

REVIEW OF LAND REFORMS IN  
**SOUTHERN AFRICA**





**REVIEW OF LAND REFORMS IN**  
**SOUTHERN AFRICA 2010**

Edited by Karin Kleinbooi





Source: Stephen Turner

### *Review of land reforms in Southern Africa, 2010*

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Source: Poul Wisborg

## **FREQUENTLY USED ACRONYMS**

CLB	communal land boards
CLRA	Communal Land Rights Act
DUAT	Portuguese acronym for 'land-use and benefit rights'
FAO	Food and Agriculture Organization
FTLRP	fast-tracked land-reform programme
LAA	land-administration authority
LMB	land management board
MCA	Millennium Challenge Account
MCC	Millennium Challenge Corporation
MNLP	Malawi national land policy
NCC	National Constitutional Conference
ZLA	Zambia Land Alliance

# INTRODUCTION

Karin Kleinbooi

Land, and access to land, is one of the most important assets for the poor in southern Africa, both rural and urban, and probably contributes more than any other factor to their economic survival and the quality of their lives. The countries of southern Africa share similar histories of colonisation and dispossession, histories that continue to shape current patterns of land tenure and administration. Most of the countries in the region have been through a phase of liberalisation and market reforms, or market-related land redistribution programmes, and since the 1990s new land laws have been passed in several countries, which tend to have been relatively weakly implemented and enforced.

While land issues in the region have been shaped by history, access to land in the sub-region is currently characterised by: scarcity of arable land; increasing commercialisation of land; new land-use patterns; the expansion of agro-fuel plantations; gender inequalities; and land ownership being concentrated in the hands of an indigenous elite while labour tenants and farm workers are subject to evictions, displacement and deepening poverty.

Several countries have recently adopted land reforms with a strongly redistributive character and a number of others have tenure reforms underway. So far, these processes have tended to be highly centralised, with little or no participation by potential beneficiaries in decisions over how land should be allocated,

managed and used, or who should benefit from reforms. As a result, land-reform programmes have tended to be largely unresponsive to local needs and conditions. This has, in turn, fostered high levels of conflict over land, weak governance structures, poverty, and underdevelopment.

This book forms part of a learning programme on 'Land Reform From Below: Decentralised Land Reform in Southern Africa'. Supported by the Austrian Development Agency, the programme was launched in 2007, and has since provided policymakers, development practitioners and those involved in local governance with a variety of regional platforms on which to share their experiences of decentralised land-reform processes and to derive lessons related to best practice that can inform and improve policy-making.

Decentralisation, for the learning programme, refers to the allocation of power and authority over decision-making and resources away from central, towards regional and local levels of governance, and including other actors such as non-governmental bodies and other civil society organisations, user associations or village committees, traditional institutions, and the private sector. Arguments in favour of the decentralisation of land reform assume that both central and local governance structures are working, and that high levels of local participation and accountability are in place.



In the context of tenure reform, decentralisation provides local community members with formal decision-making powers over land and resources, and strengthens local capacities to carry out administrative tasks. Significant examples of decentralisation in decision-making are to be found where communal councils control land-rights administration, district assemblies have responsibilities for land management, or village land-use management committees have been established.

In the context of redistributive land reform, decentralisation is defined in terms of the steps taken to create conditions for a more equitable distribution of land and other natural resources through people-led (but state-supported) approaches to land reform. It leans towards transferring capacity and resources to downwardly accountable local institutions, and relies less on central government control in implementing land reforms.

In addition to identifying best practice in relation to land administration and management, the Land Reform From Below programme aims to promote innovative local governance through supporting approaches, methodologies, and instruments derived from and based on locally expressed needs and priorities. By providing examples of innovation and best practice on land reform from the region, the programme hopes to inform regional and national discourse and practice.

This *Review of Land Reform in Southern Africa 2010* reflects on countries' experiences up to the first part of 2010, and highlights lessons for land policy and practice. It aims to follow on from the biennial *Independent Review of Land Issues, in Eastern and Southern Africa* produced by land-rights specialists, Robin Palmer and Martin Adams, in 2003, 2005 and 2007.

The information in this volume has been gathered by practitioners, researchers and policy-makers working on land issues in their respective countries. The Institute for Poverty Land and Agrarian Studies (PLAAS) acknowledges the valuable contributions and assistance of the following individuals: Ward Anseeuw, Maggie Banda, Sashi Chanda, Mawira Chitima, Ben Cousins, Jabu Dlamini, Ben Fuller, Ruth Hall, Karin Kleinbooi, Edward Lahiff, Harold Liversage, Henry Machina, Nelson Marongwe, Shenard Mazengera, Mike McDermott, Louise McDonald, Theodor Muduva, Noah Nkambule, Nsama Nsemiwe, Willem Odendaal, Chris Tanner, André Teyssier, Stephen Turner, Wolfgang Werner and Richard White. While a few contributors asked not to be named, their work is also gratefully acknowledged.

This review was submitted to an advisory team that provided editorial support; namely Ruth Hall, Robin Palmer, Ben Cousins and myself.

Karin Kleinbooi, PLAAS, August 2010

# ANGOLA

Karin Kleinbooi and Sashi Chanda

In September 2008, Angola held democratic parliamentary elections. Prior to this, Angola had been in a state of war over 40 years, first against colonial occupation from 1961 to 1975, and then between internal factions from 1975 to 2002. It is therefore highly significant that war has not followed the 2008 elections.

The country is still recovering from these wars, and the situation regarding land rights is in disarray. Soon after the war ended, the Food and Agriculture Organization estimated that less than 5% of arable land was under cultivation (FAO 2004). Yet, it is estimated that approximately 85% of Angola's population live in rural areas and depend on subsistence agriculture (Clover 2005).

After Angola won its independence in 1975, the new government confiscated most of the land occupied by Portuguese settlers. Established estates were converted into state farms or co-operatives and other land was nationalised and simply reverted to the state. While some peasant communities reoccupied their land, on the whole, land was not returned to its pre-colonial, traditional owners. Civil war followed soon after independence, and confiscated (but abandoned) land tended to be occupied by the local people.

In the early 1990s, commercially valuable state land was privatised and sold as large estates, often to the politically well-connected. Even the state-owned coffee plantations became private estates. Many disputes of ownership between



Source: PLAAS

commercial farmers and peasants erupted over the coffee lands. Land occupied by pastoralists, particularly in the southern parts of the country, was fenced off and transferred to ranchers under government concessions. Since then rural land conflicts have festered, and communities of pastoralists and peasants have been displaced from estates but resettled in close proximity to them, so that landowners can benefit from pools of cheap labour when needed.

One of the consequences of peace is that large areas, which were previously insecure and hence unsuitable for investment, have become available for private development; much of this land is particularly suited to dairy farming. The price of the land has therefore increased, and with it, the temptation to grab land illegally – land grabbing is occurring in both rural and peri-urban areas.

Land rights in Angola appear to be more complex than in comparable post-conflict societies, such as Mozambique and east Africa such as Burundi or Rwanda, and need to be

viewed within a wider political, social and economic context. Rapid urbanisation followed the post-war period and conflict regularly erupts over forced evictions. It is therefore not surprising that most disputes over land currently take place in urban areas, and the issue of land grabbing, and the commercialisation of land in rural areas, is increasingly debated.

## Land reform

Since independence in 1975, Angola has struggled to create a legal framework to address the complexities of land ownership. In November 2004, the Lei da Terras (Land Law) was passed. This new law aimed to harmonise state land, state concessionary land given to private individuals and the traditional land-tenure system. The law delineated and expanded on the range of land rights available by concession and recognised some measure of traditional land rights. It also sought to strengthen perceived areas of weakness in previous legislation;

most notably, it regulated the use of urban land and contained some safeguards for persons at risk of eviction. According to this law state ownership of all land is maintained in accordance with the Constitution and the acquisition of rights to use, inherit and sell land is enacted in both civil and customary law. Land held by traditional authorities in rural communities is exempted, however, and once demarcated and titled, this land cannot be sold.

In 2006, the Angolan government proposed some additional regulations (*regulamento*) that were gazetted in 2007. These regulations specifically addressed the land-concession sections of the land law, and provided some detail on how land rights would be formalised. The regulations also expanded on the government's authority to expropriate land such that expropriation is now only legal by court order, and international standards and procedures apply in relation to informing, negotiating with, and compensating affected parties.<sup>1</sup> In practice, however, the government's bias towards large commercial companies may result in the expropriation of land from local communities in the name of macroeconomic growth.

Civil-society organisations and networks lobbied to try to influence the regulations, and succeeded in having certain key clauses reviewed such as: expropriation on the basis of public and private interest, and the illegalisation of all land occupants not in possession of formal title deeds within one year of the publication of the regulations (Amnesty International 2008).<sup>2</sup> Yet, despite these efforts, fundamental gaps and weaknesses in the legal framework governing land persist. These dilute the country's ability to fully use its land resources in support of economic growth, the alleviation of poverty, and the enhancement of the lives of the country's population, including the marginalised. The main gaps and weaknesses are:

- The lack of a comprehensive land policy: without this, Angola has no clear foundation or set of principles to consult when drafting new legislation, co-ordinating existing pieces of legislation, or prioritising actions to be taken, be these at national, provincial or local levels.
- Land related legislation expresses the country's commitment to social and economic development, environmental protection, and the sustainable use of land, yet the content of the law does not support these objectives, and in some cases creates barriers to the achievement of these aims.
- The law is not clear on some key issues, and particularly on the question of land rights acquired through prolonged use, procedures for the acquisition of legal land titles, and the provision 'with no exceptions' of just three years for the legalisation of title deeds.

A critical underlying factor contributing to the vulnerability of the rural and urban poor is insecurity of land tenure. In 2007, a study done jointly by Human Rights Watch and the Angolan organisation, SOS Habitat, detailed 18 mass evictions carried out by the government between 2002 and 2006. The report states that:

*The Angolan government provided evictees with little or no information about the purpose of their eviction and the use planned for the land they occupied. The government also failed to discuss with the affected communities possible alternative solutions to their forcible removal. The majority of evictees interviewed... did not receive formal notification of their evictions. (2007: 3).*<sup>3</sup>

Evictions continued in 2009 in Luanda, Benguela, Huambo, Huila and Malanje provinces. While civil society organisations, including Amnesty International and Human Rights Watch, have launched studies to try to

track both forced evictions and land grabbing in the country, the government has justified evictions on the grounds that it needs the land for public interest development projects, or that it is removing alleged trespassers from state land (Human Rights Watch & SOS Habitat 2007). It is the case that most housing and land acquisition in Angola has been done informally, and only a small percentage of people have legal titles to the land that they occupy. Until recently, most people assumed that use and occupation gave them sufficient security of tenure, since formal procedures were too cumbersome and the state administration was incapable of registering land rights. Recent evictions show that anyone relying on informal tenure rights is very vulnerable.

## Policy developments

The administration and implementation of the law is a major problem in Angola. Despite setting a target of three years (from mid 2007 to mid 2010) for the development of the regulations:

- Most municipal and provincial authorities do not yet know how to issue titles to land;
- In some rural areas, hundreds of applications to legalise communities' or families' lands have not been processed, despite the fact that many of these applications were made years ago;
- Urban dwellers in several neighbourhoods that were allowed to apply for the legalisation of their land rights, have had no replies, much less been given titles to land they occupy;
- The application process is difficult and expensive, and most poor families require support from civil society organisations to complete their applications;
- The law makes provision for occupation without a title deed to become illegal at the end of the three-year period (that is, in mid 2010).

Since the end of the civil war in 2002, the military, political and economic elites have acquired large tracts of land. This has been effected mainly through channels of central government while local administrative structures and former owners or occupiers have been ignored. The law and its regulations do not rule out this process for very large parcels of land, since these have to be approved by the Council of Ministers and the land registry is non-transparent, inaccessible and involves a number of separate agencies. Public bodies, such as municipal administrations and the national police, often enforce illegal and violent actions (Amnesty International 2007).

Civil society organisations working on land issues agree that, the Land Law, and the Constitution of Angola – which declares that the state protects the rights of rural communities to their land, and affirms the right to housing – as well as international conventions ratified by Angola, are not being respected by the authorities themselves.

## Gendered impacts

The Angolan Constitution stipulates that both men and women are equal before the law, yet the Land Law is silent on issue of the equality of men and women in relation to acquiring and owning land. The law recognises the traditional tenure system as authoritative in the administration of land, and traditional systems of land distribution tend to disadvantage women. The Land Law is thus not a solution to gender disparity in terms of land ownership.

Furthermore, while the *regulamento* have made provision for the protection of individual land rights since 2004, the majority of the population – including many government officials – is unaware of the terms of these laws. Without an awareness and understanding of the laws, implementing them is extremely difficult, if not impossible. Fortunately, the resulting delays in the implementation of these laws and regulations have created an opportunity for civil

society organisations to design strategies for protecting (and improving) women's rights to land.

War and HIV/AIDS have left millions of households headed by women. Women's rights to land are trumped by customary practices, leaving land under the control of men. The American federal government's aid-agency, USAID, is currently giving some attention to this issue in a project aimed at strengthening land tenure and property rights in Angola. This may have implications for both the formal and customary laws that affect women's property and inheritance rights in cases of widowhood, divorce, and polygamy.

## Decentralisation

Angola's traditional leaders, known as *sobas*, act as local governing authorities in rural and many peri-urban areas. A multitude of local governance matters, including land administration and management, have traditionally been handled by *sobas* in conjunction with village elders. The line between traditional and formal governance structures has tended to become slightly blurred in the last few decades and, in some areas, *sobas* have steadily lost power while, in other places, they have been absorbed into formal government structures. This indicates how superficial local-level authority over land can be. However, particularly in the more remote areas, *sobas* often continue to serve as the sole governing authority.

## Conclusion

During the drafting of Angola's Land Law and the regulations subsequently linked to it, members of civil society (with the support of several members of Angola's government) made sustained and comprehensive efforts to influence the content of the legislation for the benefit of the majority of the population. Unfortunately the legislation does not reflect these efforts. The Land Law and

related regulations contain numerous areas of ambiguity and a significant gaps that require the addition of further guidelines and substantiation.

While the Land Law provides a general overview of land ownership, the regulations should set out concrete guidelines on how the law should be applied. The present regulations are too generic, however, and do not provide sufficient detailed information on how communities should go about securing communal land, nor do they provide for equality between men and women in relation to land ownership and access.

## Acknowledgements

Several people based in Angola made valuable contributions to this chapter. In particular, Norwegian People's Aid (NPA-Angola) commissioned a study on land conflicts in four Angolan provinces. Their report is due for completion by the end of 2010, and the contribution by Sashi Chanda of NPA-Angola drew on internal preliminary discussions related to the study.

## Notes

1. Angola acceded to the International Covenant on Economic, Social and Cultural Rights (ICESCR) on 10 April 1992. Since then it has ratified a number of other international human-rights treaties including: the International Covenant of Civil and Political Rights (ICCPR) and its first optional protocol; The Convention on the Elimination of all forms of Discrimination against Women (CEDAW) and its optional protocol; and the Convention on the Rights of the Child (CRC) and its optional protocols.
2. The wording of the latter clause was later changed to 'three years after publication of the regulations'. As discussed below however, the three years has also proven



insufficient, and there is a large backlog of applications for title deeds that have not been processed.

