commonage. The rules for the selection process must ensure that the process is transparent and fair. The terms and conditions subject to which a user may use the commonage must be determined by grazing agreement or by regulation.

Allocation criteria may identify priority groups and may also need to include the ability or capacity of a user – in other words, whether the applicant has stock and other necessary resources to farm. Allocation may also be on a first come, first served basis, or on the basis of a draw. In Namaqualand, allocation is based on a point system. Those with the highest scores get first access.

The number of users who may use a portion of land depends on the capacity of the land. This may change over time (that is, during drought periods the capacity of the land may dwindle) and this needs to be catered for in policy.



Once the capacity of the land and the criteria and process for selection and allocation have been determined, the next step would be to select the users and conclude agreements or, in the case of regulations, confirm and record user rights.

The extent of the right may be established through agreement or by-laws (regulations). The core right states exactly what a member is entitled to: the number of stock to be grazed, or extent of land to be worked. Secondary rights must also be explained – for example whether a user has permission to collect firewood or build a structure. What may not be done must also be specified, for example no running of stock on arable lands, and no cutting down of trees.

Commonage land may be leased as a whole to an organisation or users, with the user group responsible for the internal configuration of rights and fees. This is the model that was initially most frequently used, but experience has shown, as illustrated in the Colesburg case study (Box 4, page 21), that it does not work. It also allows, in effect, for the ongoing privatisation of the commonage.

Another option is for the local authority to make the land available for a fee per stock/land unit, with an agreement with each individual user. This is obviously more of an administrative burden, but has been shown to greatly improve land management and ensures that no individual can bring down the fortunes of the whole group. In a collective agreement, one member who does not pay his/ her fees, or refuses to comply with stocking numbers, may cause the agreement to be cancelled, to the detriment of the entire group. With individual agreements, users who are not complying with the regulations may have their individual agreement cancelled. The municipality has greater powers and resources at its disposal to enforce compliance than does an organisation of users.

Another alternative is the formulation of a set of commonage use regulations. If a portion of land is made available for commonage purposes in terms of regulations, the regulations generally do not make the portion of land available in its entirety to one party, but afford access to individual users subject to certain terms and conditions. If an individual user breaches the terms of the regulations by not paying, or by keeping more than the permitted number of stock, the municipality will take action against the individual user and such action will not jeopardise the access of other users.

Regulations are public contracts. They do not come to an end in the way that a private contract does, but are adopted, amended or repealed by public notice, confirmation by the municipal council and publication in the provincial gazette – in the same manner that national and provincial laws are made. Rights conferred by regulation are statutory rights as opposed to rights conferred by contract that constitute ‘personal’ rights. Managing land by way of regulation does therefore have advantages to both the user and the municipality.

Commonage regulations should typically provide for:

- a. a definition of the rights of the user. This entails what the user may do and what his/ her obligations are
- b. a process for the allocation of rights and for an incident at which a right vests in a user
- c. a system for recording and administration of rights
- d. a system for enforcement of rules
- e. a system for ongoing management and maintenance of the land.

Commonage management by regulation has been the mechanism through which commonage was managed for well over 100 years. Contracts were introduced very recently, as commonage was 'privatised' through commercial lease agreements. Most municipalities still have a set of grazing and pound regulations on their books. The conditions of the right must be clear and set out in a set of regulations, including issues such as user fees, brand marking and vaccination of stock. The nature of the right and length of tenure must be explained: is it a life long right or an annual right, and is it transferable (allowed to be sold, bequeathed, or sub-let)? The rights to moveable property erected on the commonage need to be clear, for example if a user erects a pig sty on the land, can this be sold to the next user? Users also need clarity as to how the right is recognised and registered, for example, will they receive a document or contract showing proof of the right, or will the right be kept in a municipal register? Whichever form chosen needs to be clear, understandable and easily accessible to users.

The regulation of the right requires an administrative system that includes the registration of users, registration of stock, collection of fees, separate bookkeeping within the municipal financial system, and mechanisms for what happens when rights holders violate the conditions of the right. Measures to curb offenders need to outline a system of warnings, impoundment and possible extinguishing of the right under certain circumstances.

Personnel are required to manage the commonage. Management structures, their status and responsibilities must be clear and recognised and should be based on the nature and demands of the project in question. Management structures may be advisory in nature, or be delegated full decision-making powers through the creation of a municipal entity – a legally-established structure outside of the municipality to which the municipality may delegate certain tasks. Where aspects of management are delegated, for instance to DoA, this needs to be clearly set out and co-ordinated.

