

Issues in African Land Policy: Experiences from Southern Africa

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INTRODUCTION

Since gaining their independence most of the southern African nations have preserved, by and large, the structural division between commercial estates and communal lands inherited from colonial times, finding that the maintenance of the commercial sector is essential for their economic development and important for political stability. Nevertheless, there are continuing demands for redistribution of agricultural land to small farmers and the communal lands are becoming increasingly crowded, environmentally degraded and vulnerable to the impacts of drought.

As a result, land policy throughout the southern African region has been under review by governments, assisted by donors, and the policy issues are debated by NGOs, academics, farmers organizations, and community groups.

Up to now, governments and donors have tended to focus on land as the basis for agricultural development, stressing the importance of efficient and secure land allocation to individual producers in order to supply domestic and export markets. On the other hand, many NGOs, academics and community organizations concerned with land issues emphasize the need for secure land rights for rural people as a whole, especially the poor, as a solid foundation for sustainable livelihoods, farm incomes, household food security and the eradication of poverty.

Although these two sets of concerns are by no means mutually exclusive, a preoccupation amongst donors and government with issues of agricultural efficiency, combined with the influence of national élites and private investors, has led to policy choices which perpetuate inequitable land distribution, protect the interests of the large commercial sector, but do not deliver real benefits for the rural poor. They may, however, provide opportunities for acquiring land title for the more successful farmers, outside investors, and political figures themselves.

This report seeks to unravel the issues in land policy debate in southern Africa, and looks forward to the development of balanced policies designed and implemented to enhance the rights and interests of the region's rural people: women, men, and future generations alike.

The report is a result of a study commissioned by the Department for International Development (DFID, formerly ODA) to review policy developments in the areas of land tenure and land reform in the southern African region, identifying cross-cutting issues and areas for future donor support. The study was based on reviews of relevant published and grey literature and the author's information gathering visits and field experience in the region. It addresses land policy in its broadest sense, focusing on questions of land tenure, land distribution and land access in a rural context. The scope encompasses issues of natural resource management and institutional issues at local level, but not technical questions of land use planning, or administrative and institutional questions of land delivery, which are treated as secondary to policy.

The report is not a comprehensive survey of land policy issues in the whole southern African region, but focuses on three countries where land policy is problematic: Malawi, Mozambique and Zimbabwe. Land policy developments in Namibia and Tanzania are also reviewed, as is the approach being taken to land policy in South Africa, in order to identify lessons for neighbouring countries. Botswana, Zambia, Swaziland and Lesotho are not covered although assessment of land policy in these countries would also be relevant.

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SUMMARY

This report provides an overview of current land policy issues in the southern African region, drawn from assessments of six individual country experiences. It sets out the issues surrounding land policy development and land reform in Malawi, Mozambique and Zimbabwe, and of wider relevance in the region as a whole. The first chapter offers an overview of major land policy issues facing the countries of the region:

- the dualistic nature of landholding in the region, divided between freehold or leasehold commercial farmland and 'communal areas' where African farmers hold land under customary arrangements;
- the land distribution and tenure issues which arise in relation to programmes of land reform and resettlement;
- questions of tenure security, agricultural efficiency and equity in African land policy and the strengths and weaknesses of customary and formal systems in delivering land security;
- the changing nature of customary institutions and authority in the region, the place of gender rights to land, and of common property resource management, in that context;
- the risks of conflict and political instability posed by increasing land competition; and,
- the development of land policy processes in the region, in which the lack of transparency and cases of parallel policy-making bodies are particularly worrying.

Chapter Two provides a brief review of recent literature which assesses the relations between forms of land tenure, security and farm productivity in sub-Saharan Africa more generally. The conclusion that individual land tenure formalized in law is not a general requirement for smallholder land security and productive investment challenges the received orthodoxy that has been used to justify programmes of private land titling. Although titling and registration programmes may sometimes be required, they risk undermining community land rights and those of women, and adequate tenure security for farm households can often be provided by customary systems.

Chapters Three to Five are individual country reviews providing supporting historical material and in-depth analysis for the main focus countries of Malawi, Zimbabwe and Mozambique. Land policy remains uncertain in Malawi, where a historical division between a commercial estates sector and customary lands has been complicated by widespread leasehold registration in customary lands, until

recently a requirement for smallholders to obtain quotas for marketing tobacco, the principal cash crop. In **Zimbabwe**, sharp inequalities of wealth and landholding between white commercial farmers, and African peasants living in overcrowded, degraded communal areas, create continuing pressure for land redistribution. Meanwhile there is debate about the need for tenure reform in the communal lands themselves, and how customary authority can be reconciled with the recognition of women's land rights. In **Mozambique**, following the end of civil war, massive population displacement and land allocation in favour of political élites and private investors has created a situation of overlapping land claims and widespread smallholder insecurity. While a new land law now promises to reverse growing confusion and uncertainty, clear mechanisms still need to be established for community and household land registration and to resolve land conflicts.

Chapter Six addresses **South Africa**. Although its highly urbanized population, largely unused to arable farming, provides a very different context, the ambitious programme of land reform underway there is reviewed as an instructive source of lessons for neighbouring states. Participatory debate has helped forge a land policy genuinely owned by national stakeholders, and South Africa has now begun pilot programmes for the restitution of historically alienated lands, market-led land distribution for smallholders, and the protection of the rights of farm labourers and tenants.

The recent experiences of land policy in Tanzania and Namibia are also briefly reviewed in Chapters Seven and Eight. In **Tanzania**, government has set aside the comprehensive and popular recommendations of a Presidential Land Commission in order to push through urban-biased legislation which would open the way to private investment in land, while failing to provide security for customary land holders. In **Namibia**, the government's failure to introduce legislation to tackle the issues of land allocation, grazing rights and the relation of customary and formal land law has effectively sanctioned the enclosure and *de facto* privatization of communal grazing land by powerful individuals, to the detriment of the poor.

The report concludes by identifying cross-cutting issues for land policy in the region, specific lessons for the cases of Malawi, Mozambique and Zimbabwe, and highlights the needs for:

- donor support for policy development processes
- careful planning and monitoring of resettlement schemes
- avoidance of hasty programmes of tenure reform, without full consideration of their impacts on the poor and for future generations
- closer integration of work on land rights and rural development support at local level
- the adoption of a poverty focus in land policy work, and support for advocacy on behalf of the poor.

1. REGIONAL OVERVIEW

Land distribution and resettlement

Since the colonial period, land distribution in much of the southern African region has been characterized by dualistic systems of land tenure in which land has been divided between large commercial farms and estates held under leasehold or freehold, generally by white settler farmers and members of national élites, and alienated from indigenous populations by force and legislation; and communal or customary lands, occupied by the majority of African farmers under customary law, frequently also functioning as labour reserves for the estates and urban sectors. Because the best lands have generally been monopolized by the commercial sector, the concentration of rural populations on poorer, more marginal lands has created problems of poverty, food insecurity and environmental degradation. Since independence, and even before, the question of redistribution of private commercial land holdings has been a major policy issue confronting the states of the region.

Despite political demands, progress with land redistribution in the post-independence period has been slow. One feature of the land policy debate in the 1990s, however, has been the recognition by the World Bank of the relative inefficiency of large commercial land holdings, which tend to be substantially under-utilized in many cases, as compared to aggregations of smaller units (see for instance Binswanger and Deininger, 1993). This provides an economic argument against the maintenance of large commercial farms as the dominant form of agricultural production in the region. Although commercial farmers remain legitimate stakeholders, some measure of redistribution is essential to address gross inequities in land allocation, and to meet the political demands of the black majority, notably in **Zimbabwe** and **South Africa**, as well as to promote smallholder food security and greater efficiency in land use.

Only **Zimbabwe** has experience of land transfers from the white-owned commercial sector to black smallholders, through an organized resettlement programme. In **Mozambique**, in line with the socialist orientation of the post-independence government, private land was nationalized and converted into state-owned large-scale production units generally less successful than their private sector equivalents. In practice most countries in the region have redistributed available land to emerging black commercial interests, cementing political alliances amongst national élites in support of the governments of the day, and going some way towards satisfying the more powerful political demands. The overcrowding of communal areas, alongside the concentration of prime land in the hands of former colonial settlers will ensure that inter-racial equity in land policy will remain a central political issue for years to come in **South Africa** and **Zimbabwe**, and to a lesser extent in **Malawi** and **Namibia**.

Large-scale redistribution of private holdings requires a programme of government acquisition of land. Since forcible expropriation is generally politically unacceptable, acquisition should be at market rates, on a willing seller, willing buyer basis, but requiring state intervention and public expenditure beyond the reach of most regional governments.

Because of the costs involved redistribution programmes are likely to continue to depend on donor support. In **Zimbabwe**, in the 1980s Britain supported the costs of resettlement, assisting the landless and demobilized combatants, while also helping to protect the interests of former landowners, and averting political conflict. There is a continuing demand for further redistribution of commercial land, and widespread recognition that present inequalities are not sustainable. However, donors are reluctant to fund a second phase of land acquisitions by government because of concerns that land is finding its way into the pockets of the black political class, and fears of a negative impact on agricultural performance. At the time of writing, government has announced its intention of forcing through compulsory land acquisitions, paying compensation only for buildings and fixed assets, but not for the value of the land itself.

In **South Africa**, government has opted for a market-based approach, but remains involved in facilitating smallholder land acquisition through a system of grants (also likely to require donor support), as well as block purchases where large farms become vacant. If donors are to continue to support resettlement then they are likely to require assurances that land redistribution will bring about reductions in poverty and improvements in land security, as well as providing opportunities for increased smallholder production and reducing the risks of conflict.

Where market supplies of land are not sufficient, governments will need to apply criteria for land redistribution, the most obvious candidate being under-utilization or inappropriate use of land holdings. Such criteria are difficult to define however, and may be subject to political manipulation. In **Zimbabwe**, commercial farmers are diversifying into game ranching and tourist development, already well established in **Namibia**, as a way of utilizing more marginal land which would otherwise be targeted for redistribution.

In order to guarantee adequate supplies of land, governments will need to explore incentives to create willing sellers, and disincentives against land concentration, such as land taxes, and opportunities for investment in other sectors of the economy, while taking care that land does not become overvalued, and thus a source of windfall profits for private sellers.

Redistribution of large public land holdings is also on the agenda, notably in **Mozambique**, where large public estates are being broken up for allocation to both smallholders and the private sector. A drive for investment now subjects nationalized land to private concessions for mining, tourism, safari hunting and speculative use, to the benefit of both national élites and external investors. **Malawi**, **South Africa**, **Zimbabwe** and other countries in the region, however, also hold under-utilized public lands, such as former military training camps, which are prime candidates for redistribution.