3. See also the International Amnesty report on this issue (Amnesty International 2007)

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# BOTSWANA

Richard White

Botswana was less affected by colonial rule than any other territory in southern Africa. The reasons for this relate to Botswana's relatively scarce mineral resources, its low rainfall levels, and the fact that its traditional chiefdoms (merafe) were both powerful and well organised at the height of colonial expansionism. Britain declared the country a protectorate in 1885, and pursued a policy of indirect rule that involved minimal interference in the internal governance and systems of customary law established by the indigenous peoples. Thus significant settlement by white farmers never took place in the country, and no more than 6.3% of the land was ever alienated for freehold (mostly white-owned) farms.

There are three categories of land ownership in Botswana; tribal land, state land (known as crown land before independence), and freehold land. Tribal land comprises just over 71% of the national land area; state land comprises about 25%, and freehold land makes up the remaining 4%. Tribal land is administered by land boards that issue use-rights, not ownership rights.

In 1966, the State Land Act turned crown land into state land while the Tribal Land Act of 1968 provided for the establishment of land boards. Thus authority over land was transferred from the hands of traditional chiefs into the domain of the land boards. The Tribal Land Act was reviewed in 1983 and again in 1992. The trend



Source: Richard White

in Botswana's land policy has been to increase the proportion of tribal land at the expense of both state and private ownership.

Since the introduction of the land boards, the responsibilities of traditional leaders in land administration and land management have largely been taken over by these boards. Elections in the kgotlas (village assemblies) began in 1984. Prior to that, two village-council members were elected to the District Councils. The chief was an ex-officio member representing his tribe, the district agricultural officer was an ex-officio member representing agricultural interests and the remaining members were appointed by the Ministry of Local Government Lands and Housing on the advice of the district commissioner, to represent tribesmen and other local interests. Nowadays, following an election, the minister appoints land-board members, and subordinate land boards are established to deal with customary allocations when necessary. By 2009, 12 land boards and 38 subordinate land boards were in operation.

## Land reform

Land policies in Botswana, contrary to other southern African countries, have not been developed with the primary aim of land redistribution, but rather to increase agricultural productivity, conserve range resources, and improve social equity in the country's rural areas.

While the state has been modestly successful in attaining the first two goals, the same cannot be said for the third. During the 1980s, Botswana introduced a number of agricultural subsidy programmes to help small farmers improve their crop outputs and overcome severe droughts. These programmes were then reviewed and revised from 2007. As it turned out, however, the two agricultural land-reform policies (the Tribal Land Grazing Policy and the National Policy on Agricultural Development) actually harmed many poor households living in communal areas. Poor people were excluded by constraints such as: demarcated farms not being large enough to be economically viable given the prevailing

development and input costs; ownership of only small herds or none at all; and lack of human capital. Complementary programmes in the form of innovative loan products and cash grants are needed to support these farmers and so help them participate in the land reform process. The maintenance and management of communal rangelands remains problematic.

In 1983, the Presidential Commission on Land Tenure conducted the first review of land-policy. In 1992 a second presidential commission was set up to review the Tribal Land Act, land policies and related issues, and published a Paper entitled, *Land Problems in Mogoditshane and Other Peri-Urban Villages* (Republic of Botswana- 1992). In 2002, another national land policy review was undertaken. In 2005, the president's powers to give directions of a general or specific nature to the land boards were extended to the minister. In 2006, a decision was taken to divide the Ministry of Local Government, Lands and Housing into the Ministry of Local Government and the Ministry of Lands and Housing. At this point, all employees of the land boards who, until then, had been part of the Local Government Services, were transferred to the Department of Land Board Services, which falls under the Ministry of Lands and Housing.

A number of governance problems stem from this decision. For example, in 2006, Cabinet took an administrative decision that no further direct allocations of tribal land would be permitted to non-citizens. Non-citizens who want access to tribal land must now obtain it by sub-leasing from citizens. There is an ongoing issue in Botswana about who can be regarded as a citizen of the country. Of the 12 land-board secretaries currently employed, nine are Tswana. Those in Botswana who do not see themselves as Tswana, though in the minority, regard themselves as citizens but do not have legal recognition as such, since the Tribal Territories Act and its related laws do not provide equal land rights to all tribes. The case of San is a

good example. The concept of tribal territory coupled with group rights and participation in the decision-making process, has provided a basis for the Tswana to control resources on behalf of the state but in their own group interests.

Another major challenge facing the land boards is the recognition of the customary rights of culturally and economically marginalised minority groups to their ancestral lands. Again, the rights of the San communities, for example, remain a contested issue. Despite the community-based natural-resources-management approach (introduced in 1989) and the national conservation strategy (adopted by the National Assembly in 1990), which aim to support land reform by promoting more sustainable use of land-based natural resources and devolving limited property rights to legally constituted communities, little significant progress has been made in this regard.

## Gendered impacts

Government policy in Botswana avoids making specific reference to men and women. In an effort to work in a gender-neutral way, access to land and housing, among other publicly controlled resources, is currently allocated on a 'first-come, first-served' basis. Unfortunately, this, by its very nature, marginalises women as it fails to recognise the obstacles that many women face in claiming independent land rights (or demanding land reform). Legally, all women, whether married or single, have an equal right to access land, but patriarchal attitudes continue to limit the extent to which women are able to exercise this right. In general, women still find it very difficult to obtain access to land.

Women are not excluded from making applications to the land boards and the boards are not allowed to discriminate on the basis of gender. Spouses may not be allocated two separate residential plots unless they demonstrate need; that is, separate allocations



Source: Ulf Nermark (Activepic)

will be granted where both spouses work in separate areas and travel significant distances to work and therefore both require access to separate accommodation.

## Decentralisation

Botswana has been lauded as an example of democratic governance, but its democratic credentials have been subject to scrutiny over the past few years. The administrative structure of the land boards is centralised, but the system fails to place effective controls, checks or balances on the activities of the boards at the local level. At the same time, however, local-level institutions such as district councils or the tribal administration have little or no power to influence the way that the land boards conduct their business. One of the most frequent complaints against the land boards is that they allocate land inequitably, that they favour those with influence and many cattle, and ignore the land claims of those who are politically

inarticulate and own few animals. There is some evidence, however, that these biases are even greater in some of the central government offices which deal with land, and that the land boards and district councils, have a clearer perception of the needs of the poor at the local level than do most civil servants. So they are hamstrung by the central control of the ministry, but at the same time many other issues, such as allowing elite control at the local level, go unmonitored and unevaluated.

While land boards are hailed as a good example of decentralisation in land administration systems, they are not entirely democratic, nor are they locally accountable. The 'elections' that determine who sits on the boards are not always properly conducted and the minister then takes the final decisions regarding the appointment of board members. Many of those who vote in the elections tend to be wealthier members of the community and owners of large cattle herds. As a result, the boards cannot be said

to fully represent the diverse interests of the communities they serve.

Given the tendency of expanding bureaucracies to increase centralisation, it is perhaps inevitable that the Ministry of Lands and Housing has taken advantage of the opportunity to involve itself more closely in the affairs of the land boards (and other land matters at district level). Furthermore, in 1993, the office of the district officer for land was transferred from under the district commissioner to the land board, thus removing the only independent monitor within the system.

Furthermore, there is an inappropriate distribution of power and responsibility, risk and reward between the various actors and stakeholders. In particular, board members need to be allocated more power over their staff and the powers of the board secretary over the appointment and retention of board members should be curtailed.

In the past few years, increased corruption, combined with administrative incompetence and long delays, have led to a clear decline in public confidence in the land-board system, and a marked increase in the number of cases referred to the land tribunals and other courts. Botswana's two land tribunals are inundated with cases and are unable to deal with cases at a rate approaching that at which they are filed; backlogs are large. Some cases initiated as long ago as 2003 remain unresolved.

One of the underlying problems is that the service providers themselves, to satisfy their own agendas rather than to meet the needs of service users, designed the system to deal mainly with the administration of tribal land, rather than to address issues of social equity across the rural areas. This problem is not unique to land administration in Botswana, but

must be addressed as a matter of urgency if national aspirations for economic growth and social justice are to be met.

## Conclusion

Botswana's experience of land boards is of interest for many developing countries, yet work still needs to be done to bring about more effective, democratic and participatory management of communal land rights, and to devolve responsibility for land-rights-management to the rights holders themselves.

In moving forward, it is important to learn from the mistakes outlined above, and to reapply the founding principles of democracy, participation, and accountability upon which the system was based. In particular, more emphasis on meeting the real needs of the users of the system is required if the land rights of the poor are to be protected and upheld, and national goals for social and economic development are to be achieved.

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- Richard White works for the Ministry of Lands and Housing in Botswana. His contributions reflect his own views and not those of the ministry.





*Source: David Neves*

# LESOTHO

Stephen Turner

Land in Lesotho is predominantly under communal tenure. By regional standards, the country has a high population density. Ten years of land-policy formulation started in 1999 with the establishment of the Land Policy Review Commission. A draft white paper on land policy was developed in 2002 and, in 2003, a Land Bill was prepared with the intention of regularising the irregular tenure arrangements that prevailed in urban and peri-urban areas after decades of ineffective land administration. The Land Bill was revised in 2004, 2005 and 2006 but ultimately rejected by the minister of local government, who is responsible for land matters. A further round of debate and legal drafting has generated a new Land Bill that was tabled in parliament at the end of 2009.

There will be some significant changes if the new bill is passed. The bill will override customary land-law and tenure arrangements wherever these conflict with its own provisions. In addition, it revives the traditional principle of revoking the title of those who do not use their land or do not use it in accordance with the law. This should facilitate the development of a market for land in Lesotho. Foreign-owned companies registered and doing business in Lesotho should be able to obtain land rights for investment purposes, as would individual non-citizens. The also bill places strong emphasis on land-use planning; no title may be granted in rural or urban areas except in accordance with an approved development plan.



Source: Stephen Turner

## Land reform

The Land Bill as prepared in 2003 made provision for four kinds of land title to cover all land rights, namely: primary, qualified, demarcated and registrable leases. In 2006, after being revised in 2004 and 2005, the detailed and comprehensive bill (which formed part of a broader proposed Land Code) was rejected at ministerial level. The minister had two main objections. Urban sprawl in Lesotho has resulted in unplanned extra-legal allocations for a vast number of Basotho who have bypassed the largely dysfunctional administrative systems to obtain urban and peri-urban land rights. The minister's first objection was against the bill's proposal for a qualified amnesty for these urban dwellers. The amnesty also mandated the minister to legalise and formalise these de facto tenure arrangements. The objection was made on the grounds that uncontrolled growth of urban populations could reduce the resources available to the existing urban population and could lead to the decimation of agricultural land.

The minister's second objection was against the conversion of rural land allocations to primary leases. She called for the allocation of primary and qualified leases to be deleted from the bill. Repeated and increasingly convoluted

efforts to rewrite the bill to meet the minister's requirements led government to conclude that instead it would be necessary to redraft the bill from scratch. A new round of policy consultation and legal drafting took place in 2008 and 2009, and led to the Land Bill of 2009.

## Policy developments

Over the past decade of debate and drafting of new land legislation, community councils (elected in 2005 in terms of the Local Government Act of 1997) have been responsible for allocating land for rural residential and arable purposes in terms of the 1979 Land Act. The councils and have been given training (supported by German aid agency, GTZ) for this purpose. The Local Government Act also gives these authorities natural-resource management roles for all except the highest mountain cattle posts. Those areas are still administered by the principal chiefs. Elsewhere, chiefs have – officially at least – lost their powers over the allocation, administration and management of land.

After years of declining donor interest in Lesotho, the arrival of the US-government aid agency, the Millennium Challenge Corporation (MCC) has had a significant impact. Over five years, from 2008, MCC will provide \$362.5m for

a series of projects that include water, health and private-sector development. This funding dwarfs that provided by other donors in Lesotho and, not surprisingly, comes with a long set of conditions. Among the conditions for the MCC's Private-Sector Development Project is the passing of a new Land Act that, *inter alia*, will:

- enhance tenure security for all land occupants;
- ensure gender equity in land ownership and land transactions;
- 'establish a simplified framework for the systematic regularisation and registration of land and mechanisms that increase access to land and encourage formalisation of land rights' (MCA-Lesotho, 2008: 21).

Another condition for this project is 'the passage of legislation that enables the establishment of a new land administration authority (LAA) that is professionally managed, autonomous in its operations, self-sustaining and provides efficient and cost-effective land administration services to public and private users' (MCA-Lesotho, 2008: 21).

Both these conditions (reportedly imposed in the face of considerable reluctance from the Ministry of Local Government) were to be met within a year of the MCA-Lesotho compact's entry into force, that is, by mid 2009. Intensive efforts followed as new teams of consultants worked to prepare a new Land Bill and to lay the foundations for the LAA. The Land Bill as tabled in 2009 defers many of the necessary, detailed provisions to regulations that the minister would have to promulgate at some later date, and it makes no reference to an LAA. Instead, it provides for the following:

- the continuation of the Office of the Commissioner of Lands;
- the continuation of the 1979 Land Act's legally vague reference to land 'allocations' in rural areas, although it provides that

holders of such allocations may apply to convert these to leases;

- all land titles in urban areas to be leasehold;
- holders of urban leases to be free to encumber their titles, for example through mortgages, but still require the commissioner's consent to sub-let or sell their land.

Predictably, the publication of the Bill led to controversy, with many complaints that it could transfer the Basotho's precious land rights to foreigners, and dilute the equitable distribution of land that the nation has long cherished. Advocates of these reforms have countered that economic growth and efficient commercial agriculture will never be attained without easier access for foreign investors and provisions that allow entrepreneurial citizens to develop larger holdings.

## Gendered impacts

Legally and culturally, a number of barriers have impeded women's access to land, including the customary laws of Ler'otholi' (named after the paramount chief of the Basotho, 1891–1905), and the statutory and common-law status of women as minors. However, a major step forward was taken when the Legal Capacity of Married Persons Act was passed in 2006. This officially ended the status of married women in Lesotho as legal minors and should make a significant difference to gender equity in land tenure and administration. Indeed, the conditions related to funding from the MCC include the requirement that new land legislation should reflect the provisions of this Act. There has been a general social trend towards stronger land rights for unmarried women and widows in practice, but these rights have not yet been given adequate legal foundations.

## Decentralisation

Attempted land reform from 2000 to 2010 has taken place in the context of decentralisation,

introduced by the Local Government Act of 1997, but not put into practice until the local-government elections of 2005. The new local government authorities have made a comparatively smooth transition into the administration of the 1979 Land Act, although each of the 128 community councils established by the Act covers an extensive area. Meanwhile, chiefs and headmen often still support community councils in the handling of land-administration matters at village level, although traditional leaders can no longer award title deeds.

Effective decentralisation requires resourcing and political commitment, and it remains to be seen whether these will be provided or sustained in Lesotho. So far, in three of the ten districts, attempts to introduce decentralised development planning have shown indifferent results. Probably the most successful area of innovation has been the management of natural resources by local authorities, notably grazing lands – although much remains to be done in this regard too.