The 'commonage management committee' to be developed in the planning phase is a requirement of the standard notarial deed that DLA attaches to land acquired through the commonage programme and which restricts the use of the commonage for land reform purposes. It incorporates the principle of co-management in which users participate in setting up rules and regulations and in managing projects. This was intended to move away from past practices of top-down management of government land. This committee is to comprise the local government, user representatives, DoA and any other relevant roleplayers as agreed to by the user group and council. The management committee is envisaged as the body responsible for day-to-day management of the project. However, the options for the form of this structure are wide and the parties (commonage users and municipality) must themselves decide on the legal status and powers of this committee.

The purpose of a committee is to support the municipality with the management of the commonage. The starting point needs to be the allocation of rights and establishment of administrative and management systems. The municipality will need assistance and guidance from a commonage reference group, but only once these have been established should rights holders and the municipality formulate the structure most appropriate for the ongoing, daily management of the land. The choice of the status of such a committee needs to be made on the basis of 'best fit' for the project concerned. The options range from an advisory body,



constitutionally structured but not a legal entity, able to enter into contracts with the municipality, to a municipal entity (as provided for within the Local Government: Municipal Systems Act), or private legal entity, with a type of service contract to manage and administer the commonage. The latter options provide the management structure with a greater degree of independence and ability to make decisions, but through a more complicated legal process which may be entirely unnecessary in many cases. For secure tenure, users need to know how and where their right may be defended against unfair practice – what the required steps are in such instances and to whom users may appeal.

6. Conclusion

Substantial land has been transferred through the commonage programme. Programme outcomes indicate that the DLA has been less proactive in facilitating access to 'traditional' commonage than was envisaged in policy, but this is beginning to happen and is locally driven. The geographical distribution of land transferred through the programme has been highly uneven.

Possibly due to the breakdown of the process of rights allocation to users, it is difficult to determine whether a substantial number of households have benefited from the programme to date. This, and the virtual absence of land management systems, appears to have, in many instances, led to a frustrating situation of conflict around commonage land and open access to the land, possibly constraining potential livelihoods benefits from the programme. The beneficiaries of the programme are predominantly men.

Substantial demand for commonage persists. Many town residents do not want to farm commercially, or are unable to do so because they lack access to capital resources, but wish to access land for keeping stock for subsistence and/ or cultural purposes. Commonage requires very low levels of investment from, and low risk for, users, making it ideally suited to serve its poor constituency. Up-to-date information coming out of the Karoo region is beginning to show that the potential economic benefits of commonage may be substantial.

Commonage provides a relatively inexpensive and potentially very effective option for land reform. The municipal government system means that the necessary regulatory framework for rights administration and land management is already in place. Municipal legislation both empowers local authorities to act as agents of development and ensures that management is devolved to the lowest possible level. The municipality as the land holding entity is not a top-down, absentee landlord, but a key agent of local economic development.

The commonage programme has been an effective mechanism in land reform and accounts for the largest single proportion of land transferred in the land reform programme to date. With effective legal arrangements, administrative and management systems, effective land use outcomes can be achieved. Municipal commonage, with its paid officials and regulatory framework, provides a greater chance of 'getting it right' than private landholding by communal property associations. A municipal commonage system also offers a mechanism for the vital ongoing state support necessary for tenure security and for the full benefit of realising land rights. The level of support for the programme in DLA needs to reflect the notable potential of commonage within land reform.

7. Recommendations

1. A land audit should be done in order to identify the extent of existing municipal commonage land across all provinces, combining information held by the DLA with information supplied by all municipalities.
2. For effective programme review, the DLA's Monitoring and Evaluation Directorate must capture information for both 'traditional' and new municipal commonage acquired through land reform efforts.
3. Monitoring and evaluation should capture information on land extent, land capacity, the number and extent of rights allocated, and beneficiaries of those rights, payment of commonage fees and the ability of municipalities to enforce rules and regulations. This information should be generated as a matter of course once effective commonage rights administration systems are in place.
4. Monitoring and evaluation must be gender-disaggregated so that the spread of benefits between women and men can be assessed. Socio-economic profiles of those being afforded rights must be recorded.
5. Reasons for the lack of uptake of the programme in different provinces needs further investigation and DLA should promote the programme in such provinces.
6. DLA needs to promote the use of 'traditional' commonage for public purpose, particularly land reform purposes. Systems to facilitate the conversion of existing commonage into public use land reform opportunities should be established. Amongst other strategies, a pamphlet outlining the land reform obligations of local government in terms of the Local Government: Municipal Systems Act, detailing DLA's municipal commonage services and providing a basic guide to options in municipal commonage management, should issued to all municipalities. Guidelines outlining the facilitation of access to 'traditional' commonages should be included in the DLA toolkit. These guidelines should indicate how and where this fits into IDP and spatial development planning at the municipal level.
7. The site of commonage delivery requires clarity. Clearly DLA and the Department of Provincial and Local Government have resources and skills to offer. The local municipality must, however, be the driver of the project.
8. DLA and DPLG need to work together to create a support package for municipalities to make their commonage available for LED purposes. Municipalities require assistance in order to fulfil their development obligations. Additional personnel may be required. Also of assistance would be an investigation into the opportunity costs faced by municipalities in making commonage available for development purposes in order to assist municipalities to make the difficult decisions about the allocation of this public resource. This would include developing guidelines for municipalities on setting fees for commonage in line with its land reform/ public function.
9. As commonage projects are agricultural projects, DoAs need to work towards trying to gain better boundary alignment between their extension work and municipal boundaries