In the absence of large-scale land reform and distribution programmes, southern Africa's customary or communal lands are undergoing both spontaneous and officially supported changes in land distribution and tenurial status. Informal land transactions are increasing, and governments have been transferring land to the emergent private smallholder sector through land titling of customary land (**Malawi**) or by turning a blind eye to processes of enclosure and annexation of customary lands by powerful individuals (**Namibia**).

Tenure security, agricultural efficiency and equity

As the state has nationalized both commercial and customary land, redistributing it while creating opportunities for African freehold and leasehold title, alongside the pre-existing commercial and customary sectors, dualistic land systems are evolving into pluralistic ones, characterized by a multiplicity of forms of tenure. As a result of the historical alienation of indigenous land to colonial settlers, and more recent nationalizations, land transfers to the private sector, and spontaneous enclosure of common land, customary systems of tenure have to some extent become insecure, leading to demands for improved tenure security. In parts of **Malawi**, customary and leasehold forms of tenure now coexist side-by-side, with some farmers having a foot in both sectors, and others, effectively landless, in neither (Dickerman and Bloch, 1991).

This situation has led to debate amongst national governments, donors, NGOs and farmers themselves about what forms of tenure are appropriate for smallholder farmers. A principal concern amongst policy makers has been agricultural efficiency. It is frequently supposed that secure individual freehold or leasehold tenure is required to promote investments in efficient land use, and moreover that a free market in land should be encouraged so as to promote acquisition by those who are able to make best use of it. The balance of evidence from recent empirical studies, however, suggests that security of tenure provides an adequate basis for efficient productivity and that formal title is not required (Barrows and Roth, 1989; Bruce and Migot-Adholla, 1994). Systems of customary tenure may frequently be able to provide adequate security to the individual farmer or farm household and formal land title is not essential.

Financial institutions, however, generally require formal title as collateral for loans, although it is unclear how far this requirement actually obstructs the availability of smallholder credit in the region.

The full range of cost-benefits implicit in land titling or other policy options have rarely been comprehensively assessed, in fact, but *ex-post* studies of land registration in Kenya suggest that on balance they can be negative, resulting in increasing landlessness and vulnerability for the poor, while having minimal impact on credit and productivity for the majority of smallholders (Barrows and Roth, 1989). On the cost side, it should also be noted that mass land registration programmes are extremely expensive to deliver, requiring investments in land surveying, mapping, adjudication and administration; in practice they have taken much longer to deliver than anticipated (Okoth-Ogendo, 1996).

Moreover, agricultural efficiency is not the only concern in relation to tenure policy. Where individual smallholder land titles are issued, equity concerns arise both within households, as wives and other family members can lose customary land rights, and amongst them, as better educated, 'emergent' small-scale commercial producers transfer out of the customary sector and into private hands. Individual leasehold, for example, does not provide for multiple inheritance and subdivision of land, and women can be particularly disadvantaged in cases of death of the leaseholder, divorce, or polygamous situations. Widespread land registration is also a high risk strategy, which can promote landlessness and land concentration, as unsuccessful farmers are forced to sell up to pay back loans or acquire food in bad years.

The formalization of land tenure can also undermine social cohesion, which is frequently based on customary systems of land allocation and management within kin groups. Indigenous land management, while subject to change historically, still frequently provides for land, labour and resource sharing on the basis of reciprocal obligation, providing some level of food and livelihood security to all members of the community. These arrangements tend to break down under individual tenure. In addition, individual title does not facilitate the maintenance and management of grazing commons or other natural resources held in common by lineage groups and village communities.

These issues arise both in resettlement programmes, and in relation to the reform of customary tenure. In **Zimbabwe**, government is opting for a leasehold model, which critics claim will automatically benefit the better off, rather than the more vulnerable in greater need of land reform. In **Malawi**, a process of tenure conversion has been driven by legal requirements for the registration of land leases in order to obtain licences for the marketing of burley tobacco, the dominant cash crop. This situation has allowed certain donors to promote a policy of secure individual land title ideologically, without adequate information about the relative performance and conditions in the customary and leasehold sectors.

Nonetheless, where there are risks that customary rights may be extinguished by state acquisition or privatization, land titling represents the principal way in which small farmers can improve their security of tenure. Land titling remains particularly relevant in cases where customary rights are effectively extinct, where there are high incidences of land disputes, and where land is subject to large-scale development, such as irrigation or settlement projects (Hazell, 1993).

In **Mozambique** and **South Africa** in recent years, and in **Malawi** in the 1970s, demands have emerged for the allocation of secure land title to groups of farmers, generally family or kin-based groups. These have arisen where farmers recognized the need for registration to strengthen security of tenure, but where individual title does not guarantee the rights of all family members who seek to maintain the benefits that customary tenure provides. These cases should be carefully distinguished from more ideological attempts to institute co-operative production under systems of collective tenure, such as the generally failed co-operative settlement schemes in Zimbabwe. Nevertheless, communal tenure remains a difficult issue in law and credit institutions may still decline to lend to those holding land in common, although formal land title exists.

The nature of customary tenure

Indigenous or customary tenure systems are generally based on similar principles of heritable rights of usufruct, held within family lineages, regulated and sanctioned by customary authorities, namely chiefs, village headmen, occasionally headwomen, and councils of elders or village notables. Rights in land may be traceable back to original occupancy and clearance of natural vegetation by an ancestor,

sanctioned by a customary authority. Accepted kinship and inheritance rules, which vary from group to group, generally prescribe the access rights of different family members, and these are frequently very secure (customary tenure in Zimbabwe is described as 'traditional freehold' by the Presidential Land Commission). While customary authorities are often regarded as holding land in trust for the community as a whole, in practice most land is already allocated and effectively owned by particular kin-groups. Land is rarely reassigned, although customary authorities have roles in resolving disputes, and may continue to allocate vacant land to new claimants or incoming outsiders.

While general principles are discernible, systems of customary tenure and authority are dynamic and subject to historical change. Principal factors which have shaped their recent evolution include the alienation of customary lands and the installation of chiefs accountable to colonial government, the growth of informal land transactions as a result of market development, and the associated breakdowns in older systems of common property management and indigenous values which have tied people culturally to their ancestral lands.

These changes have led to divergent calls for the abandonment of customary tenure, and for universal smallholder land registration, but also for the formal recognition and codification of customary tenure in law. In practice customary tenure has both advantages and disadvantages, and in no country can a black and white case be made for either abandoning it or for enshrining existing practice in law.

On the positive side, customary tenure and systems of authority retain widespread legitimacy in rural society in southern Africa: they offer some safeguards for the poor and vulnerable; they recognize some degree of gender rights, where women can secure access to farm plots within customary systems; customary mechanisms for dispute resolution and land adjudication still function in many cases; and, despite problems of land fragmentation, and risks of the dispossession of widows, they do provide workable systems of inheritance.

A major disadvantage of customary tenure under contemporary conditions of reduced overall land supply and market development, is that it has to some extent become insecure, and farmers may fear expropriation by the state or the private sector. As unoccupied common land has been lost from the system, and population increases, fallow periods reduce, grazing land may disappear or become severely degraded, and individual farm plots may no longer yield a livelihood (these are now common circumstances in the communal areas of **Malawi, Namibia and Zimbabwe**). As smallholder production has become more market oriented, land has acquired a monetary value, even where no formal land market exists, because it is believed that one will do in future, or because it produces commodities that can be traded. Chiefs and headmen may often have only reduced or partial authority as a result of historical changes, they may develop commercial interests of their own, as farmers or as land speculators, or at least, they become subject to pecuniary pressures from would-be investors wishing to acquire land.

As a result of these changes, it can be argued that local government institutions should also maintain their place in land management and allocation alongside traditional authorities. Local government itself, however, is also subject to pressure from private interests. It is widely acknowledged that checks and balances are required on the authority of the chiefs, but it should be noted that although the legitimacy of customary *authorities* as individuals may be in question, the legitimacy of customary *institutions* (such as rules governing inheritance and reciprocity, the functioning of traditional courts, or criteria for land allocation), where these function effectively, is generally much greater. The challenge is therefore to secure an effective articulation of customary and state institutions at local level. This clearly requires some sort of formal recognition and codification of the principles of customary law, although there are few successful legal precedents for the latter, given the sheer diversity and dynamic character of customary systems.

The debate about customary tenure raises fundamental questions about the nature of the state and of governance at local level. The governments of the region are unlikely to cede ultimate rights to land to customary authorities, since by doing so they effectively divest themselves of political control over customary lands. Nonetheless the continuing legitimacy of customary institutions requires that they have a firm place in local governance, and ill-considered tenurial reforms which marginalize customary institutions risk losing the continuing benefits they have to offer.

Gender rights

Women's organizations and NGOs throughout the southern African region agree that policy and legislative reforms to protect and extend women's rights to land are required, and although recent Land Commissions have been criticized for their under-representation of women, questions of women's rights have featured significantly in their deliberations. However there are disagreements as to what the appropriate reforms should be. Urban-based women's groups tend to argue for joint ownership of land by men and women, for opportunities for women to acquire freehold or leasehold, and to benefit from resettlement and land titling exercises aimed at smallholder agricultural development.

More poverty-focused organizations reject the preoccupation with gender equality within systems of individual title, which would benefit primarily middle class, commercially oriented women farmers. Instead, they focus on the need for support and modification of customary law so as to guarantee and protect the land rights of widows, daughters and divorcees. Although customary systems do provide some protection for women's land rights, they are still widely regarded with suspicion because the safeguards are limited and variable, because men are traditionally regarded as heads of household and land holders, and traditional authorities and customary village assemblies tend to be dominated by men. As a result of growing market orientation, cash crop development, and the growth of land sales, women's customary rights to plots of land for food production may be overridden by more powerful men.

There is no consensus amongst women's groups and NGOs about the place of customary authorities and institutions in land reform for the communal areas, and the potential for local government to provide a basis for guaranteeing more equitable gender rights. However, in **Zimbabwe**, for example, it is clear that fuller debate and consultation with women's groups and other stakeholders are required before moving towards definitive legislation, and the institutionalisation of current 'customary' risks preservation of the traditional male-dominated *status quo*.

Systems of inheritance have also come under scrutiny in the context of land reform. These vary widely, and there are moves to standardize and protect women's rights through changes in inheritance law. Because responsibility for inheritance law generally lies with Ministries of Justice rather than Ministries of Lands, creating requirements for separate, but harmonious policy reforms, women's land rights in cases of inheritance risk falling between two stools, preserving the *status quo*.

The issues presented by systems of matrilineal inheritance and matrilineal residence (prevalent in central and southern **Malawi** and in northern **Namibia**) are particularly complex. A commonly cited complaint by male farmers interested in cash crop development (and used to argue against systems of customary tenure), is that these systems offer men insufficient security, since men's land rights are conditional on authorization by their wives' clans, and land is passed not from father to son but from wife's brothers to nephews. Although the female line may be customarily regarded as the source of authority and continuity in land management in matrilineal systems, it is generally men who must ensure that their sisters' land rights are preserved in cases of death divorce and inheritance. Today, strict adherence to matrilineal rules appears to be declining under the influence of the market, and women's security of tenure may be seriously weakened, as well as their husbands', in cases where maternal uncles claim a widow's land for themselves.