The highest priority for the minister of local government – linking decentralisation and land administration – seems to be land-use planning. This is grounded in her long-standing opposition to the disorderly, unplanned and largely extra-legal sprawl that has characterised the rapid growth of Maseru and other urban areas. Occasionally, she expresses her views by authorising the bulldozing of urban settlements. In one instance this led to a court case that the ministry lost. In this landmark case, a group of ordinary urban residents in Maseru successfully challenged the legality of state eviction and the appropriation of their land without compensation. The concerns of the minister are understandable, however. Rapid, unplanned residential development not only makes service provision difficult but may destroy scarce agricultural land. Urgent efforts are underway to train land-use planners and to assign one such officer to each community council so that spatial

development plans can be prepared for each village. Meanwhile, the minister has imposed a ban on any land allocation not complying with an approved land-use plan.

## Conclusion

Depending on if and when parliament approves it, the 2009 Land Bill could mark a major turning point for land tenure and administration in Lesotho. From the perspective of ordinary rural and peri-urban people, the highest priority is probably that there is clarity, efficiency and transparency in land administration. From the perspective of the government, there is an urgent need to achieve the legal and administrative reforms agreed to in the conditions linked to the MCC funding. From the perspective of the nation as a whole, it is clear that major challenges remain. Decentralisation, land reform and land administration are all vulnerable to deteriorating standards of governance and unrealistic expectations about the quality of planning and administration that can be achieved in the short to medium term. Meanwhile, the kind of land reform Lesotho may achieve is likely to be done in a rush, to meet the funding deadlines. Those deadlines may at least help policy makers to refocus their attention on finalising Lesotho's land policy.

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# MADAGASCAR

André Teyssier and Ward Anseeuw

In 2005, Madagascar's government embarked on a land-reform process that aimed to change the prevailing view that only citizens can buy land rights from the state, in favour of a perspective that views all land as an economic asset that can be sold to attract foreign investment. This reform process also introduced a system of decentralised land management. In November 2008, South Korean firm, Daewoo Logistics, signed a 99-year lease on 1.3 million hectares of land in Madagascar – roughly half of the country's arable land. The agreement, signed by then president Marc Ravalomanana, was widely condemned and sparked an uprising that, in March 2009, led to a coup by Andry Rajoelina, then mayor of Madagascar's capital

city. One of Rajoelina's first steps after the coup was to cancel the Daewoo deal. Understandably, land-reform processes have been disrupted by the political instability that continues to rock the country, but the instability itself illustrates the latent conflict between the two perceptions of land as outlined above.

Madagascar inherited state property and land systems based on French colonial rule and inspired by the Torrens title system.<sup>1</sup> Until 2005, all land was owned by the state, which could award land titles to Madagascan citizens who wanted to purchase the land they lived on. The land registration procedure (that comprised 24 separate steps and took an average of six years to complete) was extremely expensive





and complicated. Between 1896 (when French colonial rule began) and 2006, less than 500 000 titles were registered in a country that has approximately five million agricultural and urban plots (Teyssier & Ravelomanantsoa 2008). The dilapidated state of land-registration services coincided with the poor state of the national land and topographic archives, the frequent disappearance of boundary markers, and sometimes the absence of any identified owners, to the point where one sometimes wondered whether the term ‘property’ had any real meaning in Madagascar. Furthermore:

- The land-registration procedure remained inaccessible; even those who applied for registration were rarely assured that their rights would be fully recognised in an environment where the demand for land was constantly increasing;
- Land insecurity prompted individuals to assert ownership over natural resources that were previously collectively owned and used;
- Economic investment remained minimal;
- Tribunals were saturated with land-related affairs;

- Uncertainties around land tenure hindered taxation and limited local-level development.

Returning the responsibility for regulating access to land to Madagascar’s traditional authorities is no longer a viable option. Years of colonial administration, enforced through ‘direct rule’, severely weakened the power of traditional authorities to manage the allocation of land rights. Currently, the power held by these authorities tends to be limited to the conservation of sacred sites.

In the meantime, Malagasies have developed their own methods of recognising property rights by means of *petits papiers* (little papers), which they try to formalise by having them stamped by the local public authorities, the communes.<sup>2</sup> Despite the lack of nationally approved standards, these papers have been established in the same way throughout the country. They formalise land transactions much more cheaply than the formal title registration process and offer a first-level guarantee of rights.

In this context, land reform was conceived of as an alliance between centralised authorities and the local *communes*, permitting the state to



recognise land-management systems inspired by local practices that were reliable and easy to implement.

## Land reform

In 2005, the government's White Paper on Land Policy suppressed the presumption of state property. This means that land that is untitled but has been developed, cultivated and/or built upon by generations of users is no longer considered to be the property of the state; it is now considered to be the private property of those users. The White Paper also announced a combined land-management system whereby the formalisation of property titles became the responsibility of the centralised land administration, and the formalisation of non-titled property, through *petits papiers*, was placed under the of the local *communes*. Issued by a *commune's* land office, *petits papiers* developed a legal value almost identical to that of a legal title. It is now up to users to choose the method they prefer in establishing their rights to land.

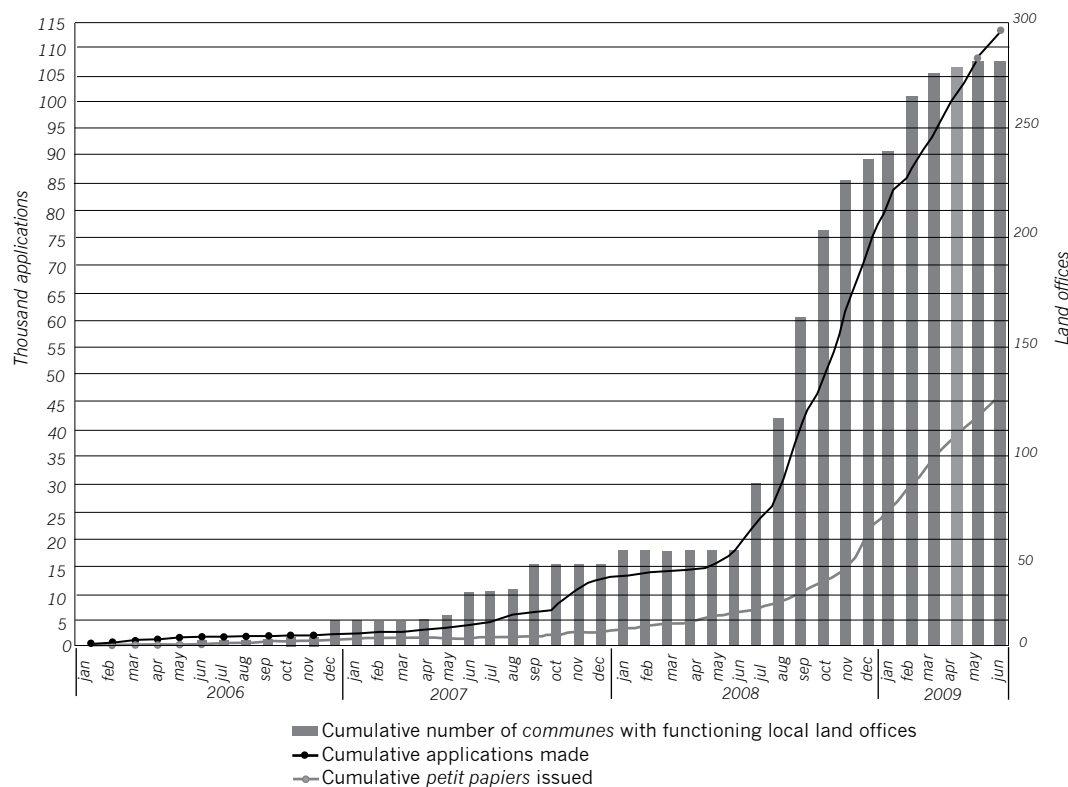
In total there are just over 1500 *communes* in Madagascar. All *communes* can establish a local land office. In early 2007, funding from donors such as the US-government's Millennium Challenge Corporation (MCC) and the World Bank was made available to cover the start-up and operating costs of about 250

*communes* that began to pilot the new system. Administrated by community personnel, this service manages procedures for the recognition of rights to non-titled land on request by users, records information regarding untitled land, and keeps track of *petits papiers* that are issued (Teyssier et al. 2007). As discussed further below, however costs have since had to be covered by the *communes* themselves.

The process of awarding land rights to untitled private property is outlined in Law 2006-31 – which established the legal framework for the establishment and management of the local land offices at *commune* level (Teyssier et al. 2008). For each application, a commission, made up of elected representatives of the *commune* and village councils (*fokonolona*), establishes an official report recording the asserted rights and possible oppositions. The local land office agent then prepares a *petit papier* which has to be signed by the local mayor. The boundaries of the certified plots are recorded on a map known as the *Plan Local d'Occupation Foncière* (PLOF). This acts as a record of the legal status of each plot, its title, area and, by default, the local land office under which it falls. The Local Land Occupation Plan is illustrated preferably using satellite images or aerial photographs, on which plots are indicated, according to reference marks such as roads, rivers, unique trees, rocks, flood banks or rice plantations. This process has made it possible for landowners to reduce their dependence on centralised state land-administration processes, and has cut both the costs and the time involved in obtaining legal titles.

The political restructuring that has taken place since the coup in March 2009, reflects the difficult choices and inevitable uncertainties of Malagasy land policy. The new government is trying to manage a difficult paradox: on the one hand, it wants to satisfy voters by installing land offices in all *communes* and, on the other hand, it hopes to keep control over land by maintaining

Figure 1. Growth in local land offices, as well as the demand for and issue of *petits papiers*, Madagascar, 2006–2009



the state’s property procedures, mainly regarding the installation of large agro-industrial projects. The management of these two different land policies will have to be resolved in the near future.

The coup also sparked reaction from the international community: the Millennium Challenge Corporation and the World Bank, which together had provided 90% of the financial support for the Malagasy land reform process, stopped all funding from July 2009. The local land offices were severely affected by this. The local land offices in the 250 *communes* that had received external financing had to take charge of their own costs at a time when sustainability and extension/technical support services were not yet well established.

The year 2009 therefore saw a process of forced financial and technical autonomy for the majority of local land offices. Two months

after their funding was stopped, two-thirds of the *communes* had managed to maintain their land offices, but funding for ongoing technical support, monitoring and training remain crucial if there is to be a sustainable and efficient transfer of skills to the *communes*.

## Decentralisation

The *communes* have an obvious interest in the local land offices – Figure 1 clearly illustrates the significant growth in the number of *petits papiers* that have been issued. Between 2006 and June 2009, 280 *communes* (approximately 20%) were equipped with a land office. They issued approximately 45 000 *petits papiers* (in response to 112 000 applications). This represents 80% of land-rights documents issued in Madagascar for this period, both titles and *petits papiers*. In 2008 and 2009, the number of *petits papiers* issued (representing transactions on less than 20% of the land) was higher than



Source: André Teyssier

the total number of land titles granted in the country over the previous 30 years.

The average cost of a *petit papier* amounts to \$9, compared to \$507 for a land title, and the average waiting time to obtain a *papier* is six months not six years. The management of land at community level also facilitates the resolution of a significant number of disputes without the involvement of the land tribunal.

These impressive results should not mask the challenges that the system presents to Malagasy land policy, such as:

- technical constraints, linked to the derelict and incomplete plans and files in the centralised administration, which make it difficult for *communes* to identify the land covered by old titles and identify their areas of jurisdiction;
- the cost of acquiring the satellite images or aerial photographs to create detailed local land-occupation plans;
- legal constraints, linked to the maintenance of old land rights and the status of domains

such as registered indigenous reserves, unachieved cadastral operations, etc. which most *communes* still do not have the expertise to engage with effectively;

- constraints linked to the training of land-office and *commune* personnel;
- the difficult relationship that exists between the national land administration and the local land offices, with the land offices progressively depriving civil servants of their ‘customers’ and their parallel incomes.

These issues will need to be resolved if land offices are to be deployed nationwide.

## Gendered impacts

The statutory laws in Madagascar do not discriminate between men and women in terms of property rights. The present legal clause allows for land titles, and *petits papiers*, to be issued in the name of either a man or a woman, be they married or single. Of the 45 000 *papiers* issued by June 2009, 6 100 (21%) were registered in women’s names. However, real equality between the sexes in terms of the recognition of land rights is highly nuanced and varies from region to region. In the south-eastern regions, for example, social practices effectively prohibit women from owning land. Although the local land offices in these regions tend to allow for the recognition of women’s rights, it is difficult to evaluate the impact of the decentralisation of land management on more equitable land access for women, as the process is still new and as yet, there is very little available data.

In terms of customary law, the rights of women to acquire land or property are subject to strict rules, and it can be argued that:

- The existence of land local offices has so far had no effect on the number of women obtaining *petits papiers*;

- The land reform process seems to reinforce inequalities between men and women;
- Few women know that they have a right to own land;
- Few women know much about the local land offices.

In this context, government and commune authorities need to be proactive about reconciling the differences between the statutory laws and customary practices in order to improve the situation of women. For example, the traditional authorities should be made aware of the recent land reforms and statutory changes described above, while women should be informed of their rights, trained to negotiate for these rights and encouraged to make use of the local land offices.

## Conclusion

In the current political context, it is difficult to predict the future of land policy in Madagascar: will it reaffirm the decentralisation process or will there be a return to a centralised system that mainly provides for the management of large land-acquisition projects? At the time of writing, the decentralisation process seemed firmly entrenched. Local land offices tend to become new community services, fully managed by the community, and the demand from communities for local land offices remains high.

It could be argued that the key will be how seamlessly the communes manage to insert the local land offices into their own administrations. It is clear that the communes are starting to reflect on their land and fiscal policies; they see that the land offices can be useful tools not only in protecting the rights of those on whose behalf they administrate, but also in generating tax revenue benefits them directly. The future of development in Madagascar is, without doubt, linked to the fate of the land offices.

## Notes

1. The Torrens title system was introduced in South Australia in 1858, formulated by then colonial Premier of South Australia Sir Robert Torrens. The system transferred property by registration of title, instead of by deeds, and it has since been widely adopted throughout the world.
2. Each *commune* consists of several *fokontanies*, which are the smallest administrative entities in Madagascar. Each *fokontanie* may contain several *fokonolona*. No exactly equivalent terms for these words exist in English, but the terms municipalities, wards and village councils are similar.

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# MALAWI

Ruth Hall

The vast majority of Malawians (around 85 %) depend on agriculture for their livelihoods yet, despite the country's rich and fertile soils, it remains one of the poorest nations in the world. The agricultural sector consists of a large number of smallholder farmers and a small number of large commercial estates run by an even smaller elite that wields considerable economic power. These two agricultural sectors have been subject to different tenure regimes. Smallholder farmers work land that is held under customary tenure to produce for their own consumption and aim to sell surpluses. The large estates are held either under freehold title (a title in perpetuity) or leasehold tenure

(resulting from the conversion of customary land). This applies to most of the tobacco estates.

## Land reform

Confirming and securing customary land rights are the main aims of the Malawi National Land Policy (MNLP) introduced in 2002 (Government of Malawi 2002). The policy aims to address concerns about the 'fraudulent disposal of customary lands by headmen, chiefs and government officials' and proposes to strengthen and formalise land rights and their administration over the 70% of the country's land that is held under customary tenure. The





Source: Barbara Tapela

policy proposes the privatisation of parcels of customary land and the registration of these in the names of individuals – in other words, to extend a system of titling to ‘customary estates’ over which people will have lifelong usufruct rights. There are debates about what this means for the role of chiefs – many of whom feel threatened by these reforms – and whether the sale of customary land will be allowed.