for more effective municipality-DoA communication. Increased awareness amongst extension staff on the needs and requirements of subsistence, as opposed to commercial, farmers is important for providing meaningful commonage support.

10. Incentives to induce a culture of payment of commonage fees could include such payment as a condition for access to the Consolidated Municipal Infrastructure Grant.
11. DLA should extend its facilitation and planning grant to the commonage programme in order to provide a support service to all local authorities engaged in land reform planning and commonage planning.
12. DLA should work with DPLG to develop a policy on municipalities as development agencies, with particular emphasis on options, processes and requirements for commonage development.
13. Project proposals for the acquisition of commonage land that is relatively far from town may exclude targeted (poor) participants. Land swaps with farmers close to towns should be considered.
14. Non-grazing uses of commonage land, such as developing options for arable allotments, need to be explored. This must include looking at what different systems of rights and management are required for different land uses.
15. Resources should be allocated for DLA involvement in the ongoing project implementation phase to ensure ongoing land rights administration support to municipalities, and to move away from a situation where the DLA delivers the land and signs off.
16. DLA should provide updated guidelines and examples of contracts and regulations through which rights to commonage may be regulated. Such mechanisms should outline rules of access, policy on fees, land management and mechanisms for dealing with cases of non-compliance.
17. The broad public demarcation of the land needs to be clearly defined through proactive measures to ensure that priority land reform groups – the poorest residents and women – benefit from commonage. Measures may include quotas within allocation procedures and means-tested eligibility criteria. Lower levies for women may also be an affirmative support measure to ensure more women benefit from commonage.
18. Women and the poor are often excluded from commonage as they do not have the means to acquire stock or credit. Creative opportunities should be created to overcome this obstacle, such as simple revolving credit funds.
19. Investigations should be conducted into women's priority land needs in relation to commonage to provide a tool for municipalities when designing and planning commonage projects. In further developing its policy and guidelines for commonage, DLA should ensure that gender-related issues are brought in to the planning process and rights allocation process from the beginning – the project needs to be structured around these considerations from the outset.

20. No land should be transferred to a municipality for commonage purposes until allocation criteria and legal arrangements are in place. The following arrangements should be put in place first:
- criteria for identification of users in line with existing policy that affirms poor, female and previously disadvantaged residents
 - a process for user identification and selection
 - suitable arrangements for land rights administration, whether involving a type of contract or promulgation of regulations to be concluded per user and per head of stock
 - the inclusion in commonage regulations of clear rights and conditions
 - user fee structures which will ensure that management takes place on a financially sustainable basis, while ensuring poor residents are able to maintain access to the land
 - administrative support measures to ensure that effective action is taken against rule breakers, for example for non-payment or over-stocking
 - systems of management support and maintenance of the commonage, through a structure suited to the requirements of each project, ranging from an informal advisory committee through to a formally-constituted municipal entity.
21. DLA's projected resource targets for its commonage programme as described in its current MTEF projections should be increased. This is necessary broadly in terms of the important role that commonage has been shown it can play in South Africa's land reform programme, and also in order to include those aspects of expenditure/ resource allocation currently neglected in the commonage programme – planning grants, facilitation and post-transfer support services.

Endnotes

- ¹ We do not discuss the administration of communal grazing land in the 'trust land' areas. The paper also does not deal with commonage lands that were established and controlled by general legislation or special legislation in the past, or commonage in peri-urban local government areas as provided for in the old provincial ordinances.
- ² See also paragraph 4.12 on local government commonage (DLA 1997:50–1); paragraph 3.16 on the use of municipal commonage (DLA 1997:28–9); paragraph 4.24 on grants for the acquisition of land for municipal commonage (DLA 1997:73–4); and paragraph 5.11 on land held by local authorities (DLA 1997:89).
- ³ The Minister of Agriculture is similarly given general powers to prescribe and enforce control measures in terms of the Conservation of Agricultural Resources Act 43 of 1983.
- ⁴ The earliest such act was the Disposal of Crown Lands Act 15 of 1887, Cape of Good Hope. Article 10 stipulated that 'Grants or reserves may be made by the governor for the benefit of the inhabitants of a Municipality of any Crown lands within the limits of the said Municipality, provided that the lands so granted, or the proceeds thereof shall not be used for, or on account of, the ordinary expenditure of such Municipality, but shall be applied for the use and benefit of the said inhabitants in such manner and upon such



works or improvements as the Governor may approve'. In a number of cases, the Dutch Reformed Church acted as town developer/ establisher and the state granted land to it at the outset. In later years the church's role waned and land so granted (and in certain cases subject to a sale) was transferred to municipalities.