Natural resource and environment management

Despite the development of market production by the smallholder sector, most southern African farming societies still rely on the existence of common property resources, including woodlands, grassland and wetland areas: as sources of firewood, building materials, pasture, fodder and supplementary foodstuffs; as reserves of agricultural land; and as a basis for off-season livelihoods. In many cases limited common lands remain under some form of communal management with user rights allocated according to customary law. However as population increases and land is alienated to other uses the availability of common land has declined, remaining commons shift in status towards open access resources, subject to unsustainable rates of exploitation, and cases of disputes increase.

While conservation objectives can be met by gazettement of protected areas and exclusion of local, or

by conservation land use in the private sector (e.g. game ranching and eco-tourism), the removal of common land from customary access places additional pressures on remaining commons. Increasingly, however, improvements in natural resource management can be achieved by instituting agreements for joint utilization and management of peri-village resources by local communities.

In countries subject to land scarcity, the allocation of land between agriculture and conservation is contended politically. In **Malawi**, population pressure is linked to deforestation, steep slope conservation and soil erosion, and has led to the degazetting of state forest reserves, or occupation under customary tenure. In **Zimbabwe**, the commercial sector is able to benefit from conservation land use, while there is pressure for redistribution of the land in question to smallholders.

Tenure conversion to individual title is likely to accelerate these processes, the demise of effective common-property management, by removing land resources from customary jurisdiction, abrogating long standing collective or reciprocal rights, for example, grazing on crop residues, and access to water sources or certain tree products located on individual land. Similar problems arise where settlement schemes are planned without regard for the needs to allocate land areas to natural resources production under some form of collective management. Surviving systems of common property management are rooted in customary law, and the strengthening of customary institutions and systems of resource tenure is likely to prove the best approach to sustaining natural resource utilization at village level, even though these have their defects and may not provide adequate security of tenure for individual farm plots. These facts have been recognized by the **Zimbabwe** Presidential Land Commission which drew on the experience of the **CAMPFIRE** community-based natural resource management programme, recommending traditional village assemblies as the appropriate land management institutions in communal areas, and the establishment of common property management systems for resettlement areas, even though the arable land would be held under leasehold tenure.

Within communal areas themselves, the extent of degradation of common and of individual land holdings, also requires higher level systems of regulation to supplement and reinforce local management. These might include planning controls, and systems of taxes and subsidies designed to equate the private costs and benefits of good, or bad, individual land use with the social cost-benefits (Hazell, 1993).

The breakdown of common property management has been particularly acute in pastoral and agro-pastoral societies, such as northern **Namibia** where the privatization and enclosure of grazing commons obstructs traditional patterns of transhumance and overrides customary systems of flexible access to seasonal water sources and fallback pasture, leading to widening disparities between rich and poor in terms of incomes, cattle ownership and land rights. Although it is likely that areas of rangeland will need to fall under systems of group and individual title in order to meet the demands of powerful community members and commercial cattle producers, the breakdown of customary rangeland management systems also requires the development of new community-based institutions for common property management. This is no easy business, however, and in turn requires the existence of an enabling legal framework, support services for local institutional development, and higher level procedures for enforcement and conflict resolution (Cousins, 1995), all of which need to be contemplated within the scope of land policy.

Land competition and resource conflict

Competition over land rights is cited as an important factor in the development of civil and military conflict in sub-Saharan Africa, particularly in circumstances where the legitimacy of state institutions has failed, and access to land is skewed and inequitable between different ethnic groups. The alienation of indigenous lands and their occupation by white settlers has underlain the liberation struggles in the region, notably in **Zimbabwe**, **Mozambique** and **Angola**. More recently, during the 1980s in **Mozambique**, the state's failure to acknowledge the importance of customary authority, and the forcible usurpation of dispersed systems of customary tenure by the creation of communal villages, were important factors fuelling the civil war in the centre of the country.

Today policy makers are concerned that the spectre of massive ethnic violence in **Rwanda**, under-

pinned by enormous population pressure, resource conflict and diminishing returns to land may have its parallels elsewhere on the continent. Nowhere in the southern African region has inter-ethnic resource conflict been so pronounced and deep rooted as in Rwanda and Burundi, and the horrific outbreak of communal violence in Rwanda in 1994 was a result of a long history of inter- and intra-ethnic political struggles. Nevertheless, land scarcity can be considered an important factor in fermenting the conflict, and there are similarities here with some situations in southern Africa.

Evidence from Rwanda (Platteau and Andre, 1996) indicates that within certain Hutu communities, population densities and fragmentation reached such a level that in the years preceding 1994 customary systems of land allocation and inheritance broke down completely. Landlessness, particularly amongst young people, land disputes and informal sales multiplied; the authority of the elders was rejected and widespread delinquency developed. The absence of public investment in agricultural diversification, development of off-farm employment, and in family planning, and the lack of opportunities for migration also contributed to this desperate situation. In the violence which followed, not only were anger and frustration turned outwards toward the Tutsi community, but also directed against moderate members of the Hutu community, frequently larger land holders or members of the older generation. Although customary tenure had broken down, the existence of formal private property rights is unlikely to have mitigated tensions over land and could perhaps have complicated the situation further. Rather, genuine economic opportunities, on- or off-farm, are required.

However, failure to redistribute a growing proportion of white-owned lands to black majorities suffering poverty and landlessness in **Zimbabwe** and **South Africa** would be a potential source of inter-racial conflict and political instability, which risks undermining the credibility of state policy, while promoting internal strife and lawlessness within the communal lands. In **Mozambique**, the renewed alienation of customary lands to the national élite and external investors also risks the re-ignition of conflict on a local scale particularly in cases where traditional authorities are marginalized, or if particular ethnic groups were to be excluded from land titling.

In **Malawi** population densities approximate to those of the Great Lakes region of central Africa, although each geographical region of the country is reasonably homogeneous ethnically, and so far there is no indication of ethnic conflict over land. Inter-regional political conflict is also possible however, and despite a need for resettlement, the translocation of southerners to the ethnically distinct north could cause problems. Land policy will need to assure all ethnic groups of access to the benefits of land titling, stem the growth of landlessness, and establish equitable systems for the management of customary lands, in which traditional authorities have a significant role to play.

In central Africa, the case of **Rwanda** underlines the need for equitable economic development for the overcrowded communal lands of southern Africa, to create new opportunities, complemented by land and resettlement policies aimed at alleviating poverty and land pressure. In addition there is a need to monitor the indicators of land-related instability, so evident in Rwanda, such as population-land ratios, the incidence of land disputes, and the growth of landlessness, distress sales, and juvenile crime.

Policy processes

Presidential Land Commissions have had only partial success in formulating recommendations based on widespread popular consultation. In **Zimbabwe** community groups and NGOs are arguing for a more extended process of stakeholder consultation and debate, in order to secure an adequate balance of different policy interests and forms of tenure, and avert hasty, ill-considered land reforms. In **Malawi**, the Land Commission stands in need of technical support and adequate resources in order to organize appropriate consultation fora. In **South Africa** the policy development process has been quite participatory, as a result of the role played by the National Land Committee, a non-governmental body with broad stakeholder representation, and National Lands Conferences have been important here, and in **Mozambique**, where they have been directly linked to the Land Commissions' deliberations, which also collaborated very closely with NGOs concerned with lands issues.

Participation is, however, no guarantee that governments will accept the recommendations of Land Commissions, whose findings have been substantially rejected in **Tanzania**, where the policy process

came to be captured by private and vested government interests. Although the Tanzanian Lands Commission undertook country-wide consultations, and considered submissions from a wide range of stakeholder groups, government has also established a Ministerial Committee on Lands, and a Land Policy Advisory Unit in the Ministry of Lands, with World Bank technical assistance. Ultimately, government appears to have used the recommendations of these to steer the outcome of national workshops, dominated by government representatives, to overrule the Land Commission's recommendations on a range of issues including village land title, the role of village assemblies, limitation of private land holdings and inheritance rights. Following a hiatus in the policy process due to 1995 elections, the Land Policy submitted to Parliament suffered further revisions yet was passed unanimously.

Land Commission recommendations have been partially rejected in **Zimbabwe**, where non-governmental lobbying, has been ignored. Non-governmental attempts to organize policy debates, such as the People's Land Conference in **Namibia**, have also met with no official response.

Alongside the need for extended participatory *debate*, there is also a need for informed but decisive *action* in land policy, to arrest the spontaneous processes which are sharpening inequalities in land rights. There has been a notable inertia on the part of governments to introduce reform, suggesting a tendency to acquiesce in the *status quo*, or to allow *de facto* land privatization to occur, through the processes of leasehold tenure conversion (**Malawi**), rangeland enclosure (**Namibia**) and the allocation of private land concessions (**Mozambique**).

2. LAND TENURE, PRODUCTIVITY AND SECURITY

The majority of African farmers continue to cultivate their land holdings under indigenous or customary tenure systems. While these vary enormously across the continent, and are subject to considerable change and evolution, they are generally based on similar principles of heritable rights of usufruct, held within family lineages, regulated and sanctioned by customary authorities, namely chiefs, village headmen, occasionally headwomen, and councils of elders or village notables.

Throughout much of this century, planners and economists from developed countries have generally supposed that systems of customary tenure are insecure and not conducive to investments in agriculture. Critics of customary tenure have argued that it needs to be abandoned, in favour of systems characterized by secure individual tenure and free markets in land, if greater productivity and food security are to be achieved and African rural society is to modernize. Recent research has, however, established that these suppositions are generally misleading and that the constraints and opportunities provided by the persistence of indigenous tenure within dynamic contexts of market development and political change are invariably more complex (Barrows and Roth, 1989; Bruce, 1993; Bruce and Migot-Adholla, 1994).

In a recent review of studies by the World Bank and the Wisconsin Land Tenure Centre, covering Ghana, Kenya, Rwanda, Somalia, Burkina Faso, Senegal and Malawi (Bruce and Migot-Adholla, 1994) no significant relationship has been established between farm yields and forms of land tenure. Earlier research has also concluded that increases in farm productivity, for instance in some parts of Kenya, have depended on the market environment and the availability of complementary agrarian inputs to the farmer (Barrows and Roth, 1989).

Although there is little evidence that customary tenure itself restricts agricultural productivity, it does appear to restrict access to credit, with some creditors preferring to lend against established formal title. The significance of these restrictions can be questioned, however, since transferability of land, for purposes of debt redemption, requires the existence of a land market and some reliable level of demand for the land in question (Bruce, 1993). Moreover, informal customary credit systems do exist, in many cases NGOs and parastatal agricultural development services successfully provide small-scale credit in communal areas, and banks have been reluctant to actually seize private land as collateral for loans (Palmer, 1996). A more reliable criterion for allocation of credit is a reliable income stream in a reasonably certain agricultural market irrespective of tenurial status (Bruce, 1993).