Alongside these tenure reforms, there has been a move to redistribute some private land – mostly those large estates where much of the land is under-used – in order to try and alleviate the problem of chronic overcrowding in some of the customary areas. This redistribution programme has been run along the lines of the willing-buyer, willing-seller approach, advocated and funded by the World Bank.<sup>1</sup> Starting in 2004, a World Bank-funded community rural-land development project was rolled out in four (pilot) districts. Its aim was to provide access to land and support for newly settled farmers, through a small-grants programme (of about \$1 000 per applicant) for land purchase and farm development. As has happened elsewhere,

this led to groups of applicants combining resources to buy and then jointly farm the land. The MNLP emerged from a Presidential Commission of Inquiry into Land Policy Reform, set up in 1995, following the introduction of democratic reforms and multi-party elections that ousted long-serving leader, Hastings Kamuzu Banda. Its final report (Government of Malawi 1999) outlined the reforms needed, which through a consultative public process, were developed into the MNLP. While addressing the issues of overcrowding on communal lands and skewed land distribution, the Commission and the MNLP have tried to address a range of problems arising from unclear and

contested land rights, including:

- land grabbing and land speculation by the elite;
- conflict between ‘firstcomers’ and ‘latecomers’;
- the allocation of land to multiple ‘owners’;
- the extraction of exorbitant allocation fees by chiefs;
- the commercialisation of land use, whereby customary lands have been leased out to allow for the further expansion of large estates (often tea and tobacco), thus further aggravating congestion and conflict over the remaining customary land.

## Policy developments

The next step in the reform process is for existing land laws to be changed to give effect to the MNLP. Expectations were that one comprehensive land law would be developed to give effect to the MNLP, but it seems that legal reforms may be enacted more incrementally.

There have been several delays in giving legal effect to the new policy framework, indicating that the political impetus for these land reforms was on the wane. In 2006, for example, a report was presented to the Minister of Justice who in turn brought a draft bill to the national assembly. Unfortunately, parliament was not fully functional at the time (the government of the day was in the minority) and, because this issue was very sensitive among politicians and traditional chiefs, the report was not tabled or debated in parliament. In 2007, the Special Law Commission on Land Law Reform reported on its consultations – largely with traditional leaders and civil society organisations – about the proposed regulations in the draft Land Bill (see Peters & Kambewa 2007). A new parliament was sworn in (in 2009), and number of civil-society organisations led by Landnet began lobbying for the law to be debated in parliament, but at the time of writing, the bill had still not been tabled.

In relation to agriculture, Malawi has directed public investment towards improving productivity and marketing by smallholders, as well as securing their land rights. As a result, the country has been recognised as having triumphed in promoting productivity among small farmers – who make up the majority of land users in the country and produce two-thirds of its agricultural output. Between 2005 and 2007, Malawi rapidly moved from having a food deficit of 43% (of national food requirements) to a food surplus of 57%.<sup>2</sup> This was achieved through the government's introduction of direct or 'smart' input subsidies, particularly for fertiliser. This signalled the re-entry of state support for smallholder farming, following a structural-adjustment process in the 1980s that dismantled parastatals and state marketing boards, to the detriment of rural development.

Malawi has since been widely hailed as an example for other African countries of the importance of investing in agriculture and supporting small farmers, as one response to

the global crisis of rising food prices. Political and financial emphasis has fallen on production support for small farmers, however, rather than on giving effect to the land policy, and so conflicts and contestations over land allocations continue.

A notable political shift that may affect land reform is that the ruling party, which, for the preceding five years held a minority in parliament, gained a majority in 2010. This might change the course of parliamentary debate as the ruling party gains confidence in pushing its policies through. The policy remains unchanged, however, so the real challenge will be seen when the draft Land Bill is debated in parliament.

The tenure reform process, incomplete as it is, has already led to increased conflict over the customary land, as the move towards formalisation of titles is beginning to entrench the powers of traditional leaders. Even before the land policy is fully implemented, competition over land is intensifying. Increased rentals and sales are not evidence of a more efficient land market, but of growing inequality and conflict among the rural population as land becomes commoditised.

## Gendered impacts

Women in Malawi provide most of the country's agricultural labour, and make up the majority of small farmers in the areas under customary tenure. Their tenure is insecure, however, as it is guided mainly by customary law, which in the patrilineal groups, stipulates that women cannot own land and may only access it through their husbands or male relatives. In matrilineal groups, women are assumed be owners of land, but are expected to consult their male relatives on any major decisions concerning their land. Usually the maternal uncle, who is regarded as the head of clan, has to be consulted. Since many communities are not only matrilineal but

also matrilineal (where a man moves to his wife's home), most men who farm do so on land that currently belongs to their wives or their wives' families.

The draft Land Bill proposes making inheritance bilateral, thus making it possible for both female and male children to inherit land. Ironically, this may have the effect of dispossessing women in matrilineal communities. Since the policy provides for land titles to be held in the name of the 'head' of the family, this is likely to lead to men's names being registered as owners, even in situations where matrilineal and matrilineal traditions prescribe that women be recognised as the legitimate rights holders (Peters and Kambewa 2007).

## Decentralisation

Malawi has a policy of decentralising land administration, but the structures are not in place and the draft Land Bill has not yet been passed, so the policy is not yet operational and its impacts on land reform cannot be assessed. So far, there has not been sufficient political will from government to implement the policy and the proposed decentralised structures have not been constituted. When land disputes arise, community members go to their village chiefs and if that fails, they go to the district commissioner who, by virtue of being the overseer of a district, is mandated to adjudicate over matters. The courts do not deal with any land-related issues, as they have no mandate over land matters.

The titling approach to tenure reform that is proposed in the MNLP hardly constitutes decentralisation. Yet both the tenure reform and redistribution processes aim to support local institutions that would allocate and register land rights. In this sense, privatisation effectively involves decentralisation. The policy proposes that each district is to have its own traditional land clerk tasked with maintaining a register of land rights allocated, and customary-land

committees (comprising traditional leaders as chairpersons, and some elected representatives) to oversee the process. This may result in chiefs having greater authority over decisions regarding land than they have had in the past.

## Acknowledgements

Shenard Maxengera and Maggie Banda also contributed to this chapter.

## Notes

1. This is similar to the programme introduced in South Africa, also on the advice of the World Bank.
2. See Yolandi Groenewald, 'Malawi's fertile plan' *Mail & Guardian*, 25 June 2009. Available at <http://www.mg.co.za/article/2009-06-25-malawis-fertile-plan>; and Archbishop Njongonkulu Ndungane. 'From basket case to food basket in Africa: Lessons to make hunger history.' Press release, *African Monitor*, 2009 Cape Town

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# MOZAMBIQUE

Christopher Tanner

In Mozambique land belongs to the state. Before the 1992 peace agreement, more than 80% of the population were peasants. Out of a population of 16.5 million people, over five million had been displaced by the long civil war. Of the 80 million hectares of land in Mozambique, 45% is arable and only a small percentage of that is productively used. Getting more land under production, to support national development and alleviate poverty, is therefore a major goal for the government.

The Constitution provides for land-use and benefit rights (DUATs is the Portuguese acronym for this) to be allocated to anyone who wants access to land; access to, and use of, land is considered to be a fundamental right of all

Mozambicans. After 1992, an open-market system was adopted that led to the liberalisation of the economy and the rehabilitation of infrastructure. Conflict over land and other natural resources led to a 'race for land', and this prompted a new policy-development process, creating expectations that land would be privatised and made available for new commercial enterprises – including forestry, game farms and agribusinesses – rather than for peasant agriculture. The policy-development process resulted in the 1995 National Land Policy, which is still in force today, and which steers a path between securing local rights, acquired through customary occupation, and promoting new private investment.



Source: Christopher Tanner

# Land reform

The Land Law of 1997 emerged from a process of dialogue and collaboration between government, civil society and technical specialists. This law is generally considered to be a good basis for protecting the land rights of poor and vulnerable groups because:

- It recognises the land rights of communities and individuals as acquired by customary or long-term occupation, and gives such rights full legal equivalence to state-allocated DUATs.
- The rights of women over land are protected by constitutional provisions that take precedence over potentially prejudicial customary norms and practices;
- A collective DUAT can be held by a local community, on a co-title basis, thus giving stronger protection to the many hundreds of households whose rights are acquired through, and managed by, customary structures.

The 1997 Land Law does not create separate community and commercial lands, but provides mechanisms for investors to acquire rights in

land where local rights already exist. This is done principally through mandatory ‘community consultation’, whereby potential investors must talk to communities occupying the land they wish to access and negotiate an agreement with the local rights-holders. In principle these agreements should ensure that local people gain economic and other benefits in return for ceding their rights to private investors. Furthermore, to obtain a new DUAT, an investor must also present a ‘project’ that, if not implemented, can result in the DUAT being revoked. In 2003, the first contracts were signed on projects set up between a local community and two logging companies (Inchope Madeira and Lorena Lda.) to harvest timber. These contracts represent perhaps the first concrete examples of the kinds of partnerships that, if successful, will serve as important models for similar initiatives elsewhere. However, these kinds of initiatives tend to fall apart more often than not.

Progress with implementing the more progressive aspects of the Land Law has been uneven, with a tendency on the part of government to favour the fast-tracking of new private investment over the need to identify and register the great majority of DUATs which

already exist, having been acquired through occupation.

An amendment to the law in late 2007 imposed administrative limits on the capacity of local people and communities to gain formal title over the land they claim through occupation. This weakens the basis of future negotiations with outside interests, as land not formally recognised as being held by a community is considered to be 'free of occupation' and more easily handed over to new investors. In addition, the registration of DUATs acquired by occupation can no longer be done at local level, but must go via central government; communities must also produce a land-use plan showing how they intend to use all the land they claim as theirs through custom. Meanwhile, in spite of calls from the growing entrepreneurial class to privatise land, official policy is that the land still belongs to the state and always will. While the DUAT in fact represents a strong private right with Constitutional protection, the state continues to retain ultimate authority over all land, and has special regulatory control over 'public-domain' land, such as national parks and other protected areas.

Government is concerned about the fact that large areas of land are still unused, even where it is in the hands of the private sector. It is also concerned about the implications of the Land Law for allocating large areas of land to major investors, notably for the production of biofuels but also for forestry plantations and, recently, to grow food for other countries. Hence recent regulatory changes have imposed a de facto restriction on those DUATs acquired by customary occupation, and subjected the cadastral formalisation of this right (in addition to the legal formalisation already achieved) to approval at the highest level, namely by the council of ministers. While government is now demanding that communities present a project or land-use plan when they want to formalise their acquired DUATs, the Land Law itself does not require this.

According to the Minister of Agriculture, Soares Nhaca, of the 15 million hectares of arable land for which new DUATs have been issued, only six million hectares are being well used. He told a meeting in October 2008 that the ministry would step up inspections and ensure that DUATs are revoked if proposed projects are not implemented.<sup>1</sup> Legally DUATs held by communities cannot be rescinded. Inspections are infrequent and some elite interest groups close to the state continue to hold unused land – in anticipation of some future return if the land is privatised or if they can make an agreement with international investors. Yet, the 2008 statement by Minister Nhaca is one of several in recent years suggesting a crackdown on state officials holding unused land, and there are some signs that some unused DUATs are indeed being cancelled and the land allocated to other applicants.

Recent urban land regulations also restrict rights acquired under the Land Law, in a way that is judged by some observers to be illegal and unconstitutional (see Hanlon 2002). This has particular importance for many thousands of peri-urban residents with occupation rights. As at the time of writing (April 2010), there had been no organised reaction by civil society, which is tending to go along with these and the other restrictions now being imposed on rural communities.

All this is taking place in the context of government frequently asserting that it is the 'land owner' and can therefore take decisions – including revoking or overriding local DUATs – in the name of some greater public or national interest. In fact, the powers of the government are legally circumscribed and subject to quite tight legal and constitutional safeguards. Unfortunately these are little known or understood by the majority of Mozambicans.

Meanwhile there is a growing awareness at local level of acquired rights and how to use and defend these more effectively. Many years of lobbying and campaigns by NGOs, and the

training of paralegals and communities provided by the Netherlands-funded Food and Agriculture Organisation (FAO) programme at the Centre for Legal and Judicial Training is having an impact. Many communities on land that is in high demand from investors (for tourism or agriculture) are requesting that their land be delimited so that they can acquire DUATs to their land.

There are also signs that the government is more aware of the need to work with local rights holders when considering new investment proposals. A government resolution passed in late 2008 requires firms asking for rights to more than 10 000 hectares to include the 'terms of the agreement made with the holders of rights acquired by occupation' with their applications. The rural-development strategy talks of effective implementation of the Land Law, namely the DUAT, giving priority to rural communities, and underlining the need to involve local people as stakeholders in a decentralised development process.

These are significant steps forward but it remains to be seen how implementation of the Land Law will change in practice. The reality is that land-reform implementation is not centrally integrated into wider rural and national development strategies. Yet the cumulative impact of over 10 years of land reform and capacity building, by government, NGOs, and other partners who are concerned to see the 1997 law fully implemented, has resulted in a diverse range of interest groups that are now well able to engage the government in debate over current policy and the real direction of reform.

## Policy developments

Since 2007, no explicit policy developments have occurred, although the regulatory changes could be said to have effected a de facto shift away from the more progressive principles of the 1995 National Land Policy. It is clear that a national debate on land is likely in the coming

years as the government exercises its new mandate after fresh elections in late 2009, and seeks to promote growth and alleviate poverty through private investment and job creation. However, a new National Land Forum is being created with funding from the US-government's aid agency, the Millennium Challenge Corporation (MCC), to consider underlying policy and legal-reform issues. While this will be a multi-sector and multi-stakeholder body, it is not yet clear whether it will be participatory or consultative in nature, allowing stakeholders to contribute, or merely to comment, on already elaborated government thinking and proposals.

The regulatory changes carried out so far would suggest a more 'directed' approach to reform, as the government seeks ways to find land for large-scale investors, and reasserts its control (as owner of the land) over rights that are, in fact, constitutionally recognised and guaranteed. There has been no open discussion by any of the main political parties of land issues, and a political shift from the basic principle of state ownership is unlikely under the FRELIMO government. But it is also the case that 'the state' (or more accurately, government and its supporters) faces huge pressures and opportunities from major investors and from friendly sovereign states, to allocate land in a way that may not be in the full interests of existing rights holders. While the demand from biofuel investors has dropped along with the world price of oil and the global credit crunch, applications made in 2008 by nearly 30 biofuel firms for some 12 million hectares of arable land, underline this point.

## Gendered impacts

The mix of constitutional principles and Land Law provisions conditioning the application of customary norms and practices is intended to give women and men an equal voice in land decisions. The recognition of customary rights as being equivalent to state-allocated DUATs give women a strong degree of legal protection over



land obtained through local customary systems. In practice however, women remain vulnerable to losing use-rights they may have acquired if they marry, or through other relationships they may have with men, since men are nearly always considered to be the 'owners' of the land in question. Also, customary norms that evolved to safeguard widows and orphans in earlier times are failing to respond to land grabbing by male relatives that has become common in the context of HIV and AIDS and the growing commoditisation of land.