- ⁵ The legal principle was confirmed in the case of Langfield vs. Whittlesea VM Board, 11 SRC:236 (Joubert 1907:56). Regulations that were made by the Whittlesea Village Management Board to limit stock grazing on the village commonage on payment of a fee per head of stock were struck down because the object was to generate revenue. See also R vs. Meintjies & Others, 13 EDC, referred to by Joubert (1907:136).
- ⁶ Note that while this may be stated as a general rule, the title deed for each portion of commonage land needs to be scrutinised to establish the nature and extent of restrictive title deed conditions.
- ⁷ Various works on commonage support this view of a complex demand for commonage, including Ndabula (no date) and Cartwright et al. (2002).
- ⁸ In terms of the 1996 Constitution, municipalities constitute a sphere of government. Land owned by national, provincial and municipal governments is now state land.
- ⁹ Note that the LRAD policy statement does not deal with municipal commonage, it rather confusingly mentions that commonage is a sub-programme of LRAD.
- ¹⁰ Calculation based on interviews with Carmen van der Merwe and Sue Middleton, the Gauteng MTEF budget, and the official DLA MTEF figure, which allocates 10% of budget towards commonage, equities and Act 126 programmes.
- ¹¹ This assessment of the programme is based on figures made available from the DLA, information provided by various councils, interviews with DLA officials at the regional, provincial and national levels, and NGO research.
- ¹² Figures used in this paper were based on data provided by the Monitoring and Evaluation Directorate of DLA, but an apparent anomaly needs explanation. The official total of land transferred in all programmes during the period 1994–2002 was 1 348 940ha – a figure reflected in some places in the report. This total, however, excluded the Free State. Free State data up to the end of 2002 became available during the course of 2003. This new information was added to total *commonage* and total *redistribution* figures used by the authors to bring those figures up to date, but no attempt has been made to add these figures into the official DLA total.
- ¹³ An example of this is the Fraserburg grazing project in the Northern Cape. After a long struggle to gain access to the commonage, a number of members of the small farmers' group were unable to participate as they could not access finance in order to acquire stock (SPP 2002).
- ¹⁴ A person who has recently arrived from elsewhere and is therefore excluded from local networks.
- ¹⁵ Both Cartwright et al. (2002) and Ndabula (no date) refer to these conflicting demands for the commonage.
- ¹⁶ For Namaqualand, see Rohde et al. 2001:3; for the Free State, Ndabula (no date) provides useful insight.

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Appendix A: List of key informants

Gauteng

Carmen van der Merwe	Redistribution Directorate, DLA National Office
Phinda Ndabula	Strategic Management Support Directorate, DLA National Office
Sharmla Govender	Redistribution Directorate, DLA National Office

Eastern Cape

Willie Reuters	DLA PLRO
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Free State

Peet Nel	DoA
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Western Cape

Sue Middleton	DLA PLRO
Lindsay Lotter	DLA, West Coast and Unicity
Andile Ntsume	DLA, West Coast and Unicity
Clive Moses	DLA, Southern Cape
Joyene Isaacs	DoA
Mr Neethling	Murraysburg Municipality
Mr Butler	Municipal Manager, Oudtshoorn Municipality
Kelly Theunis	DLA, Worcester

Northern Cape

Charles Williams	Surplus People Project, Hantam Karoo
David Mayson	Surplus People Project, Hantam Karoo
Sue Powers	Surplus People Project, Namaqualand
Harry May	Surplus People Project, Namaqualand
Mr Kapp	Colesburg Municipality
Deon Engelbrecht	Manager, Hoogland Municipality
Braam Berg	Treasurer, Hoogland Municipality
Boettiebul van Dyk	Farmer, Hoogland municipal area
Kasper Fourie	Hoogland Municipality
Hannes Venter	Hoogland Municipality
Koos Hugo	Ubuntu Municipality
Dawie Visser	Attorney, Victoria West

Limpopo

Marc Wegerif	Nkuzi Development Association, Polokwane
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KwaZulu-Natal

Sihle Mkhize	Association for Rural Advancement, Pietermaritzburg
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