Some features of customary systems may create costs in terms of agricultural efficiency; in particular farmers may want guarantees against arbitrary alienation of their land, and they may wish to use land as collateral to raise loans to make capital improvements. However, customary systems provide for system resilience, not only productivity, emphasizing risk management (Bruce, 1993) through of reciprocal rights and obligations within village communities, and multiple land holdings across various agro-ecological niches.

Systems of customary tenure have proved capable of adapting to historical change, and they have responded to emerging market opportunities and to population growth. When there has been extensive commercialization of the rural economy, systems of tenancy, wage labour and sharecropping have all emerged within frameworks of customary tenure (Palmer, 1996). Considerable 'evolution' of indigenous tenure arrangements has taken place under the influence of market forces and population growth, frequently in the direction of greater individual control and alienability of land holdings (Bruce, 1993).

In most cases customary tenure has recognized long-term, heritable and exclusive rights for individual farmers and farm households, and usufruct is, in fact, quite secure. Although land can sometimes be

3. MALAWI

Background

In Malawi a dualistic land policy was established in colonial times, with large land areas alienated for tea estates in the south of the country, and for tobacco in the centre and south. These regions are the most densely populated parts of the country, subject to serious land pressure.

After independence government took the view that customary systems of tenure were inimical to agricultural productivity and an African estates sector developed. President Banda bestowed large land holdings on members of the ruling élite and encouraged the development of smallholder tobacco farming on leasehold basis. In addition to the leasehold sector some of the larger estates are held under freehold, a legacy of the colonial era, and customary land has also been transferred into the public sector for various purposes.

Land access is a political issue in Malawi and under-utilized estates as well as public lands are subject to encroachment in overpopulated areas especially the south. According to a 1994 food security and nutrition survey, 58% of Malawian rural households can be classified as small or very small land holders (holding less than 0.62 ha) with 44% holding less than 0.44 ha, concentrated in the southern region (Vaughan, 1996). Many Malawians, including the majority of female-headed households thus do not have enough land to meet their subsistence needs, even in a good year. In addition it is estimated that approximately half a million hectares of farmland are unsuitable for agriculture, located on steep slopes or in agro-ecologically marginal zones. Population growth is high at over 3.2% per annum (according to the 1987 census), requiring the absorption of approximately 30 000 additional families each year by the customary sector (Dickerman and Bloch, 1991).

The estates sector

The estates sector as a whole expanded rapidly in the 1970s and 1980s, and at the beginning of the 1990s an estimated 600 000 ha of land had been transferred out of the customary to the estates sector. In some districts, such as Mchinji in Central Region, almost 50% of land has been converted to leasehold, and average customary landholdings fell from 2.0 to 1.6 ha per household during the 1980s (Dickerman and Bloch, 1991). Although government has tried to arrest the transfer of land into the estates sector, the liberalization of the tobacco marketing system in 1995 encouraged farmers to register leases on customary holdings, in order to obtain a marketing quota. As a result customary lands have become further fragmented, and although the ending of the leasehold requirement for tobacco marketing is now thought to have slowed leasehold registration, the boundary between the customary and estates sectors has become blurred.

USAID has estimated that by 1994 there were approximately 30 000 estates in Malawi, covering more than 1 million ha. Of this almost 25% is under-utilized. By contrast some 2.6 million ha are cultivated by smallholders in the customary sector. Recent studies of the estates sector have, however, found that around 67% of estates are below 20 ha in size and 88% are below 40 ha (Steele, 1996). On many smallholder estates farmers combine tobacco and subsistence crop production and incomes remain relatively low, although under the tobacco quota system leaseholders also acted as middle men for marketing the burley crop produced on surrounding customary lands.

The customary sector

Within the customary sector, land is ultimately held in common by clans and lineage groups, under the custodianship of a traditional authority, but is effectively owned by individual families and passed from one generation to the next. Village headmen (occasionally headwomen) under the authority of traditional chiefs retain the power to allocate land although there is now very little unused land

available for allocation throughout much of the country. Increasing populations are accommodated by land fragmentation, and by the shortening of fallow periods, with consequent negative impacts on agricultural productivity.¹ In some areas land insecurity has developed as a result of the expansion of the estates sector, and chiefs have agreed to grant lands to prospective leaseholders. In some cases traditional authorities appear to have lost legitimacy as custodians of the land, and better-off, educated farmers have sought to register leases themselves as defence against the risks of land privatization.

A further area of interaction between the two sectors concerns the land rights of labourers and tenant farmers on large estates. Labour tenants themselves may be landless migrants, or farmers from adjacent customary lands, sometimes with customary claims on the privatized lands they now work.

The policy development process

Debate on land policy in Malawi has centred on the question of tenure reform as a means to stimulate smallholder cash crop (primarily tobacco) development and boost export earnings, but for poor households, the principal issue is basic food and livelihood security, which may well require a programme of land distribution and resettlement, as well as improvements in tenure security. Most available land for settlement is, however, located in the less populated north of the country, which is ethnically and agro-ecologically distinct from the centre and south.

The World Bank and other donors have attempted to drive land policy development in recent years although they have not acted in a coherent way. The World Bank first initiated the formation of a Land Policy Planning Unit (LPPU) in the Ministry of Lands and Valuation. USAID, DFID and the EU subsequently agreed to fund extended studies into land utilization in the public, estates, and customary sectors respectively (and known respectively as PLUS, ELUS and CLUS), reporting to the LPPU. These have not proceeded concurrently or with consistent methodologies, and as a result are of limited value for policy formulation, because of poor comparability and consistency of data relating to the estates and customary sectors (ELUS concluded as CLUS began).

In March 1996, again at the behest of the World Bank, government appointed a Presidential Lands Commission, including representatives of the various political parties and a number of traditional authorities, but not NGOs. The Commission had no clear mandate to work with the LPPU, leaving the policy unit uncertain as to its purpose and mission, even though it had itself planned a public consultation exercise involving traditional authorities and other stakeholders at regional and district levels. Moreover the Commission is not so far making use of the results of the land utilization studies underway. To date donors have not provided either body with technical expertise on land policy matters, although the World Bank and DANIDA are supporting the land policy process and FAO and UNDP have agreed to provide technical inputs.

FAO technical assistance has been provided to the Ministry of Agriculture focusing on policy development for land use and management rather than on issues of land tenure (FAO, 1996). An interactive workshop and policy drafting process resulted in a draft National Land Use and Management Policy, issued by the Ministry of Agriculture (MOALD, 1996) aimed at ensuring sustainable land use as a basis for socio-economic development and minimizing inter-sectoral disputes on land allocations. On tenure and property rights, the draft policy proposes:

- to empower traditional leaders to monitor the use, allocation and management of customary lands
- to empower community-based organizations to regulate common property resource management at village level
- that customary rights be recognized and protected without compromising opportunities for conversion to leasehold
- development of a comprehensive resource tenure policy encompassing all natural resources in addition to land, in order to guide sustainable resource use

¹ Fragmented holdings in different micro-environments can, however, increase the resilience of the farming system, allowing farmers to spread their risks across a range of sites and planting different crops at different times, in different places.

- establishment of a comprehensive data base on land resource use and ownership rights
- review of legislation in relation to all forms of tenure
- to ensure consistency of land use policy with national land policy as a whole.

It is interesting that although the central issues of agricultural productivity, food security, tenure security and land delivery are not considered in detail by this document, it does consider the importance of customary tenure in relation to wider issues of natural resource management and sustainability, and that these issues have arisen as a result of participatory discussion and analysis. Other donors, as yet have not taken a facilitative approach to stakeholder involvement in policy development, but it is not known whether or not the Presidential Lands Commission itself has taken up and developed any of the MOALD policy recommendations.

USAID and, initially, the World Bank, have both pursued a political agenda of land privatization, arguing for the introduction of universal land title and the development of a formal land market. The argument that it is *tenure security*, which can be delivered by *both* customary and formal systems of tenure, rather than *formal land title*, which is a necessary condition for investment and improved efficiency in agricultural land use is very relevant here. However the process of *de facto* land privatization as a result of leasehold registration and informal land transactions may now be so far advanced in some parts of the country that customary tenure may no longer offer adequate security to rural communities. As a result there is an argument for the defensive registration of leases by land users on customary land in order to protect their land rights. In addition, farmers wishing to raise loans for tobacco or cash crop development are likely to require land title in order to do so. Given the importance of tobacco as an export commodity, some further development of the smallholder leasehold sector is likely to be required.

Malawi has the experience of an experiment in smallholder land registration, the Lilongwe Land Development Programme (LLDP), during the 1970s. This aimed to increase agricultural production by promoting tenure security and agricultural investment by progressive farmers. The results were mixed, as local communities preferred to register land as family land (*ndunda*), avoiding the problem of formal adjudication between individuals for numerous small parcels of land. Commercial banks still refused to provide credit to collective, family leaseholders, and it is now recognized that the improvements in production that were achieved resulted from LLDP credit, extension and marketing facilities rather than from the costly process of land registration (Dickerman and Bloch, 1991).

The majority of rural Malawians still continue to hold their lands under customary law, and a universal leasehold model of land holding is badly flawed for various reasons including:

- problems of inheritance and subdivision of holdings, the question of women's and surviving relatives' access to land (complicated further in Malawi by the existence of both matrilineal and patrilineal systems of inheritance for different ethnic groups, in some cases side by side);
- the need to maintain and strengthen common property management systems for village grazing, forest and wetland (*dambo*) areas;
- risks of landlessness and land concentration which arise when poorer farmers are forced to sell up having defaulted on loans raised against their land holdings as collateral.

Despite the high degree of land fragmentation, and the overall land shortage in Malawi, customary land management, based on inheritance and the role of the chiefs, does at least provide most families with some degree of land and food security, while facilitating mutual aid through systems of share-cropping, reciprocal obligation and casual labour, within and between kin-groups.

In addition it should be noted that a universal leasehold system would require the introduction of a comprehensive land delivery system, providing for land survey, registration and adjudication on a regional basis. This would be very costly and time consuming, requiring development of considerable institutional capacity, starting from a very low base.

In conclusion, a universal leasehold model is very unlikely to provide an equitable, cost-effective solution to the complex problems of land allocation and management in Malawi. Nonetheless a

4. ZIMBABWE

Land redistribution and resettlement

Zimbabwe's 1980 independence constitution laid down a 'willing seller, willing buyer' basis for all transfers of land from commercial settler estates to blacks. The 1992 Land Acquisition Act, however, provided for expropriation of commercial farm land under a system of designation of under-utilized land. Strong political pressures for large-scale redistribution of white-owned estates persist, and the President now proposes to press ahead with the short-term expropriation of 5 million ha of land, paying compensation for buildings and fixed assets only, unless donors agree to finance land acquisition.