## Decentralisation

Decentralisation is happening in contradictory ways. On the one hand, the issuing of DUATs has been centralised as mentioned earlier. This means that local authorities can no longer register people's customary land rights. This function has been transferred to central government, and is thus further removed from the people whose rights are in question. On the other hand, the government has overseen an extensive and genuine decentralisation programme in recent years.

Administrative decentralisation happened initially through a range of donor-supported local-district planning and decentralisation programmes (notably in Nampula and Sofala Provinces). These formed the basis for the further expansion of decentralisation and the promulgation, in 2003, of new local government legislation. In 2008 the government allocated cash resources of some \$280 000 per district per year to all the districts in the country. This initially created confusion and mistrust in many areas, but now the process is generally being far better handled and is having a visible impact on local infrastructure in some districts. There is an urgent need to link these 'top down' processes with the emerging local-level capacity to develop proposals for services and investment using these (and other) resources.

While there are also clear signs of a reassertion of centralised government (FRELIMO) control,

much local capacity has been built up, with many non-traditional leaders emerging as effective actors at local level. Elected municipal governments in the major towns are well established; the challenge is to extend this process into rural districts.

The Land Law in principle decentralises major functions down to communities, which should participate in consultations and manage and allocate all customary rights within their jurisdiction. This system works well, but the decentralisation of real administrative power to local level – for example, giving communities a decisive role in how official land allocations are made – is less evident and still has a long way to go. Community consultations also tend to be rushed, involve too few people (mainly local leaders who do not adequately represent local people), and are more cosmetic than effective ways of ensuring that local rights are respected.

Moreover this legally prescribed decentralisation is not matched by a corresponding shift in the day-to-day operation of public land services (such as land surveys and accurate mapping), which are still hard to find at local level and are in need of a major overhaul. Many skilled employees left at Independence, and over the next decade, Mozambique relied heavily on expertise from socialist countries for cadastral and other such services (De Wit et al. 2009; Norfolk & Tanner 2006). These experts also left suddenly in 1991, and by 1996, the national staff complement had fallen from 477 to 326. In 1998, in one of the weakest provinces, there were just eight staff, none of whom had higher-level training, trying to cover an area larger than many EU countries. The government's programme does however include setting up cadastral offices in many more districts, to bring services closer to local people. NGO and civic action over the years is also resulting in a growing awareness among people of their land rights and the need to protect these more forcefully, either through delimiting and titling/ registration, or by engaging more forcefully with



investors and others who seek to purchase local land. There is as yet no visible evidence of the move to open more district land offices; there are still too few and no assessment has been made of the areas where these exist.

There is a clear synergy between the practical application of Land-Law mechanisms, such as the delimitation of acquired rights and community consultation, and the emerging local-level planning process. These processes generate what are, in effect, local land-use agreements, with implications for determining which areas might be available for investment, and what kinds of services (such as feeder roads) a district might have to provide. These and related issues of participatory local development and community-investor partnerships are now being addressed in an extension of the FAO-Netherlands programme to support the implementation of their rural development strategy.

## Conclusion

The Land Law still enjoys widespread legitimacy and popular support, rooted in the democratic and participatory way in which it was developed. This legitimacy has created a legal and policy space for interest groups to act in various ways to defend and exercise their rights. The government also has legitimate concerns about the need to respond to investor demand and get national land resources under production in the fight against poverty and the drive towards sustainable national development. While recent regulatory changes lack the legitimacy of the earlier reform process, the reassertion of 'state' control over land has achieved a de facto change in the application of policy on the ground. There is a risk that if public land administrators and other land users are not encouraged to apply the more progressive principles of the existing legal and policy framework, and are allowed instead to focus on conventional land administration practices that serve elite and small interest groups, then de facto (and not necessarily

positive) policy change will be achieved through administrative means.

This underlines the need for strong civil-society participation and far greater education of citizens about their rights, and how to defend and use them. The subtle changes to the Land Law Regulations have had a direct 'policy' impact, and have not been opposed by civil society, which failed to achieve consensus on how to deal with these challenges. Generating and maintaining consensus in all areas of land policy involves a commitment to genuine participatory engagement by all stakeholders. Meanwhile in a country where the rule of law is slowly gaining ground, and where there is a strong commitment to producing a professional judiciary, legal empowerment of the poor is emerging as a key tool for ensuring that legal frameworks – present and future – are correctly and fairly applied in practice. This involves more than just 'disseminating the law'; practical measures such as paralegal services are needed to provide legal support in day-to-day processes (negotiations with investors for example), and help with defending rights in courts.

## Acknowledgement

This chapter includes comments and contributions from NGO representatives and other observers of land issues in Mozambique.

## Note

1. Joseph Hanlon, 'Crackdown on unused land'. News reports and clippings 139. Available at <http://glacier.gg.rhnc.ac.uk/simon/GG3072/Moz-Bull-139.pdf>.

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Source: David Neves

# NAMIBIA

Karin Kleinbooi

Since Namibian independence in 1990, land reform and resettlement has proceeded slowly and cautiously. A national conference on Land Reform and the Land Question, held in 1991, paved the way for land reform to begin to address the racially skewed land-holding pattern that had been prevalent in the country before 1990.

In 1995, the Agricultural (Commercial) Land Reform Act allowed the government to accelerate its acquisition of land. In 1998, Namibia's National Land Policy was adopted. And in 2002, the Communal Land Act was enacted which has facilitated the establishment of communal land boards (CLBs) in 12 of

the country's 13 administrative regions. The 2002 Act specifies that CLBs should include representatives from various sectors including farmers, traditional leaders, and delegates from conservancies, the regional council and the relevant government ministries (such as Land, Agriculture, and Environment). In terms of gender, the Act requires that at least four women be represented on each CLB, two with experience of the functioning of the CLBs, and two that engage in farming or related activity in the area covered by the CLB.

CLBs have no powers to allocate land. They can only approve or reject applications for the registration of customary land rights. The



Source: Werner Wolfgang

role of a CLB is to allocate customary rights on plots of up to 20 hectares for commercial agricultural use, maintain a land register, and advise the minister of Lands, Resettlement and Rehabilitation. Central government funds the CLBs and provides regional employees of the national ministry to assist them.

## Land reform

The current focus of land reform in Namibia is on the implementation of existing policies and legislation. On the one hand, the transfer of freehold farmland continues through the Affirmative Action Loan Scheme. This provides grants to supplement the capital of those who can access their own finance. Redistribution of land also occurs via a resettlement programme, which aims to redistribute freehold agricultural land to previously disadvantaged individuals and requires no financial contributions from the beneficiaries. The resettlement programme targets asset-poor individuals in communal areas who engage in agricultural production through official membership of projects run by project co-ordinators appointed by the Minister.

On the other hand, the registration of customary land rights for residents of communal areas also continues. By the end of 2008, rights to 12 922 pieces of customary land had been registered. This represents 5.5% of the estimated 236 000

properties held by households or individuals under customary land rights (Fuller 2008). However, while it may be popular in some areas, people in other parts of the country have so far refused to register their land. The reason for this relates to certain deficiencies in the way the Act attempts to regulate customary land law. In other words, the Act helps to consolidate the powers of traditional authorities by confirming their inherited rights to administer and manage land under their jurisdiction. But in the Kavango Region, for example, all five traditional authorities have rejected the registration of customary land rights because this region is organised according to matrilineal custom. This has certain implications for inheritance rules that the Act does not adequately provide for.

People holding customary land rights rarely use their land as collateral for loans. Consequently, they are unable to develop economically. Discussions continue around ways to enable residents to use their communal rights as collateral for loans but the counter-argument that the use of communal land as collateral can put this public resource at risk in the event of defaults remains convincing (Werner & Odendaal, 2010).

In 2009, discussions got underway to find ways to enable residents in communal areas to use their rights as collateral for other loans. It is still too early to tell how this might affect access to land.

## Policy developments

The price of commercial land has risen dramatically since 2005. In 2009, the Ministry of Lands and Resettlement initiated a land audit and an investigation into the factors behind this rise. The rise in prices has limited the government's capacity to buy land and thus slowed the resettlement of commercial farms. It is possible that operational changes to the resettlement process may come once the audit report is completed.

In the general and presidential elections held in November 2009, SWAPO maintained its large majority. The party has not indicated that there will be any other major changes to their land policies or programmes.

While the main focus of activity has been the implementation of existing policy, there is one key policy shift underway:

- In 2010 a new Land Bill was released for public consultation. The objectives of the new Bill were to combine the Commercial (Agricultural) Land Reform Act 1995 as amended with the Communal Land Reform Act, 2002 as amended into one Land Act with few changes. In its entirety the Bill correspond largely to the two laws it seeks to replace. The benefits of this exercise remains to be seen. It is conceivable that policymakers aims to minimize the impacts of a dual tenure system by having one piece of legislation. Regrettably, the differences between the communal areas and the freehold sector are of a structural nature. In the first case access to land and land rights are governed largely by customary tenure. In the other case, land is being held under freehold title which provides very robust rights to the land. Each system brings with it its own specific land rights issues which has not been resolved under the current pieces of legislation. One key aspect of the Land Bill is its proposal to restrict the acquisition of agricultural land by foreigners. This is absolutely necessary in view of the 'land grabs' that have affected Namibia. Without improved accountability and transparency towards land rights holders, people in communal areas will be vulnerable to the predations of international investors and their local allies. With regard to redistributive land reform in the freehold sector, the Land Bill disappoints in not proposing changes to some sections of the ACLRA that clearly have not worked for beneficiaries i.e. the procedures for



land acquisition by way of the willing seller willing buyer principle has remained unchanged in the Land Bill with a few minor changes.

## Gendered impacts

The majority of Namibia's subsistence farmers are women. Both women and men in communal lands have usufruct rights from the government, although it is male traditional leaders who have the authority to allocate land to households.

Since Namibia attained independence in 1990, the policy and legal framework has sought to promote gender equality. In addition, various policies and laws have addressed the right of women to own, and more specifically to inherit, land. For example, the National Land Policy and the Communal Land Reform Act of 2002 aimed to improve gender equality in land rights and tenure security. Then, in 2005, a national conference on women's land and property rights and livelihoods was held, where women's land rights were recognised as being equal to those of men. This had a positive impact, and the concerted emphasis on gender seems to be leading to greater respect and rights for women at community level. Yet, while women are now more likely to retain their legal rights to own land, certain categories of women such as widows continue to be dispossessed of their assets such as their homes and agricultural implements.

This points to the fact that key areas, such as customary family law, customary inheritance law, and the laws that regulate traditional courts, are not yet covered by effective statutory provisions. It remains important that these be addressed. In terms of existing customary laws of inheritance, the death of a husband can leave his estate, and particularly those aspects of it that relate to land ownership, vulnerable to all sorts of legitimate and illegitimate interests. It is vital that the interests of the least powerful (and often the most legitimate, namely the women and children), are legally protected, to prevent widows from losing their homes and being forced off the land.

## Decentralisation

Providing customary-rights certificates has provoked mixed reaction. Many thousands of small farmers have not yet put in their applications. The certification process is wholly decentralised however, and takes place within Namibia's 13 administrative regions.

It is working, albeit slowly, but is hampered by inadequate and in some cases insufficient administrative capacity within the regional governing structures. Partly in response to these problems, an EU-funded initiative, the Rural Poverty Reduction Programme, and the Millennium Challenge Account<sup>1</sup> aim to make significant progress in improving regional land management capacity, as well as in increasing the productivity of farms in communal areas.

Another factor hindering the certification process is that some traditional authorities perceive the Communal Land Reform Act – which aimed to take existing traditions and customs into account – as taking control of the administration and management of communal land. These traditional leaders are therefore reluctant to implement the Act. In addition, in some regions, the areas that fall under the jurisdiction of traditional authorities were not very clearly demarcated. Tensions have arisen

between newly recognised traditional authorities and those that had already been in existence in those areas. It is important that policymakers learn from these problems and take them into account in future.

## Conclusion

After 20 years of independence, land reform in both commercial and communal areas remains very slow. The effective implementation of the Communal Land Reform Act has been hamstrung by the fact that CLBs have limited budgets that impact on the swift processing of customary-land registrations, leasehold registrations and dealing with land disputes. More effective monitoring and evaluation of the activities of CLBs is needed.

Arguably, most of the focus on land reform has been on commercial land reform. It is interesting to note that the market-driven Affirmative Action Loan Scheme has seen more than four times as much land transferred from white into black hands than the government's resettlement programme. The loan scheme is mainly aimed at creating black middle-class farmers, whereas the resettlement programme's original aims were to alleviate rural poverty and provide land to the poor and landless. Thus it could be argued that the Namibian land reform process has had a limited impact on alleviating rural poverty. In fact, land reform as a poverty alleviation tool, did not feature at all in the *National Poverty Reduction Action Programme 2001–2005* released in 2002 (see Werner 2003).

## Acknowledgement

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## Note

1. The Millennium Challenge Account is a \$304.5 million grant agreement that

amounts to more than N\$2.3 billion, signed with the US-government's Millennium Challenge Corporation.

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# SOUTH AFRICA

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Widespread poverty and deep inequality remain major challenges in post-apartheid South Africa. The persistence of these problems, particularly in rural areas, is closely linked to the legacy of a bitter history of land dispossession. Land reform is essential if the structural roots of rural poverty are to be addressed. In addition, the commercial agricultural sector remains dominated by large-scale, capital intensive and predominantly white-owned enterprise, while millions of small-scale and poorly resourced black farmers are effectively shut out of markets for both agricultural inputs and produce. Given the widely acknowledged failure of the market-based land-reform policies adopted after 1994, recent years have seen renewed

debate on alternative approaches. The ruling party, the African National Congress (ANC), developed resolutions on agrarian reform for its 2007 national conference in Polokwane, which indicated that land, agriculture and rural development would be given higher priority than in the past, and hinted at new policy directions. This emphasis was also evident in the ANC's 2009 election manifesto, and in the new administration's subsequent announcement of a comprehensive rural development programme in June 2009 (DLDR 2009).

The post-election period has seen significant institutional shifts. Constitutionally, land is defined as a national competency while





Source: Ben Cousins

At the time of writing, (May 2010), a policy process was underway to produce a new Green Paper, and the big political and policy question was whether the new policy would address wider issues about the nature of agriculture and the agrarian structure.

## Land reform

The land-reform policy framework was set out in the *White Paper on South African Land Policy*, released by the former Department of Land Affairs in April 1997. It provides for three broad sub-programmes:

- Land restitution – which provides land or compensation for victims of land dispossession which took place after 1913;
- Land redistribution – which provides a system of discretionary grants that assist certain categories of people to acquire land through the property market; and
- Tenure reform – which secures and extends the tenure rights of the victims of past discriminatory laws and practices.

The land redistribution programme aims to achieve objectives of both equity (in land access and ownership), and efficiency (through improved land use and a greater contribution to the national economy). In 1994, government set a target for the land redistribution programme, aiming to transfer 30% of commercial farmland (that is, 24.6 million hectares) to black South Africans by 1999. The implementation date has since been extended to 2014, and again to 2025. By March 2009, just 5.3 million of the 24.6 million target hectares (5.2%) had been transferred through the various land reform programmes, including restitution. Over 4000 lodged rural restitution claims had not been processed by 2009, and the restitution programme faced many challenges in resolving land claims, particularly in relation to high-value land. Inadequate budgetary allocations, unrealistic deadlines and a lack of adequate post-settlement support for land-reform

agriculture as a provincial one. One consequence of this has been that government programmes for land and agriculture have tended to operate separately despite being under one ministry. In President Jacob Zuma's Cabinet, however, land and agriculture have been allocated to different ministries. In other words, the former Department of Land Affairs and Agriculture has been split into the Ministry of Rural Development and Land Reform (DRDLR) and the Ministry of Agriculture, Forestry and Fisheries. There are diverse views on the implications of this split, and a number of critical questions are being asked about the move, such as:

- Does this imply a welfarist approach to land reform?
- Does the institutional de-linking of land and agriculture mean that commercial agriculture will be protected from land reform?
- Does this mean that, for government, the term 'rural' really refers only to 'communal areas'?

beneficiaries have continued to hamper both the redistribution and the restitution components of the land reform programme.

Neither the ANC's 2009 election manifesto, nor the DLDLR's comprehensive rural development programme announced in June of the same year, address the huge challenges of tenure reform. Critics have often noted fundamental flaws in the legislative frameworks that address tenure insecurity in both communal and commercial farming areas. The tenure security of farm dwellers has not been significantly enhanced since 1994, despite being regulated by the Extension of Security of Tenure Act of 1997 and the Labour Tenants Act of 1996. In fact, farm workers' tenure has been severely compromised and the unintended trend is that the displacement of farm workers has increased since 1994, such that the proportion of farm workers that have lost their land rights is higher than the proportion that have gained strengthened tenure security. Both of the tenure laws have been earmarked for review since 2001.

The Prevention of Illegal Eviction From and Unlawful Occupation of Land Act of 1998, which currently regulates evictions from urban property occupied without permission, may in future also govern farm-dweller evictions. This Act is also currently under review. Civil-society organisations are arguing that the proposed amendments to the Act, if accepted by parliament, will further dilute tenure security. They also anticipate that the number of people excluded from the Act's protection would increase significantly because protections now in place would be relaxed, and landowners would be able to get eviction orders on an urgent basis more often and with greater ease.

In relation to communal areas, occupied by some 20 million black South Africans, the Communal Land Rights Act of 2004 (CLRA) has been highly controversial. This Act provides for:

- the transfer of land title from the state to traditional communities living on communal land in the former reserves;
- individual land rights within 'communally owned' areas to be registered;
- traditional councils to administer the land and represent the 'community' as owner.

The Act attempts to provide for gender equality in land holding by requiring land rights to be registered jointly in the name of all spouses. In its passage through parliament, it sparked debate on the role of customary land law in contemporary, democratic South Africa, and in particular on the roles and powers of traditional authorities in relation to land.

In a court challenge to the Act launched in 2006 by four rural communities, it was argued that the CLRA is in breach of Section 25(6) of the Bill of Rights in South Africa's Constitution, since it undermines rather than secures the land rights of many rural people. It was also argued that the titling and registration processes specified in the CLRA disadvantage women who have access to land through their families, but may not be spouses, and that it thus makes their tenure rights less, rather than more, secure. The government had not yet published the regulations that are needed to implement the Act, and no implementation had begun. In October 2009, the North Gauteng High Court struck many of the CLRA's key provisions down as unconstitutional and invalid. The Constitutional Court later upheld this decision, and the DRDLR subsequently conceded that the law was unconstitutional, did not reflect government policy, and would be redrafted.

In the past, the department of land affairs launched various initiatives to address the thorny issue of post-settlement support to land-reform beneficiaries. These strategies tended to lean strongly towards the privatisation of this function, mainly through 'strategic partnerships'



with private sector actors. In contrast, a settlement and implementation support (SIS) strategy launched in February 2008 aimed at integrating SIS through rural services centres. This strategy has yet to be adopted as policy by government. Either way, it is not clear what kind of support should be leveraged for different categories of emerging and existing small farmers, nor how this support will be obtained from the relevant government structures (such as the Department of Agriculture, Forestry and Fisheries, or local and district municipalities). Similarly, it is still unclear where post-settlement support should be co-ordinated from and budgeted for. It is, therefore, questionable whether SIS will have the required impact, and be able to reverse the general failure to provide post-settlement support in the past.

## Policy developments

There is widespread recognition and agreement that the land-reform programme is in crisis and unlikely to achieve its objective of creating a more equitable pattern of land

ownership, human settlement and agricultural production. Underlying the failure of land reform is the lack of a clear vision for agrarian transformation. While rural development and poverty reduction are clearly top priorities for the Zuma administration, the recession and its consequences may well deprive the government of the means to pursue these grand objectives.

There are indications that government wishes to move away from a market-based willing-buyer, willing-seller approach to land acquisition and shift towards a more proactive yet narrower state approach. This is evident in the introduction of a number of new policies such as the Proactive Land Acquisition Strategy of 2006, which allows the state to be a pro-active buyer of land through negotiations with landowners, or through expropriation. This was followed by the introduction of the Land and Agrarian Reform Project in 2007, which aimed to redistribute five million hectares of white-owned agricultural land to 10 000 new agricultural producers and included the acquisition of land earmarked for farm dwellers.

The possibility of increasing the rate of land transfer through expropriation opened up in 2008 with the introduction of a new Expropriation Bill, intended to replace the 1975 Expropriation Act. The bill proposed expediting the expropriation of property in the public interest (which, the Constitution declares, can include land reform). However, the bill did not clearly define an approach to determining what constitutes the 'public interest', nor did it clarify how it would seek to operationalise constitutionally defined criteria for compensation. The bill was shelved in August 2008 after it provoked a storm of controversy, with some commentators arguing that its provisions were unconstitutional and inconsistent with the property clause in the Bill of Rights. It is not yet clear whether the bill will be reintroduced by the Zuma administration.

In her 2009 budget speech, agriculture minister, Tina Joemat-Pettersson, emphasised the importance of large-scale, export-oriented agricultural production. It remains to be seen whether government will provide support for smaller scale, subsistence production in communal areas and on land-reform farms, or whether the new division of labour will result in the Department of Agriculture, Forestry and Fisheries mainly serving the interests of large-scale commercial agriculture (possibly including selected land-reform farms). There is concern that the DRDLR is too under-resourced to provide support to small-scale farmers and land-reform beneficiaries (which are seen by some as less 'commercially viable' from a market-oriented point of view).

The comprehensive rural development programme announced by government in June 2009, includes land and agrarian reform, and food security, and is listed as one of the top 10 priorities of the new land administration. The programme has been conceptualised on the basis of three integrated pillars – rural development (defined as infrastructure), agrarian transformation (essentially defined as



production support) and land reform – although much of the current approach hinges on service delivery to poorer rural areas. Pilot projects have been initiated in a number of provinces,<sup>1</sup> and the big question is whether it will be possible to expedite land reform, and considerably scale-up rural development, and how this can be done.

## Gendered impacts

Government portrays gender equity as an important objective of land policy. So far, the key means of achieving this have been:

- the removal of legal restrictions on women's access to land;
- the promotion of women's active participation in decision-making;
- the registration of land assets in the names of beneficiary household members and not solely in the name of the household head.

However, reality on the ground does not reflect real gender parity in the implementation of land reform. In many land-reform projects, women beneficiaries are marginalised from

controlling and benefiting from the land and other productive resources. Minister Lulu Xingwana, under what she termed the 'use it or lose it' approach, ordered the first seizure of land from Veronica Moos, a land-reform beneficiary in Gauteng. Fortunately, the land was eventually returned to Ms Moos, but it is still unclear whether this kind of desperate and heavy-handed approach to ensuring the future productivity of redistributed land in the absence of effective post-settlement support will become policy. In the Gauteng case, the courts reversed the land seizure, but in early 2010, government announced its intention to continue with this approach.<sup>2</sup> Given continuing gender inequity in landholding, and government's stated commitment to addressing this problem, it is ironic that the first case involved a female beneficiary.

In relation to communal areas, the Traditional Courts Bill was tabled in parliament in 2008. This bill aims to regulate the roles and functions of traditional leaders in resolving disputes, in line with constitutional imperatives and as envisaged by the Traditional Leadership and Governance Framework Act. According to analysts such as Claasen (2008), the bill does not adequately address the serious discrimination currently experienced by many rural women in customary courts and may further entrench patriarchal power relations in rural areas. The South African Law Commission's proposal that women be represented on the traditional councils that hear and decide disputes (including land-based disputes) was rejected and not included in the bill. The bill also ignores the Law Commission's recommendation that courts operating at village level should be recognised. The bill is due to be tabled in parliament during 2010.

A more focused approach to gender may be back on the land-reform agenda, however, with the DRDLR planning to develop a *Women and Gender Training Manual for Land Reform Implementers*. If done effectively, this may help

equip the department to promote land rights for women and inform attempts to develop more appropriate and effective policies and implementation procedures aimed at securing gender equity.

## Decentralisation

Land reform in South Africa, up to 2010, has been a highly centralised process. This is, in part, due to the previous department's drive to retain centralised control over implementation with no devolution of power to the provinces. Some efforts at decentralisation to district level were introduced in the early 2000s when district assessment committees were set up to co-ordinate various stakeholder departments and other bodies in the evaluation of land-restitution claims. However, these efforts remained somewhat ad hoc in character and have not resulted in effectively co-ordinated local-level implementation of land reform.

In relation to land redistribution, there have also been some attempts to move away from the bureaucratic, unresponsive, disempowering and compartmentalised approach adopted by both the land redistribution and land restitution programmes. The previous Department of Land Affairs adopted an 'area-based planning' approach in 2007, which provided for planning and implementing land reform. Area-based planning is seen as a strategy to identify opportunities for land reform in rural areas and incorporate these into municipal planning and implementation procedures. The approach means the state can consider what kind of land is needed for what purposes, expropriate properties where needed and approve grants for acquisition of land by the state. While area-based planning could result in land-reform development plans for each district, and essentially decentralise land reform to the local level, it lacks any methodology for identifying land needs or working with beneficiaries to identify both needs and opportunities. Currently the area-based planning process remains

focused more on land acquisition than on the provision of support for beneficiaries once the land has been acquired. Planning done so far does not include an audit of existing land-reform projects or identify their particular support needs. It also remains to be seen whether this locally-driven planning approach will result in more space for local people to influence planning that could affect their lives, and so make land reform more responsive to local needs.

In relation to the reform of communal tenure, the passing of the controversial CLRA in 2004 saw an apparent shift to decentralise land administration to community structures. Ironically however, if it had been not been revoked as being unconstitutional in 2010, the Act would have centralised the jurisdiction of traditional leaders over territories based on controversial, apartheid-era, tribal-authority boundaries, without recognising the more localised land-administration functions that exist in communal land tenure systems. Under the CLRA, traditional leaders would have been given extraordinary powers that disregarded key features of customary law, such as mechanisms that ensure a degree of downward accountability.

## Conclusion

The Department of Rural Development and Land Reform's move to comprehensive rural development, and the institutional shifts linking rural development and land reform as part of a broader agrarian reform agenda, indicate that government may be moving towards a more developmental approach to land reform, in which the economic benefits are made explicit and clear. This may signal a new direction for land reform in South Africa, in which the redistribution of land and water for agricultural

development with the aim of maintaining and supporting rural livelihoods would become a central goal. However, the lack of any clear link to the line ministry responsible for agriculture is worrying, and suggests that this 'new direction' may not have been fully thought through.

Plans are underway to shift the implementation of rural development to local-municipality level. However, rural development remains a national competency, with accountability being primarily upward from municipality to national government. This suggests a partial, administrative form of decentralisation, which involves the transfer of some decision-making authority, resources, and responsibilities for the delivery of land reform from the national department to local government. Whether or not this will involve communities participating in decision making, and being able to influence decisions in favour of their own land needs, remains to be seen.

## Acknowledgements

Contributions to this chapter were made by Ben Cousins and Ruth Hall.

## Notes

1. See [www.ruraldevelopment.gov.za](http://www.ruraldevelopment.gov.za).
2. This happened via a comment on a national radio station by the Director General of the DRDLR, who stated that if land is not used appropriately it would revert back to the state.

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Source: Karin Kleinbooi



# SWAZILAND

Harold Liversage

Colonial interventions in Swaziland resulted in a dual system of land law and two tenurial categories known as Swazi-Nation Land and Title-Deed Land.

Swazi-Nation Land is the customary land tenure system that evolved over several generations, whereby land is loosely perceived as 'communal'. However, while 'communal' may be construed as denoting 'common ownership', in practice only grazing and non-arable land is seen as strictly communal. Cropland, and land allocated to homesteads, is individually held, but the landholder merely enjoys usufruct rights. The Swazi king holds the land in trust for the Swazi Nation. The king entrusts his chiefs, and

their councils with the day-to-day administration of land, including the allocation of areas to headmen and the resolution of disputes over land rights. Officially, the Native Administration Act of 1950 regulates a chief's control over land matters. However, since the terms of this Act are vague and incomplete, the details of a chief's land administration are left to his own interpretation of the provisions of unwritten customary law. If a chief cannot resolve a land dispute, he refers it to the traditional political or legal hierarchy, rather than to the Swazi courts, which, although created for administering Swazi customary law (by the Swazi Courts Act of 1950), do not have jurisdiction over land matters.



Source: Louise McDonald, IFAD

With this institutional and legislative arrangement, it should not be possible to alienate Swazi Nation Land through market channels (although this often does occur in peri-urban areas) and this land cannot be used as collateral for securing loans from financial institutions. The limited land rights conferred imply a low security of tenure, particularly for any large-scale commercial activities. Hence, policy reforms tend to be directed at the tenure system relating to Swazi-Nation Land.

In contrast, on Title-Deed Land private property rights apply fully and the land market operates freely. Demands for policy reforms are less pronounced when it comes to this category of the country's landscape.

The land management board (LMB) is the highest land institution, and is in charge of both categories of land, nationwide.

## Land reform

In 2000, a national land policy was drafted, yet ten years later, the relevant layers in the country's governance structure have not yet approved it. The policy was developed in parallel with a number of related initiatives and consultative processes, including the drafting of:

- the Economic Review Commission's report;
- Swaziland's national development strategy (in particular, the report of the agricultural, land and rural development sector);
- the economic and social reform agenda;
- the recent update of the national physical development plan;
- the draft resettlement policy;
- the national report to Habitat II;



Source: Louise McDonald, IFAD

- Swaziland's Environmental Action Plan.

In addition, Swaziland's new Constitution came into effect on 8 February 2006. During the constitutional development process, which took several years, the Ministry of Natural Resources and Energy, revisited the draft national land policy with a view to updating it and aligning it with the provisions of the new Constitution. While the draft land policy informed the constitutional deliberations, formal approval of the land policy itself was kept in abeyance pending the approval of the Constitution. Since 2006 however, when the Constitution came into effect, there have been no tangible signs of the land policy being finalised.

Some key provisions in the draft policy are:

- All land-related gender discrimination in legislation or administration will be opposed in line with the Constitution;
- The mortgaging of leases over Swazi-Nation Land will be permitted;
- The protection of hereditary property rights will be strengthened, irrespective of the form of tenure under which such rights are

held (this is primarily intended to protect those who have been deprived of their land rights following the demise of spouses or parents from AIDS);

- Agricultural land is to be protected from encroachment by other land users;
- The areas under the jurisdiction of traditional chiefs are to be clearly demarcated, cadastralised, rationalised and proclaimed by government gazette (this aims to prevent the frequent land disputes triggered by boundary feuds that have become a stumbling block to rural development).