At independence, Zimbabwe planned to resettle 180 000 families from the communal areas, requiring acquisition of 57% or more of commercial farmland. Efforts were initially targeted at returning refugees and ex-combatants, and subsequently extended to residents of overcrowded communal areas and urban migrants. Approximately 62 000 families have now been resettled on some 3.3 million hectares of land, over 10% of the total arable land area (Palmer, 1996). Nevertheless as few as 4000 whites still retain 35% of the country's total arable and ranch land (Hill, 1994).

In the decade after independence Zimbabwe pursued resettlement under four different models.

- Model A: secure individual tenure of residential plots and arable lands (through a system of permits) surrounding village settlements, with communal management of pasture and woodlands; more-or-less equivalent to systems of customary tenure in the communal areas.
- Model B: collective settlements in which all village land, including arable, is managed communally, with settlers intended to receive shares of the returns according to the labour contributed.
- Model C: (for former cash crop estates and irrigation schemes) contract farming through outgrower schemes on core estates, with opportunities for seasonal wage labour on the estate.
- Model D: experimental schemes for grazing management on adjacent livestock ranches (known as the 'three-tier model').

There have been some problems with the top-down ways in which resettlement has been organized, in large part deriving from inflexible, bureaucratic administration. Kinsey and Binswanger (1993) found that model B schemes have failed almost entirely, with 20% of schemes disbanding in a single year. There were some exceptions, where settlers have informally divided collective lands amongst themselves, so as to operate effectively along the lines of model A. Model A schemes have been more successful, showing increases in production, beyond initial targets and levels expected of commercial farms of similar overall size. Nevertheless, they have been severely constrained:

- schemes have suffered a lack of investment, as farmers have had poor access to credit
- settlers have been required to give up all land rights in their areas of origin
- land leases are not inheritable, and so there is no inter-generational security of tenure
- a rigid approach to farm size (5 ha per household), without regard to availability of labour, capital, technical skills, or land potential
- an insistence on full-time farming, although prohibitions on off-farm labour were subsequently relaxed, leading to improvements in farmers' abilities to purchase inputs
- prohibitions on the sale or sub-leasing of plots is prohibited, resulting in land poaching on plots belonging to poorer settlers, unable to manage them.

reallocated by traditional authorities, this generally results from under-utilization of land claimed by particular families, population growth, and local inequities in land holding. Insecurity does not appear to derive from the rules of customary systems themselves, but it may arise from circumstances of overall land scarcity, arbitrary government action, land grabbing by urban élites, and inter-ethnic rivalries (Bruce, 1993). Customary management is often ill-equipped to cope with such insecurity, and this is one factor motivating farmer demands for registration of title, in order to defend their rights against expropriation by the state, private concerns, or local counter claims (Bruce and Migot-Adholla, 1994).

Within customary frameworks, informal markets have developed from indigenous mechanisms of reciprocal obligation such as land loans and sharecropping. Where land assumes value as a result of investments made, or its proximity to markets and urban centres, customary law generally comes to recognize cash transactions in land. A general growth in transactions in land has been found, but this is occurring across the range of tenure categories, and is not restricted to circumstances of secure individual title (Bruce, 1993). Moreover, it does not appear to be individualization of title that causes a land market to emerge (Barrows and Roth, 1989). In addition, even when land titling has been introduced, informal land transactions, along with subdivision and inheritance practices along customary lines still tend to persist.

The emergence of land markets within customary frameworks poses difficult questions, however, and there is evidence, from Kenya, for instance, that increasing sales of smallholder lands can sharpen inequities in land holdings, leading to both land concentration and landlessness. In contrast, where large state or private holdings have been broken up by the market, and offered for sale to smallholders, equity has increased (Bruce, 1993).

The balance of evidence suggests that land titling is no panacea for agricultural problems, which should be addressed by focused agricultural development initiatives. Although titling may in some cases succeed in generating much needed investments, it has costs as well as benefits, often generating new problems of equity and institutional delivery, when superimposed on to pre-existing customary systems. There is no strong case for ambitious land registration and titling programmes, although there are some circumstances where more limited, focused programmes may be worthwhile (Hazell, 1993). These include cases in which:

- indigenous tenure systems are absent or extinct
- the incidence of land disputes and competing claims is very high, for instance, as a result of high levels of in-migration
- major project interventions for settlement or irrigation development require the full scale redesign of land holding systems.

harmonious coexistence between customary and leasehold sectors needs to be achieved, and emerging land markets do need to be somehow regulated.

The schemes have also discriminated against women, following customary practice of allocating land to male household heads. Although widows and divorcees are eligible for land allocation, they are normally expected to return to their areas of origin (Cousins and Robins, 1993).

Moreover settlers rights may actually conflict with indigenous claims, particularly in the case of trees and woodland resources, to which former owners may have granted local communities usufruct, in line with their historical claims. Bruce *et al.* (1993) report considerable tensions between the spirit mediums (the traditional guardians of the land) and 'newcomers', in resettlement zones across Zimbabwe, as they appealed to different sources (customary and modern law) to legitimize their claims to trees and forest products. In addition, resettlement area grazing lands are frequently under-utilized, due to low stocking rates, whereas adjacent communal lands may be seriously overstocked, resulting in fence cutting and poach grazing (Cousins and Robins, 1993). A further complication is that institutional mechanisms for conflict resolution have been neglected for the Resettlement Areas, which fall outside the jurisdiction of local government, and power is monopolized by Resettlement Officers from the Ministry of Lands, Agriculture and Rural Resettlement.

Although model B resettlers are not reported to feel insecure, some strengthening of the permit system is still required to bring about a more secure form of tenure, without encouraging unrestricted subdivision, sales, and speculation in land (Cousins and Robins, 1993).

Fundamental inequities in the distribution of high quality land persist, and production of both high value cash crops and commercial livestock remain dominated by white commercial farmers. Nor has resettlement altered high population/land resource ratios in the communal areas, where population and landlessness continue to grow.

Following the expiry of the 1980 Lancaster House independence constitution, the 1992 Land Acquisition Act removed the willing seller, willing buyer principle which formerly governed land acquisitions by the state, and empowered Regional Land Committees to determine under-utilization and designate commercial land for acquisition. Limitations on overall farm size have also been imposed. The Act still requires that compensation must be paid, but at levels to be set by government in local currency, and farmers have no right of appeal. Large-scale land designation began in 1993. Although there is Commercial Farmers' Union Representation on the Regional Land Committees, there is concern that land designation is being used politically, against particular individuals or to appease political demands rather than strictly following criteria of land use efficiency (Hill, 1994).

One conclusion arising from Zimbabwe's experience is the need for flexibility in the design and management of resettlement schemes, not only to cope with differing household circumstances and agro-ecological variations, but to ensure institutional learning, with schemes "... deliberately designed as experiments that incorporate a range of possible approaches" (Kinsey and Binswanger, 1993). A further issue is the need for adequate consideration of institutional capacity by resettlement planning, in relation to questions of tenure rights, resource management responsibilities, mechanisms for accountability, representation and conflict resolution, all of which have been generally neglected in Zimbabwe (Cousins and Robins, 1993).

Funding for resettlement programmes is a continuing issue. Initially 50% of all costs in Zimbabwe's programme was underwritten by the British Government, which expanded the scheme and enabled higher levels of compensation to be paid to sellers, thereby protecting their interests.

The Land Tenure Commission

The Commission of Inquiry into Appropriate Agricultural Land Tenure Systems was appointed in 1993 and reported to Government in October 1994. Publication of the report was delayed until September 1995. The report made radical recommendations on tenure covering both commercial and communal areas. In the case of the communal lands, the Commission's recommendations have far reaching implications for rural governance, by partially restoring the powers of the traditional chiefs, while aiming to democratize village political life. The recommendations have been substantially accepted by government which now claims to be committed to a comprehensive new Land Act intended to consolidate land and natural resource legislation, while retaining the four tenure systems of freehold, leasehold, state land, and communal tenure.

Resettlement areas

The Commission made recommendations on land tenure reform for resettlement areas and on how renewed resettlement schemes should operate. Government's preferred form of tenure for resettlement is individual leasehold (99 years), with the option for farmers to purchase the freehold after ten years, as recommended by the LTC. This preference is based on the view that opportunities should be created for emergent black small-scale producers who can make greater contributions to increased agricultural productivity under a system of private individual tenure.

The LTC found that the resettlement sector, especially the model A schemes, was more efficient than both communal and small-scale resettlement sectors, as well as making fuller use of available arable land than the large-scale commercial sector. Although the model A schemes performed well in terms of farm production, the existing permit system for occupation was insecure and did not permit permanent investments in the land. Moreover resettlement areas are under-provided with farm finance and support services.

LTC recommended that existing model A, B and C resettlement schemes be demarcated into individual plots, and leasehold title awarded to the permit holders. Successful model B co-operative schemes should have the option of continuing under a group lease, with the option to purchase the freehold. Communities resettled under model A schemes are to have the option of replanning existing communal grazing areas for incorporation into individual plots or alternatively to maintain communal grazing and forest resources if effective village management institutions are in place.

Future resettlement schemes are to operate under a leasehold model and LTC recommended that self-contained plots including arable, grazing and residential land must be adopted for all future resettlement schemes in the better endowed Natural Regions I, II and III.

For Natural Regions IV and V, where water is scarce and livestock dominates the farming system LTC recommends an approach for communal management of additional grazing land known as the 'three-tier model' which has been found to be successful in Botswana.

A government policy paper (September 1996) identified three target beneficiary groups for land redistribution:

- the landless and residents of overpopulated, congested communal lands
- successful peasant farmers with limited resources, wishing to enter small-scale commercial farming
- indigenous citizens with the resources to invest in large-scale commercial agriculture.

DFID has proposed the formation of a donor consortium to support three components of a renewed resettlement programme, aimed at the first two of these target groups:

- (i) a community-based model A programme, targeted at those living in congested communal areas
- (ii) a model A self-contained units scheme for communal area farmers wishing to enter small-scale commercial farming
- (iii) the 'three-tier' livestock model.

Criticisms of the proposals adopted

There are risks that the resettlement programme as a whole will be skewed towards the more successful peasant farmers for whom secure individual tenure of self-contained farms is the most attractive option. Since prime land is likely to be distributed to members of the black élite investing in commercial farming, there is widespread concern in Zimbabwe that the programme will do nothing to address the structural inequalities in the distribution of land and wealth in Zimbabwe. Critics argue that if a community-based programme is to succeed in meeting the needs of the landless and the vulnerable, and the needs of women, then there should be adequate provision for resettlement of functional, interdependent communities, and for inheritance and subdivision of land amongst heirs along the lines of customary systems. The leasehold system proposed would not allow for this. Box 1 summarizes some of the issues involved.