It is expected that once the national land policy is approved, a comprehensive Land Act will be drafted and enacted to usher in a new landscape in the area of land rights and land administration in this country.

## Policy developments

It is not clear what is preventing the approval of the land policy, and the long delays during its development process and in approving its implementation raises questions about the government's political commitment to the vision outlined in its draft policy. One positive aspect is that the 2006 Constitution has come into force, and Chapter 13 of the Constitution states that 'all land in Swaziland, save for privately held title-deed land, is vested in the King in trust for the Swazi nation. Provision is made giving equal access to land to all citizens of Swaziland for normal domestic purposes.'

The political landscape remains static despite efforts over recent years by citizens, political activists, trade unionists and other organisations to reduce the king's authority. So far, no change is evident and the Swazi king remains the central authority.

In relation to Swazi-Nation Land, Swaziland's Water and Agricultural Development Enterprise is providing technical assistance to the

government in various ways, including the development of chiefdom development plans and notarial deeds of lease.

The drawing up of chiefdom development plans is a community-driven land-rationalisation initiative implemented by chiefs in the LUSIP (Lower Usuthu Smallholder Irrigation Project) development area. Since these land-use plans are community owned, even the chief and his council cannot readily violate them.

## Gendered impacts

Before the advent of the new Constitution, women living Swazi-Nation Land areas could only have access to land via their husbands (or sons in the absence of a husband). Furthermore, both the Marriage Act and the Deeds Registry Act discriminate against women. A woman cannot authorise certain business decisions without the consent of her husband. While Section 210 of the new Constitution makes a clear pronouncement that 'save as may be required by the exigencies of any particular situation, a citizen of Swaziland, without regard to gender, shall have equal access to land for normal domestic purposes', only a few of the more enlightened chiefs are giving effect to this clause. The majority of chiefs are yet to embrace this important constitutional provision and grant equal access to land irrespective of gender.

Section 28 of the Constitution stipulates that 'women have the right to equal treatment with men and the right shall include equal opportunities in political, economic and social activities'. In spite of this, some of the existing legal instruments affected by it, such as the Marriage Act, have not yet been amended accordingly. Effectively, the status quo remains until these amendments are effected. Having said this, the Sexual Offences and Domestic Violence bill, The Marriage Act, and the Administration of Estates bill are up for revision and this may give force to key provisions of the Constitution that have direct bearing on women rights.

It is also likely that old legislation will be challenged in court and found unconstitutional. For example in a recent case, a married woman who was attempting to jointly register a property with her husband using her maiden name was barred from doing so by Section 16(3) of the Deeds Registry Act, which prohibits a married woman from registering a property in her own name. She has challenged the authorities in court.

## Decentralisation

Swazi-Nation Land is already highly decentralised as it is administered by over 350 traditional structures.

In terms of other land, a decentralisation policy has been endorsed by government. However, its implementation has only just started to be operationalised. The implementation agency is in the process of creating community 'link institutions' through the country's traditional structures. The policy envisages the creation of community development committees under each chief, that will drive development processes within each chiefdom. Some chiefdoms (such as those in the LUSIP Development Area) have already established such committees.

Before the decentralisation policy was introduced, some government departments had already decentralized their services. Each of the country's four administrative regions has regional offices, which co-ordinate government's development agenda at regional level. Some government ministries such as agriculture and health are clearly visible in rural areas through their rural extension networks. However, the co-ordination of government development agencies at grassroots level remains a daunting task. The decentralisation policy aims to establish appropriate institutional structures to improve co-ordination and enhance service delivery.

Constitutionally, the land management board, which as mentioned above is the highest body in charge of land in the country, but it

was hurriedly established to comply with the Constitution, and its operations are currently too undefined for it to lead a meaningful land policy reform agenda. Officially the land management board reports to the king, but it is administratively housed within the Ministry of Natural Resources and Energy. In essence, there is no minister responsible for land. It could be argued that this explains some of the uncertainties and stunted progress of the land policy reform processes. The draft national land policy proposes that in future, the land management board should report to a minister responsible for land and that a Land Act should be passed to provide a legal framework for the role and operation of the board.

## Conclusion

There have been no noticeable political shifts in Swaziland over the past few years. The protracted process of finalising the national land policy has had a bearing on the way land is administered and managed. Any further shifts

will be determined once the land policy, and subsequent Land Act, are in place, implemented and operational. However, Swazi citizens are increasingly losing their hold over the land as the population increases and the demand for land intensifies. The continuance of poor land administration in the face of the continuing challenges of population growth has already had massively harmful social and economic consequences, which will only worsen until the nettle of land reform is grasped.

## Acknowledgements

Contributions to this chapter were made by Louise McDonald, Noah Nkambule, Jabu Dlamini Mawira Chitima (SWADE/LUSIP), Harold Liversage, Louise McDonald (IFAD) and Mike McDermott.

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Source: Barbara Tapela

# ZAMBIA

Henry Machina and Nsama Nsemiwe

Zambia has a dual land tenure system – customary and state leasehold. The tenure system is related to the country’s colonial legacy in which most of the fertile land and the land along the railway line was occupied by white settlers and administered by the British. This land was referred to as ‘crown land’, and became known as ‘state land’ after Zambia achieved independence in 1964. Land not occupied by settlers was referred to as ‘reserves’ or ‘trust lands’. In 1995, these areas became known as ‘customary land’.

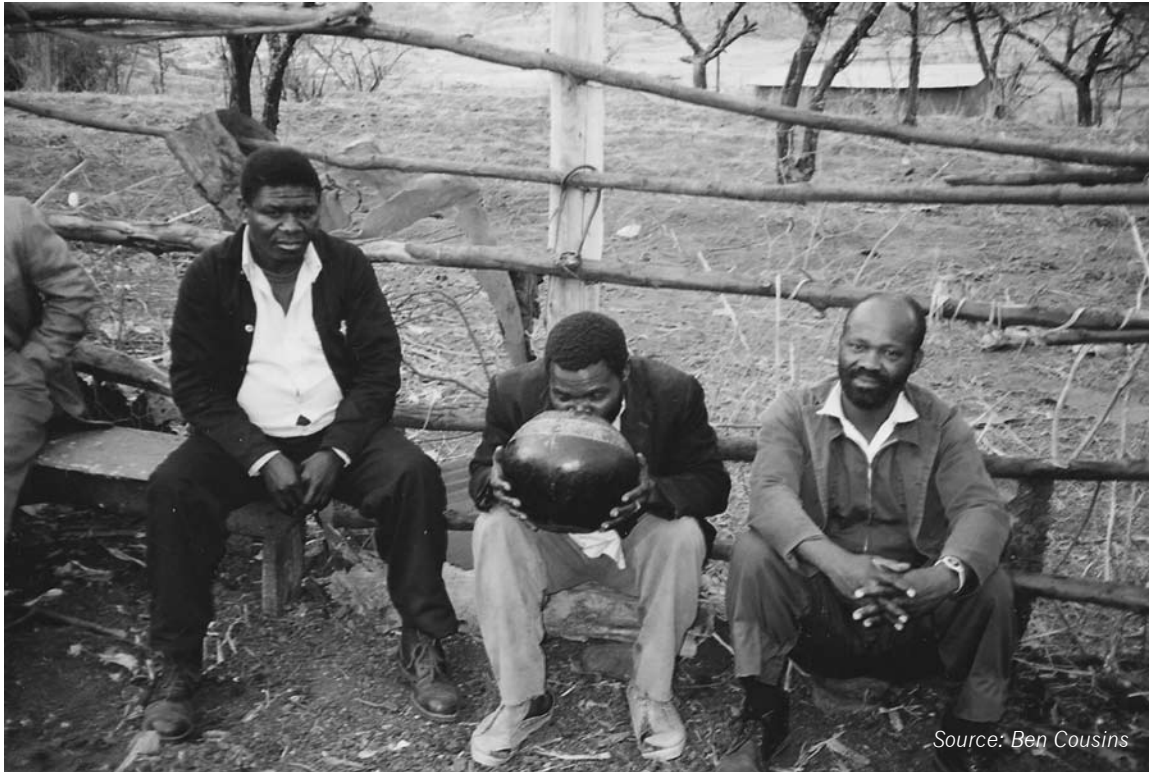
Since independence, many attempts to address the problems related to land administration in Zambia have been made. Notable reforms that

have affected land administration, especially those lands that fall under customary tenure, were those introduced by a watershed speech made by the then President Kenneth Kaunda in the early 1970s in which he declared that ‘bare’ land had ‘no value’ and prohibited the buying and selling of land – only developments on the land would be traded.

In 1991, the Movement for Multi-party Democracy Party (MMD) which came into power. Their election manifesto stated that:

*In order to bring a more efficient and equitable system of tenure conversion and land allocation in customary land, land adjudication will be*





*enacted and coordinated in such a way that confidence shall be restored in land investors... the MMD shall continue to attach economic value to undeveloped land (and) promote regular issuance of title deeds to productive land owners in both rural and urban areas.*

The government then enacted the Lands Act of 1995. An overview of land reforms that are currently being implemented is provided below.

## Land reform

The 1995 Lands Act provides for, amongst other things:

- the recognition of customary tenure;
- individuals and companies (local or foreign) to convert customary land to leasehold tenure for a maximum of 99 years;
- the buying and selling of bare land upon consulting the area chief, the local authority in the area, and any other person or body in the area whose interests might be affected by such a transaction.

This reform has perpetuated the mass inequality in access to, and ownership, of land, however – only the rich elite and either foreign or local investors are able to access highly valuable rural and urban land. The global ‘land rush’ has seen a high demand for land in Zambia for the production of biofuels, mining, and tourism – particularly the establishment of private lodges and game ranches. A significant number of people have also acquired land in Zambia for speculative purposes, taking advantage of the highly liberalised land market.

These circumstances have caused the displacement of many local communities (pushing them onto marginal lands), and increased the occurrence of common land being fenced off and turned into private property. This has fuelled resentment among local communities, many of which have lost their land to large-scale multinational investment companies without adequate (or sometimes any) compensation. Women and children have been the major losers, as they bear the burden of food gathering and food production, and

raising household incomes through roadside income-generating activities. This has prompted some attention from international financial institutions; the World Bank, for example, commissioned a study relating to large-scale land acquisition in Zambia, which was expected to be finalised in 2010.

Meanwhile, the Zambian government has been trying to formulate a national land policy since its first national conference on land in 1993. The process has gone through ‘ups and downs’ partly due to changes of national leadership and a lack of the political will to finalise the policy. In 2002 for example, the Ministry of Lands revived the consultation process in which a network of NGOs under the Zambia Land Alliance (ZLA) was partially involved. The consultations covered two districts in each of the country’s nine provinces but did not include a promised national conference with traditional leaders. As it turned out however, the recommendations made during the consultation process were left out when the draft policy went to a higher level within government circles. Instead, government produced its own draft land policy in October 2006.

The draft land policy was not widely publicised; the Ministry of Lands released the draft through its website and sent 100 copies to each of the country’s 72 districts. Many key stakeholders such as traditional leaders, and women and men in the communities could not access the document. Besides, the document was too technical for laypeople to understand and no attempts were made to make it more accessible.

Despite mentioning the need to take into consideration the interests of the poor and the marginalised, the draft policy does not address the problems faced by the rural and poor communities. Meanwhile, proposals were made for converting customary land to leasehold to facilitate large-scale investments. The draft policy also made little attempt address ways in

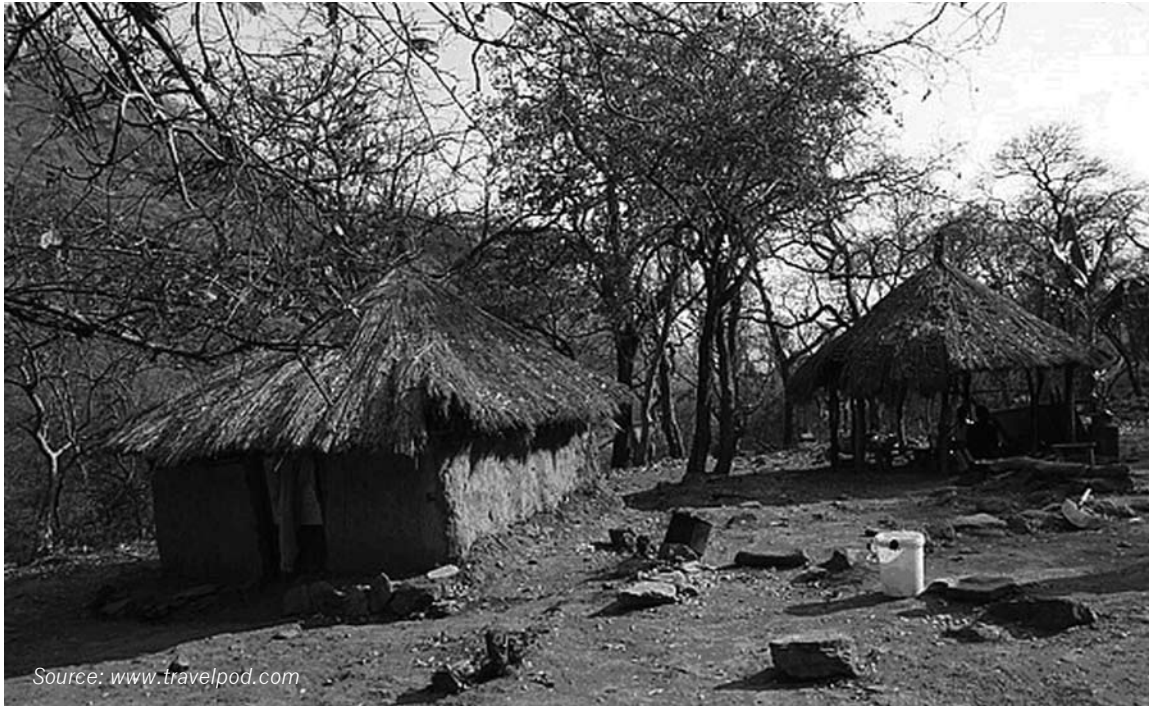
which customary land management could be improved or to recognise traditional land-dispute resolution mechanisms. The ZLA perceives this as a clear case of government lacking the political will to address the interests of the poor in relation to land administration, not to mention the need to be consistent with the principles of transparency and accountability.

Nevertheless, the draft policy was submitted to Cabinet in early 2008. Several civil-society stakeholders objected to this, and the ZLA, in particular, lobbied key Cabinet ministers and their permanent secretaries to dissuade them from adopting the policy in its current form.

Another factor that influenced Cabinet is that the Zambian government has been reviewing the country’s Constitution since 2003 through the Mung’omba Constitution Review Commission, which created a draft constitution that has been under scrutiny by the National Constitutional Conference (NCC) since late 2007. Amongst the land-related recommendations of the Mung’omba Commission were the need to:

- include a land and property chapter in the new Constitution;
- establish a lands commission to administer land on behalf of the president;
- maintain the dual land-tenure system, and enact a separate law on customary land administration;
- protect marginalised groups in society such as women, orphans and people with disabilities.