Box 1: Policy issues for the resettlement areas in Zimbabwe

- Leasehold fails to provide adequate arrangements for inheritance and subdivision of land amongst heirs, as in customary practice; upon the death of the leaseholder further landlessness could occur.
- Widows are most at risk, in that current permit holders are invariably men and the law does not provide for women to be registered as leaseholders. Women are at greatest disadvantage in cases of divorce or polygamous unions, where they are at risk of losing all land rights. Customary systems by contrast provide some safeguards for women to retain access to plots allocated within the household.
- Provision is needed for some form of communal leasehold or equivalent set of tenurial rights to lineage groups or other communities resettled together, within which land allocation and management systems can operate along customary lines including provision for communal grazing and woodland areas.
- Development of a range of income-generating activities should be encouraged in resettlement schemes so as to meet community needs; at present this is not permitted and the Land Commission made no recommendations in this regard.
- Commercial farmland which may be subject to redistribution is under-provided with social and economic infrastructure, yet resettlement schemes will require investment in health, education, social services and marketing facilities if they are to meet the needs of the poor.
- An emphasis on private forms of tenure and land mortgaging is a high risk strategy for the poor; in a low rainfall year farmers who have raised credit against their land titles would be vulnerable to repossession.

Commercial areas

The Land Commission found that a majority of commercial farms were too large, under-used, and artificially overvalued, recommending reductions in farm size and legislation to limit land holdings by commercial farmers.

A land tax

Government has discussed the possibility of introducing a land tax since 1980, as a means to persuade land owners to relinquish excessive or under-utilized holdings. The World Bank has also supported such a measure, and the LTC recommended that an agricultural land tax should be based on both farm size and potential productivity. Clearly, since the predominantly white commercial sector is able to benefit in perpetuity from freehold titles to Zimbabwe's most productive land, some considerable incentives are required in order to encourage 'willing sellers' to supply the market with sufficient land for acquisition and redistribution by government.

However, a tax should not be conceived simply as a punitive measure against commercial farmers, but requires careful design as a policy instrument effective in limiting land concentration, under-utilization and speculation. A water tax offers another potential instrument for creating an additional market supply of land, since the productivity of large estates is so heavily dependent on the exploitation of irrigation water. Up to now water issues in relation to land rights and inequalities have been overlooked in Zimbabwe (ZIMRIGHTS, personal communication, 1996).

Communal areas

The Commission drew on the CAMPFIRE experience in which villagers, through local government structures, were able to establish management of common property resources within village areas, and derive benefits from wildlife utilization. The Commission proposed the abolition of the state imposed Ward and Village Development Committees (WADCOs and VIDCOs) which had proved obstructive to the development of community-based natural resource management under CAMPFIRE, and their replacement by an elected village assembly, based on the customary fora known as *Dare* (Sishona) and *Inkundla* (Sindebele) (Reynolds, 1996).

Land Commission recommendations that customary systems of land allocation be restored, under traditional leaders, and that communal area households should continue to benefit from the system of 'traditional freehold tenure' under customary law have been accepted by government.

A recommendation that state ownership of communal lands be abolished was rejected however, and government is to retain ultimate control of land held by farm households.

The government position goes a considerable way towards re-instituting customary authority in the communal lands, but also averts the risks of permanent transfers of freehold title to private individuals being sanctioned by chiefs. However, critics of official policy argue that customary systems are not adequate to protect the interests of women, the poor and vulnerable, and that traditional councils (*Dare* and *Inkundla*) are dominated by men, and open to manipulation by private interests, including their own. Neither the LTC's recommendations, nor government's response address these issues and the problems of insecurity and limited gender rights which NGOs are now reporting from some communal areas. Some of these argue that local government bodies, or lands boards, should continue to have their place alongside customary authorities in local land management systems for the communal areas (ZWRCN 1996 (a); OXFAM, personal communication).

Critics of the emerging policy point out that the now predominant market orientation of agriculture in Zimbabwe creates a commercial interest, on the part of customary land managers, to concentrate land in their own hands and/or make allocations of land to outsiders or powerful community members in exchange for payment in cash or kind. Although no formal land market exists in communal areas (and the LTC does not recommend one) informal transactions are now reported to be widespread (Government of Zimbabwe, 1995). These developments tend to exacerbate the problems of land disputes, land poverty and landlessness.

Gender issues

The issues of women's land security cross-cut the various land categories in Zimbabwe, although they are more complex in communal areas where customary systems of land allocation and inheritance are evolving and changing under various influences.

Women's groups submitted a range of evidence and recommendations to the Land Tenure Commission, much of which was not accepted (Chenau-Repond, 1996; ZWRCN, 1996 (b)). The twelve land commissioners included only one woman, and the LTC has been criticized for biasing its consultations towards men. A key recommendation from women's groups was that land should be automatically inherited by the surviving spouse rather than passing directly to male heirs. The Commission did not accept, and instead recommended that widows should retain the land rights they held while their husbands were alive, but in practice this often leaves women at the mercy of the husband's relatives.

Although the commission did accept the need for some legal protection for widows, government passed its recommendations to the Ministry of Justice for incorporation into a new Inheritance Bill. This itself has been delayed, and there is a risk that the complicated, culturally sensitive inheritance issues will get no comprehensive treatment, and that neither land nor inheritance legislation will give adequate protection to women's land rights. The gender issues in land policy remain particularly contentious, and women's groups in Zimbabwe take the view that discussion of women's rights to land is being suppressed from the highest level.

Towards a new land policy

Following consideration of the LTC recommendations by cabinet, a new land bill is now being drafted, although this is not expected to be comprehensive. A number of NGOs and community-based organizations in Zimbabwe take the view that rural society as a whole and women in particular were not adequately represented on the LTC and that the Commission was not nearly consultative enough in its deliberations. Although a number of meetings were held with various stakeholder groups, at different levels, there are calls for a wider national debate and much greater transparency before land policy is finalized and new legislation introduced. The fear is that without fuller participation of all sections of society in policy development, a new land policy may reinforce inequalities in Zimbabwe, by concentrating too heavily on productive smallholder development.

5. MOZAMBIQUE

Against a background of some 17 years of civil war, massive population displacement, radical economic liberalization, and a scramble for control of land following the end of hostilities in 1994, Mozambique passed a new land law in September 1997. The new legislation provides a framework within which the confusion and conflict over land which have arisen in recent years might be resolved, so as to protect the land rights and livelihoods of the mass of rural people, while maintaining opportunities for private investment. The law resulted from an extended process of stakeholder consultation and popular debate, but much remains to be done to spell out the details of land policy and create mechanisms for implementation in order to guarantee smallholder land security.

The present chapter discusses, in turn: the historical background, especially concerning the recent rush for land concessions, and the question of the former state farms; the policy process and the new law itself; and finally, the outstanding issues to be resolved, especially in relation to tenure security for rural communities.

Background

Following Mozambique's independence in 1975 land was nationalized and the majority of colonial estates, were consolidated into large state farms. The constitution did not recognize a market in land, or the role of customary law, although the rights of peasant farmers to occupy arable plots were acknowledged. Private commercial production was permitted through a system of leasehold title, and although smallholders could theoretically obtain title, the costs were prohibitive.

During the 1980s the nation became preoccupied with internal warfare between the FRELIMO government and RENAMO rebels, and the wider conflict in the region. The war had disastrous impacts on smallholder production and the performance of both state and commercial farms, and on the economy as a whole, while provoking massive population displacement. Very little policy and legislative change took place during the 1980s, although 1986 land legislation sought to create mechanisms for limited smallholder land registration.

Structural adjustment and economic liberalization began in the late 1980s, leading to the break up of the state farms and a drive to secure investment in the beleaguered economy, with government offering attractive opportunities to the private sector. The war drew to a close in the early 1990s and as peace negotiations began in 1992 a rush to lay claim to land developed amongst the Mozambican élite, business people, and both new and returning external private investors. For Mozambicans, land came to represent a principal means of acquiring capital security at a time of rapid economic change. Given the political uncertainties facing members of government, the armed forces, and senior officials, politically engineered land allocations and land speculation became rampant. According to Hanlon (1995) senior military figures have been given land in return for their co-operation in the peace process.

Although the transition to peace will clearly benefit Mozambique as a whole, the accompanying political and economic changes have led to complex and conflicting results (West and Myers, 1996). Substantial increases in agricultural production are necessary in Mozambique for food security and economic development, and smallholder farmers currently supply over 90% of Mozambique's marketed agricultural surplus (MacDonald, 1995). Government has been equivocal in recognizing the importance of tenure security for the rural majority in promoting food security and agricultural growth.

However economic liberalization has had both good and ill effects for smallholders. Whilst trade networks have re-emerged, and producer prices are no longer artificially depressed, at the same time national and external outsiders have moved in undermining local control over rural resources,

particularly land, threatening livelihoods (West and Myers, 1996). Customary land management is often regarded as an obstacle to development and government has tended to take a paternalistic attitude towards smallholders, regarding the sector as “unable to defend itself or participate in a market economy, and is incapable of exploiting the more productive lands and natural resources in the country” (Myers, 1994).

During the war, displaced farming families became concentrated in peri-urban areas, along major roads, and along the coastal strip. With the emergence of peace, many returned to their areas of origin, in many cases finding them already occupied, while others preferred to remain where they were, sometimes contesting rival claims from returning residents or other interested parties. As a result of a history of colonization, nationalization, war, displacement, and finally the coincidence of peace and new market opportunities during a period of political transition, a complex situation has arisen characterized by diverse, competitive claims to land.

The various layers of competitive claimants for land have been identified by Myers (1994), as follows:

- Mozambicans claiming customary rights arising from historical occupation and lineage membership
- Mozambicans and foreigners claiming rights from the colonial era in concessions, the *colonato* schemes and from post-independence villagization
- those claiming rights resulting from the creation of state farms and co-operatives
- displaced people, former refugees and returnees
- a new category emerging of private sector companies and individuals obtaining land through recent concessions or trying to return to pre-independence claims.

Since 1991, government has been “haphazardly distributing land rights to new and returning private national and foreign enterprises as well as to government officials through privatization of the vast state farm sector, reactivation of former colonial titles, and granting concessions” (Myers, 1994). Although government has made efforts to resolve land policy issues, policy development has not been able to keep pace with the emergence of multiple land claims driven by processes of conflict, peace, and rapid economic change and liberalization.

Although there remain large areas where land is fairly abundant and land conflict is not a major issue, throughout peri-urban areas, on fertile riverine land, in border zones, and in the vicinity of major transport routes, there is considerable population pressure on land and resources. In response to private land allocations and risks of displacement, there have been instances of resistance and cases of violent conflict, land abandonment and squatting (Myers, 1994). The overall consequences of the lack of an effective land policy have been widespread insecurity and disincentives for smallholder farm investment.