The NCC established a land and environment committee to which civil society organisations submitted recommendations in January 2009. Amongst these recommendations were: the need for the establishment of an independent lands commission, the proposal that unused state land that was formerly converted from customary land to state land should revert to



customary tenure, and the development of separate legislation on customary land. The NCC adopted, among other resolutions, the following:

- Land continues to vest in the president;
- Chiefs may be prevented from ‘unreasonably’ withholding consent to an applicant who wants to convert customary land to leasehold (Article 330 (4));
- Non-Zambian citizens are allowed to own land (Article 332 (3));
- The office of commissioner of lands (one person) shall be continued but there shall be no commission on lands (committee members).

The timeframe and the processes involved in the finalisation of the draft Constitution are still unclear. However, the NCC is expected to send its draft Constitution to parliament for adoption. Cabinet has therefore directed the Ministry of Lands to wait for the finalisation of the constitutional review process before resubmitting its draft land policy.

## Gendered impacts

Article 23 of the existing Zambian Constitution (adopted in 1991 and amended in 1996) forbids laws that discriminate on the basis of sex, race, or gender, yet it allows discrimination on the basis of culture and tradition. Very few women, whether in urban, peri-urban or rural areas in Zambia hold land in their own right. There are no recent statistics, but in the early 1990s it was estimated that women held less than 14% of titled land in Zambia. Women continue to face various challenges with regard to access, control, and ownership of both leasehold and customary land. Customary laws prescribe mechanisms of administration and dispute resolution, which in some cases do not favour women. Married women are at a particular disadvantage as customary laws and practices place women in a subordinate position in relation to men with respect to property, considering only men to be heads of households.

Seeking to address these and other issues, and aiming to ensure that both women and men participate fully and equitably in the development process, the government adopted a national gender policy in March 2000. The policy allows for the allocation of 30% of all of the land parcels that are available for alienation to female applicants irrespective of their marital status. Some district councils are implementing this policy, but systematic monitoring and evaluation is non-existent, and no statistics have been published.

The draft land policy on the other hand, provides for a slightly diluted version of the gender policy, proposing at least 30% of any plots of land created by any government agency be allocated to women and persons with special needs. The government seems to have begun to implement this provision (ahead of the finalisation of the policy) but while there is no clear method of monitoring whether there is progress in this regard, there is a need to legislate this provision in future in order to oblige the government to implement it. With the support of USAID, the Ministry of Lands has created an information centre to inform the public on availability of land and procedures for acquisition. Unfortunately this centre is located only in Lusaka. Nevertheless, it would be worthwhile to determine how women in the rural, peri-urban and urban areas in and around Lusaka are making use of this centre, or even if they know about it.

The draft land policy places little emphasis on improving customary land administration and there is little hope of improving women's land rights in areas with cultures and traditions that discriminate against the poor.

## Decentralisation

In 2002, the government developed and approved a national decentralisation policy. The aim of this policy was to transfer responsibilities, authority and functions as

well as power and appropriate resources to provincial, district and sub-district levels. However, since then, the government has clearly stated in various fora that it is in no hurry to implement the decentralisation policy. Only in 2009 did the government start to show an interest in making the public aware of the implications of the policy through media and theatre. And the government has yet to approve the decentralisation implementation plan.

The 2006 draft national land policy points out that the centralised land administration system (in particular the issuing of title certificates) is both costly and overly bureaucratic. Currently, the Commissioner of Lands in Lusaka is the only office that is mandated to administer the allocation of leasehold tenure. However, district councils (under the Ministry of Local Government and Housing) act as agents for the commissioner in the districts. The powers of the district councils are limited, however, as they have a mandate merely to make recommendations on land allocations to the commissioner who still reserves the right to issue all certificates of title. Furthermore, according to the draft land policy, the Ministry of Lands intends to remove this function from the district councils and place it instead in the hands of offices to be established in every district by the Commissioner of Lands. This would involve centralising land allocations. If adopted, this provision may disadvantage the poor in that the district councils are elected bodies, while offices set up by the Commissioner of Lands would be staffed by civil servants who may choose not to serve the interests of poor and marginalised. The Ministry of Local Government and Housing, on the other hand, is reviewing spatial planning laws to, among other things, give more powers and responsibilities to district councils.

## Conclusion

Considering the need for increased capacity at the local authority level, implementing



to land policy reforms outlined above will be costly and will require a lot of gender mainstreaming to ensure that the interests of disadvantaged groups are accommodated. The co-ordination and harmonisation of the functions of the Ministry of Lands with those of other government departments will need to be enhanced if decentralisation is to yield meaningful results.

Even more important is the need for increased political will to formulate a comprehensive land policy and to begin to put the decentralisation implementation plan into effect. For this to happen, meaningful involvement of various stakeholders including local communities, civil societies and private players will be crucial.

## Acknowledgements

Contributions to this section were made by Henry Machina and Nsama Nsemiwe of the Zambian Land Alliance (<http://www.zla.org.zm>).

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Source: Ruth Hall

# ZIMBABWE

Jeanette Manjengwa

Zimbabwe has a total land area of about 39 million hectares of which 33.3 million hectares are suitable for agricultural purposes. At independence in 1980, agricultural land was divided along racial lines as follows: 6 000 white large-scale commercial farmers controlled about 15.5 million hectares (almost half the total agricultural land in the country) while 840 000 communal area farmers had access to about 16.4 million hectares. At that time three different tenure systems operated in Zimbabwe: 42% of the land was held under communal tenure, 41% was under private ownership and 16% under state ownership. By 1998, the government had redistributed 3.6 million hectares of previously privately-owned land to

70 000 families mostly during the first five years of independence. Between 2000 and 2007, more than 140 000 families benefited from the redistribution of about eight million hectares under the fast-track land reform programme (FTLRP). Farm invasions and expropriations were used extensively to acquire formerly white-owned land for redistribution. However, much of this expropriation is being contested by the former owners, who have taken their case to the Southern African Development Community's tribunal.

The collapse of Zimbabwe's large-scale commercial agriculture was highly political. The country's agricultural system, once lauded as a 'regional breadbasket,' was not universally



Source: Jeanette Manjengwa

regarded with admiration, partly because it involved the exploitation of farm workers. Even if the wholesale takeover of white commercial farms had not been engineered and abetted by the government of President Robert Mugabe, that particular model of commercial agriculture may still have had its days numbered because of a mix of historical, political, economic and racial pressures.

## Land reform

An important feature of Zimbabwe's agrarian structure is the size of most of the new farm units (see Table 1). Approximately 75.6% of the land in the country is held by smallholders in the communal, old resettlement and FTLRP's A1 schemes.<sup>1</sup> This translates into 16.4 million hectares in communal areas, 3.7 million hectares under old resettlement and 5.7 hectares in A1 schemes.<sup>1</sup> By 2006, a total of 141 656 households had been allocated smallholder plots under the A1 model since 2000, compared to 72 000 who benefited in the period 1980 to 2000. A further 14 072 beneficiaries received a combined total of

1 million hectares under the small-scale A2 schemes, while another 1 500 farmers received a combined total of 0.9 million hectares under the large-scale A2 model.

When land occupations began in early 2000, the process was illegal in terms of the country's legislation at that time. However, a combination of reforms of the judiciary and the enactment of new legislation were used retrospectively to 'correct these anomalies.' In terms of a 2005 amendment to Section 16B (3) of Zimbabwe's Constitution, no compensation is payable for land that was acquired under the FTLRP. Compensation is payable, however, for improvements that had been made on the land prior to its acquisition.

The country has been increasingly isolated internationally following the breakdown of relations between the government of Zimbabwe and the international institutions of the West. In the meantime, there has been an economic meltdown in the country. The economic difficulties have affected all sectors of the economy, including the new beneficiaries of land



Table 1: Land ownership structure in Zimbabwe, 2006

Farm type	Tenure type	Farms/households		Area		
		No.	% of total	Hectares (million)	% of total	Average farm size (hectares)
Smallholder	Communal	1 100 000		16.4		15
	Old resettlement (1980–1999)	72 000		3.7		51
	A1 (since 2000)	141 656		5.7		40
	Sub-total	1 313 656	98.0	25.8	75.6	20
Small to medium commercial	Old small-scale commercial	8 000		1.4		175
	Small A2	14 072		1.0		71
	Sub-total	22 072	1.6	2.4	7.0	109
Large scale commercial farms	Medium–large A2	1 500		0.9		600
	Large-scale commercial (black)	1 440		0.9		625
	Large-scale commercial (white)	1 377		1.2		871
	Sub-total	4 317	0.3	3.0	9.0	695
Corporate	Company	657		1.0		1 522
	Church	64		0.0		641
	Parastatal	153		0.6		3 922
	Sub-total	874	0.1	1.6	4.8	1 878
Transitional	Unallocated			1.3	3.8	
Total		1 340 919	100.0	34.1	100.0	

Source: Adapted from Moyo (2006)

reform, and this is reflected in their abilities to effectively develop and farm their newly acquired land.

While land has been redistributed, agricultural production in Zimbabwe has not yet recovered. Even though land planted with the main grain crops, such as maize and wheat, is doing well, as more and more farmers increase their plantings, factors such as drought, poor access to agricultural inputs and the low capacity of resettled farmers have combined to reduce yields and production in some areas. Despite this, some commentators, such as Scoones (2008), have argued that production on the resettled farms is under-estimated.

## Policy developments

A new political arrangement was put into place following the signing of a global political

agreement between the three main political parties in the country in September 2008. An inclusive government brought together the ZANU-PF and the two MDC formations. The expectation was that this would lead to the thawing of relations between Zimbabwe and the powerful governments in the North. But progress in the implementation of the global political agreement<sup>2</sup> has been painfully slow, and engagement with the major powers has seen only limited progress in terms of improving relationships. There is no doubt that land remains the most contentious issue in any negotiations between the government of Zimbabwe and the major powers, with the issue of compensation for displaced white farmers being the most problematic – these farmers are demanding compensation for their land as well as for improvements.

## Gendered impacts

The implementation of the FTLRP continues to privilege men as the primary recipients of resettlement land, and the emerging role of the traditional authorities in the land-reform process continues to marginalise women (see Goebel 2005). The land-reform programme focused on the highly skewed racial imbalances of land holdings and discriminatory land-tenure systems, but failed to mainstream the interests of women. Studies done in different localities indicate that between 8 and 15% of the beneficiaries of the respective schemes are women. Generally speaking, women have failed to access land and of those who did, few are managing to use it productively. Patterns of ownership under the FTLRP and other land-rights systems (such as tenancy, resettlement permits and leases) show that very few women have independent rights of ownership or control of land. Furthermore, this extends to other resources, such as access to agricultural inputs and finance. Women face a number of problems emanating from legal plurality, customary laws, patriarchal culture and tradition, and general societal attitudes towards the empowerment of women.

## Decentralisation

Created by an Act of parliament (as opposed to being enshrined in the Constitution), local government in Zimbabwe is an appendage of central government. Local government comprises 30 urban and 60 rural district councils and operates under two separate pieces of legislation.

This section focuses on the rural district councils, as they are the relevant authorities in all land reform matters. Decentralisation is understood as the deconcentration of power from central government to rural district councils, and 13 decentralisation principles adopted by Cabinet in 1996 provide a framework that guides this process throughout the country.

The Ministry of Local Government, Public Works and National Housing is the lead agency in the process. The ministry is mandated to provide the legislative and policy framework within which local government units should operate. In practice, however, the ministry has increasingly played a controlling and directive role. This has increased since the emergence of the MDC, which has significant control over local government authorities in the urban areas, and the ministry has generally stalled the meaningful implementation of the decentralisation policy.

While some progress has been made in decentralising basic service delivery (education, health, social welfare and social protection), the reverse has been the case in relation to land. Under the FTLRP, land was seen as politically sensitive and all functions were highly centralised. Military personnel were deployed to control land allocation and the distribution of limited government support, notably agricultural-inputs schemes. Local authorities, including elected councilors, had a minimal role to play in the implementation of the FTLRP. In fact, all the technocratic and legal conditions that had guided land reform for two decades before 2000 were dropped in favour of politically driven processes directed by the ruling ZANU-PF party and its national and local structures. The role of the party and its national leaders became central in driving the land reform agenda. At one point, even the state institutions and the civil servants who were traditionally responsible for land reform, were not trusted by ZANU-PF and the government; they were seen as being potentially sympathetic to the MDC (which was perceived as being opposed to FTLRP). Instead, war veterans, as leaders of the land occupations and of the constituted district and provincial land committees, took control of the FTLRP. Chiefs became aligned with the ruling party, diluting local governance structures to the extent that they became an extension of ZANU-PF. In general, the main stumbling block to decentralisation is the centralised state controlled by ZANU-PF.

# Conclusion

The political situation in Zimbabwe remains unstable. The disruptions of the transition period, droughts and the weak economic situation of the country have created a mixed picture in relation to food production in Zimbabwe, which has come under severe pressure. Yet it is important to note that this may not indicate the collapse of agriculture in general, but rather reflects the collapse of the old, formal, commercial agricultural economy. According to Scoones (2008), the potential exists for small-scale agriculture on the new resettlements to form one among a number of possible sources of livelihood, which might also include a range of off-farm activities, trade and remittance income.

More research is required on the overall trends of the 10-year period since 2000 to determine production levels after the initial upheaval and adaptation of resettled farmers. There are indications that production on fast-track resettled farms is gradually increasing. Research shows that the land under crop cultivation has generally increased because of the FTLRP, although this has not always translated to increased crop productivity (Scoones 2008). The potential of agriculture, to form the core livelihood activity for most, will need to be nurtured and enhanced by additional policy interventions.

Almost three decades of land reform in Zimbabwe have not produced clear evidence on the relationship between land reform and poverty alleviation. This raises fundamental questions from a policy and research point of view:

- What is going wrong and what needs to be changed?
- What is the vision of land reform, and are the existing mechanisms the correct ones in terms of poverty alleviation?

- What implementation characteristics need to be changed for positive outcomes in relation to poverty alleviation?

Do the answers to these questions relate to beneficiaries, resettlement models, the scale of land reform, tenure arrangements, agricultural development strategies, scheme management, non-creative policies, etc? It is evident that more thinking and research is required if land reform in Zimbabwe is to become successful in poverty reduction.

## Acknowledgements

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## Notes

1. The FTLRP uses the terms A1 to refer to smallholdings, and A2 to refer to small-scale and medium to large-scale commercial farms. The distinction between the two relates to the relative extent of the land areas but in practice there is a fair amount of overlap between them.
2. This was a 'power-sharing' accord that resulted in the creation of a new unity government in Zimbabwe. This agreement was signed on 15 September 2008.

## References and other useful resources

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The Review of Land Reforms in Southern Africa, 2010 documents experiences with decentralised land reforms in eleven countries in Southern Africa. Compiled with the support of various in-country experts, the review provides land policy information, tracks the progress of the various national land programmes underway, and monitors women's land rights in a decentralised context. Real accounts and direct analysis of current situations, shifts and outcomes from those directly involved in policymaking, implementation or land reform advocacy provide a rich source for ongoing regional learning in the field. This guide to land reform policy and practice in Southern Africa is an invaluable contribution to land reform debates and will be relevant to everyone working on land issues in the region.



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