These circumstances require an overhaul of the land policy and of the administrative institutions involved, for which the new 1997 Land Law now provides a clear basis. The law places a brake on haphazard land distribution and the privileged access which both political élites and commercial investors have had to the land allocation process. A number of critical issues will now need to be resolved, within the framework provided by the law. These include the potential conflict over land already allocated to private concession holders and smallholders with prior claims, and the question of land rights on former state farms (MacDonald, 1995), (both discussed in more detail in the following two sections). In addition land policy issues raise fundamental questions of rural governance, and the law itself requires further legislation to clarify exactly how rural communities can hold land, women’s land rights, and the roles of the various different forms of customary authority in Mozambique. These issues are considered at the end of this chapter, following a brief exposition of the new law itself.

Land grabbing and land concessions

Given an already complex situation in which there are multiple claimants to the same pieces of the land, the continuing allocation of private land concessions creates yet more confusion and potential for conflict. Data on land concessions awarded are variable and patchy, but Ministry of Agriculture statistics suggest that 5.89 million ha have been awarded since 1986, representing 33% of total arable

land (MacDonald, 1995). One estimate (based on national level data, but with many gaps) puts the total figure at 20 million ha including agriculture, mining, timber, wildlife and tourism concessions by January 1994 (West and Myers, 1996).

The key problem is the granting of concessions simultaneously at national, provincial and district levels of government, and by different ministries, for the same or overlapping pieces of land (Myers, 1994).

Concessions have frequently been given where land is already occupied, leading to evictions of smallholders, or to future eviction becoming a possibility unbeknownst to the smallholders (MacDonald, 1995). District officials may be subject to bribery by private interests, they rarely have records or means of transport to determine whether or not land is occupied, and political pressure from above may leave them with no alternative but to grant concessions to commercial enterprises (Hanlon, 1995). The process of granting titles for land concessions is slow and bureaucratic, and many companies and individuals applying for land do not have the capital to develop it. Nevertheless applicants often use preliminary documentation to push farmers off the land, even though title has not yet been granted. Generally, the seeds are being sown all over Mozambique for future land disputes. The awarding of these large concessions for agriculture, and for timber, mining and other activities, over the heads of smallholders occupying land in these areas, "...will become a serious problem as credit and other resources become available for large-scale farming and other land developments" (MacDonald, 1995).

There is an alarming trend of a kind of reversal to the colonial situation, with smallholders losing their land rights and risking being forced into sharecropping and labour tenancy. In Zambezia province, for instance, Portuguese descendants of colonial settlers are returning to stake their right to pre-independence estates, in addition to numerous claims from Mozambican investors, and concessions have been granted for commercial agriculture, logging, hunting and tourism. According to Land Tenure Centre research, 36% of Zambezia's provincial land area (63% of its arable and forested land) has been requested for concessions, in the ten year period from 1987 to 1997, not including any requests and allocations that may have been made at the national level (Myers and Eliseu, 1997). These claims were made in two distinct phases: firstly, as the war drew to a close; and secondly, from 1995 when the economy began to recover; 98% of the claims have been made by commercial concerns, as opposed to smallholders. The majority of claims have not received final authorization, but many may have provincial authorization, and in many cases claimants are reported to use letters of intent, applications and other documentation as a basis for eviction of smallholders, so as to claim that the land is unoccupied. Given farmers' ignorance of their rights the situation is a real source of insecurity and prompting abandonment of land. As a result, there is a groundswell of interest amongst farmers and NGOs in obtaining community land rights, and, while it is unclear how the new legislation will affect the land claims already in the pipeline, it is now urgent that local communities' land claims and grievances be addressed, and land allocations thoroughly reviewed, province wide.

Underlying this situation is the unequal relationship between central state and provincial governments, on the one hand, and districts and villages on the other, and the overall weakness of government institutions. "The recent years of chaotic and corrupt transactions over land have severely damaged the chances for positive transformations in the short term; new forms of power appear to have developed deep roots, and will not be easily dislodged" (West and Myers, 1996).

The former state farms

After independence FRELIMO nationalized land and took over control of colonial state settler estates and abandoned private farms to create state farms. Somewhere between 600 000 and 1 million ha was taken over, often in the most fertile areas, well served by infrastructure, with the objectives of providing jobs and services, demonstrating modern farming techniques, and extending state influence in rural areas (West and Myers, 1996).

The state farms were targeted by RENAMO and South African destabilization because of their strategic locations and political significance. They also suffered from extensive managerial, technical and financial problems. In 1985 government began to address the issues facing the state farm sector, but declared intentions to redistribute land in smaller units were not implemented, and the questions of

privatization and how to proceed with titling and registration were not resolved (West and Myers 1996). The majority of state farms closed down because of increasing debts, and divestiture began in the late 1980s, providing opportunities for foreign investors and the politically well-connected to benefit.

Since centralized state farms have not worked in Mozambique, divestiture represented opportunities for the reorganization of agricultural production, and to address the wider political issues involved. In general, however, the process has had damaging results for smallholders who have rarely benefited from redistribution of the land, and there is now a great deal of insecurity for those currently living and working on former state lands.

In practice there can be up to six types of claimants to former state farm land, arising from a series of historical events (MacDonald, 1995):

- colonial land allocation to large Portuguese farmers, usually dispossessing customary land holders; colonial descendants sometimes maintain claims and occasionally reoccupy the land
- establishment of state farms in 1977 on former plantations and estates; labourers given subsistence plots
- state farms collapsing from 1984; allocation of subdivided units to individuals and enterprises, often Mozambicans with capital, the process accelerated in 1990 when divestiture and sale began
- 1987–90 small amounts of state farm land given to displaced persons by local authorities, but other claimants not necessarily consulted
- FRELIMO's 5th Congress decision in 1989 to consider claims from pre-independence owners to land nationalized after independence.

Studies of the former state farms have found that there is "...great confusion on the status of rights to lands acquired, transferred and lost...undermining investment and tenure security" (West and Myers, 1996). By 1993 the alienation of capital assets and land was affecting most state farms and the authors predict that "conflict and uncertainty will plague these lands for years to come, and that productivity, investment and ecological sustainability will be undermined as a consequence".

In one case, that of Montepuez, Cabo Delgado province, a multinational (Lomaco, part of the Lonrho conglomerate) has been given monopoly rights to purchase cotton on large areas of former state farm land reallocated to smallholder production. Although smallholders may benefit to some degree from the investments of the company in the area, the company is often referred to by local people as the 'owner' or *dono* of Montepuez, in circumstances bearing remarkable resemblance to the colonial situation (West and Myers, 1996).

Land policy and the policy process

Prior to the adoption of the new constitution in 1990, peasant leaders, fearful of losing their land, criticized proposals for the privatization of land and the government conceded to rural pressure by maintaining key provisions of the earlier constitution regarding the ban on land privatization (Hanlon, 1995).

A Lands Commission was established within the Ministry of Agriculture, with support from FAO, but delayed in its deliberations because of the peace negotiations and impending multi-party elections. USAID and the Ford Foundation funded the Land Tenure Centre (University of Wisconsin) to study Mozambican land issues and this project included the organization of two land conferences, in 1992 and 1994.

Following the elections in late 1994 a new government was established in early 1995 and land was made a top priority by the new Minister of Agriculture, who reactivated the Land Commission in June 1995, appointing representatives from different ministries (Hanlon, 1995). The Commission drafted a new land policy consulting closely with concerned NGOs (notably ORAM and UNAC). The policy was subsequently approved by the Council of Ministers in September of the same year.

The overall philosophy of the new National Land Policy is encapsulated in the following declaration –

“Safeguard the rights of the Mozambican people over land and other natural resources, while promoting investment and the sustainable and equitable use of these resources” (Ministry of Agriculture, 1995). This in itself represents an extremely difficult political balance, and poses a considerable challenge for further policy development and implementation.

The overall objectives of the new policy are listed in the National Land Policy and Implementation Strategy (Ministry of Agriculture, 1995):

- (i) recovery of food production to improve food security
- (ii) creation of conditions for the agricultural sector to develop and grow, with increased productivity
- (iii) promotion of private investment through sustainable and economic use of land and other natural resources without prejudicing local interests
- (iv) conservation of areas of ecological interest and sustainable management of natural resources in order to guarantee the quality of life for future generations
- (v) creation and development of a legal system based on the occupation and use of land, which can support the public budget and the life of present and future generations.

In Mozambique, under the Portuguese system of law, laws establish the overall legislative framework to realize policy, but the details are worked out subsequently in regulations. In practice the development of detailed land policy regulations and implementation guidelines will be critical in operationalizing the overall policy.

Widespread public consultation on the new policy was undertaken by the Land Commission in the first half of 1996, and a National Land Conference was held on 5–6 June 1996. During discussions the questions of land privatization and mortgaging proved to be highly sensitive, and the privatization of national lands was opposed by a public outcry (Hanlon, 1995). There had been significant pressure from external agencies for land to be privatized and mortgaged, supposedly to facilitate access to credit, but this was resisted by government, in order to avoid the creation of rural landlessness. Questions of communal land tenure and management in the customary sector, and the status of ‘traditional authorities’ have also proved problematic. Although it was planned that a land bill go to Parliament in October 1996, debate continued throughout the following year, and the new law was eventually passed by parliament in September 1997, with a number of amendments to the version approved by the Council of Ministers.

The new land law

In line with the fundamental principles in the land policy, the new land law retains land as the property of the state. Use rights are to be granted on a leasehold basis, for periods of up to 100 years, on the basis of occupancy and use.

Under the law individuals or communities can acquire land rights through occupancy and use of a piece of land for a period of at least ten years, or as a result of an amendment accepted in the debate, by occupying land according to “customary norms and practices” provided these are not contrary to the constitution. Although there are still needs for clarification as regards what constitutes customary norms and practices and how these might be deemed contrary to the constitution (Kloeck Jensen, 1997) this clause should protect those unable to satisfy the ten year rule through being displaced during the war and settling subsequently on new land.

The law recognizes land rights so acquired to be as strong as those provided by formal, written title, and title cannot be issued for land already occupied by others. New applicants for land are required to negotiate with the existing occupants, and the opinion of the local administrative authorities must also be obtained. In the event of disputes, courts must accept verbal evidence as regards customary rights of occupancy; only paper titles and other documentation were admissible under previous legislation.

However, although the new law states that local communities must participate in land allocation decisions, it does not specify the mechanisms by which they can do this or at what stage in the registration process, and a more complete set of regulations will need to be developed. The law does

not state explicitly whether or not communities have the right of veto over land allocation decisions (Kloeck Jenson, 1997), and concessions which have already been authorized without community consultation are likely to prove of particular concern.

Land allocation

The new law establishes a clear hierarchy of responsibility for the allocation of leasehold titles, in order to resolve the present confusion. Provincial Governors are to authorize requests for areas between 0 and 1000 ha, and authorization of the Minister of Agriculture is required for applications between 1000 and 10 000 ha. Allocations of still larger areas must be approved by the Council of Ministers. The Council of Ministers retains the rights to make land allocations to foreign investors and to themselves and their families, but the approval of existing occupants and of provincial authorities must still be obtained, and greater transparency will be required in future.

Land allocations can be made only on submission of a land use plan after which the applicant will receive provisional authorization for a period of five years. Use rights can be revoked, and land titles not issued, if the applicant does not comply with the plan within five years, or two years in the case of foreign applicants. In addition, leaseholders will be required to obtain licences for activities such as logging, hunting and mining, and these will not necessarily be granted for the full leasehold period. However the legislation does not specify the institutions or procedures to be involved in approving investors' land use plans, monitoring compliance, or issuing licences.

Agricultural policy divides land into four categories: *commercial* (land titles required and leasehold transfers allowed), *communal* (customary rights determine access/allocation and paper titles will not be required), *protected* (ecologically sensitive areas, e.g. beaches, game reserves), and *virgin* land (available for development) (Hanlon, 1995). Fears that government might seek to designate large areas of prime land for commercial development, and confine smallholders to communal land reserves have not so far been borne out.

Private commercial land use is to be subject to taxation, but land occupation by the state, public utilities, peasant associations, co-operatives, local communities or individual smallholders is not.

Community land registration

A significant aspect of the new legislation is the provision for allocation of land title not only to individuals and companies but to local communities, who can be granted collective title. This should allow lineage group, clan, or other village community structures to be used as a basis for land holding, defining the limits of community land according to customary rights of occupation and use, while allowing for population increase. The provision for community land registration is expected to be a principal means by which smallholders can establish formal land rights, and offers great administrative advantages over a system whereby every smallholder household is required to register their own parcel of land. Moreover, no formal system could accommodate in practice the changing patterns of multiple, informal and reciprocal rights to land and natural resources held within lineage groups and village communities which are still the hallmark of indigenous practice throughout much of Mozambique. The law thus recognizes the implicit authority which 'traditional authorities' and customary institutions exercise over land allocation and management, and this is important, since FRELIMO's earlier rejection of customary authority proved to be a significant source of conflict in Mozambique during the war.

The question of community land rights was controversial during the consultation process. At the 1996 Lands Conference, the former agriculture minister criticized the handing over of state powers to "undefined rural communities", arguing that management of the land was a duty of the state. Women's representatives defended the inclusion of rural communities in the draft land law and said that the law should enable these groups to develop their potential, by giving them security of land tenure to avoid a situation where a free market reduces them to "cheap labour supplemented by subsistence production" (Mozambique News Agency, June 1996).

However, the new law does not specify how rural communities are to be defined, or how they are to be

represented in consultation on land allocation, and in the resolution of disputes. It is by no means guaranteed that established customary authorities are legitimate representatives of the communities, and, in particular, that women's land use rights are not to be "weakened by a naive idealization of local communities as entities with a homogeneous set of interests" (Kloock Jensen, 1997).

The Inter-ministerial Land Commission continues to meet and is now charged with the development of mechanisms for implementation of the new land law, including detailed regulations and additional legislation that may be required in a number of areas, including those of community land rights, and procedures for land registration, and for conflict resolution. The outstanding issues for land policy and its implementation are now reviewed below.

Outstanding policy issues

Communities as right-holders

A number of ambiguities within the new law relating to the nature and legal status of local communities, and their political and legal representation in land allocation and conflict resolution will need to be resolved by further 'local community legislation', now being discussed.

Communities will require some sort of legal incorporation, equivalent to that of associations, individuals and businesses, but, in line with the spirit of the land policy, procedures should not be over-bureaucratic and community groups should be able to apply "for co-titled land registration without needing the double process of becoming a legal entity before applying for land concession" (National Land Policy, 1995).

Initial consultations by the Land Commission with ORAM, UNAC and the Land Tenure Centre have focused on the idea of Land Councils, representing different interests within local communities. The Councils' view on land allocation and use would have equal weight to those of the District Administrations, and decisions taken at provincial level (Waterhouse/Action Aid, personal communication, November 1997).

Government had also intended that individual farmers will be able to break away from their communities and apply for separate titles for their farms (Mozambique News Agency, 1996), although it is not clear how disputes between those seeking individual land leases and wider communities would be handled, or how land might be set aside for individual smallholders.

Another issue to be addressed by the land law regulations is that of community partnerships with private investors, and the rights of local people in circumstances where enterprises are granted land title, or crop marketing monopolies. Very often local people do welcome external investment, in order to provide employment and cash incomes, but they are likely to need assistance to negotiate with private investors over the terms of partnership, and to ensure that land and resource rights are not alienated.

The role of traditional authority

Another issue that 'local communities legislation' will be required to address is that of the role of traditional authority, historically a controversial question in Mozambique, and because of the need stated in the land policy "to assure equity in communal areas" (Ministry of Agriculture, 1995). It will be important to distinguish between customary or traditional leaders as individual authority figures, and customary institutions, as a set of rules, practices, decision-making assemblies and methods (Myers, 1994). Nonetheless customary institutions can entrench existing power relations, by discriminating against women's land claims, for instance, and in favour of claims by powerful individuals. Questions of women's rights under customary systems of land management are particularly contentious and difficult.

Although the land policy restores the place of customary institutions in land allocation and management, these, and local 'traditional' leaders themselves, do not necessarily retain local popular

legitimacy. As a result of the history of marginalization, substitution and restoration of traditional leaders by colonial, successive FRELIMO and *de facto* RENAMO local governments, and the multi-ethnic composition of densely populated areas, those claiming customary leadership roles are not always recognized as legitimate. Moreover, customary leaders are also prone to develop some degree of vested interests in local land sale and development, as they have in neighbouring countries.

There is also a need for flexibility, because different patrilineal and matrilineal systems of customary rights and inheritance exist, and these are not themselves static, or always easy for outsiders to understand. The land policy recognizes that the law must be “flexible and not specify what to do in each culturally different situation, but agree that each region can operate its own system of customary land rights in accordance with local reality” (Ministry of Agriculture, 1995).

Women's land rights

Because of women's role as food producers questions of gender are central to effective land management and utilization in communal areas. Under the new law, women have the rights to acquire individualized land titles, and land use rights can be inherited by both males and females. However, for the majority of rural women, land use rights will only be protected if community land registration and customary management practices do not discriminate against women.

A group titling approach could well benefit women, provided that local customary law recognizes women's land rights, and if women are represented effectively in local political institutions and tribunals. However if these conditions are not met, the restoration of local customary law, with or without group titling of land, could also threaten women's interests.

At the 1996 lands conference, the women present succeeded in securing an amendment to the effect that land management by customary law would be legitimate only to the extent that it does not contradict constitutional principles (Nichols *et al.*, 1996). The constitution enshrines the equality of women and men, and the amendment is now incorporated into the law. Nevertheless, ‘modern’ or non-customary institutions and practices can also discriminate against women, and regulations to protect women's land rights need to be formulated with this in mind.

In practice, however, widespread advocacy for women's land rights is likely to be needed. Up to now the UGC has done some work supporting women from UGC co-operatives and associations to defend their land rights (Hanlon, 1995), and the NGO ORAM emphasizes the importance of women's land rights in its community advocacy work in Zambezia and elsewhere.

Land registration procedures

While land survey and registration remains the responsibility of DINAGECA, the new law itself does not specify how key practical issues regarding land registration in Mozambique (Hanlon, 1995) are to be resolved:

- questions of decentralization and empowerment of local level institutions for land management
- the resolution of disputes within communal areas, and between communities and private sector land claimants will also need to be addressed, particularly the mechanisms for adjudication and negotiation, which need to be sufficiently simple for local people to understand, and to provide for their representation
- simplification of the registration system itself is also necessary, because of the prohibitive cost of association and land title registration in terms of time and money for small farmers.

Existing land registration procedures are complex and costly, beyond the capacity of most smallholders, and administratively problematic (Myers and Eliseu, 1997). Increased transparency and improved public information concerning land registration procedures are necessary, and NGOs and donors will need to provide more support to the representation of rural communities and for the development of transparent practical mechanisms, to be incorporated into the legislation and regulations, for land registration where it is needed, and for spreading information about land rights and registration procedures amongst rural communities.

Land tribunals and conflict resolution

Currently, land conflicts are adjudicated by the local administration, which also carries out land allocation. The District Courts currently have no authority on land matters and there is an absence of independent mechanisms for adjudication, such as tribunals. Furthermore, although the new land law gives oral testimony equal weight to legal documents, it does not specify the legal fora which can consider such evidence in adjudicating between smallholders and more powerful land claimants (Kloock Jensen, 1997).

Given the chaotic and confused situation regarding land in Mozambique, and the fact that practice frequently differs from law, depending on the operation of stakeholder incentives on the ground, the mechanisms for addressing land conflicts is a key area still to be resolved, given the multiple layers of competitive land claims. Resolution of land conflicts will require a more transparent overall system of land rights and tenure, including clarification of responsibilities and procedures for granting land rights, and the establishment of mechanisms to settle disputes.

It is not clear whether elected local officials, or national courts administrators, will have the power to adjudicate local disputes. While internal community land conflict resolution, and the negotiation and testing of women's land rights will take place in community tribunal arenas, these do not necessarily exist, and the law does not specify how and at what level these are to be formed, or what authority they would have *vis-à-vis* state institutions.

Natural resources and environment

Although land law accepts the rights of smallholder occupants to cultivated land, the rights of small farmers to utilize other essential natural resources are not recognized in law, except where they are gathered from common village pasture land (MacDonald, 1995). For instance, in some parts of the country palm wine production is a major livelihood activity for smallholders and people have established customary rights over particular trees. Non-timber forest products are collected by villagers and hunting is also an important survival activity. These rights would need to be established in the development of legal regulations which should determine how far local people's existing entitlements are respected and how common property resources are to be included in the demarcation of communal lands (Hanlon, 1995).

Disputes over the control and access to forest, wildlife and aquatic resources are also occurring in some areas. In the hinterland of Maputo, between 1992 and 1995 many unemployed labour migrants, urban youth and demobilized soldiers have moved into the area in the search for livelihoods, coming into conflict with returning displaced inhabitants over access to trees used for charcoal burning and wine tapping, and over rights to harvest fish and wild game (McGregor, forthcoming).

Whilst local people, who can be regarded as *primary* stakeholders, are making competing claims for these resources at the local level, *secondary* stakeholders, at higher levels are also contesting control of wild resources. As conservationists and commercial interests make applications for tourism and hunting concessions, it is likely that their claims will supersede those of villagers in many cases.

Community entitlements to resources such as trees, fish, and game need to be examined and defended, especially in cases where protected areas are declared, and private concessions granted. However, "...timber, hunting, tourism, mining and fishing concessions are all covered by other laws and regulations (i.e. not by the land legislation). Something needs to be said in the (land law) regulations to bring other types of concessions under the same umbrella and to give peasants rights" (Hanlon, 1995).

In practice partnerships between local communities and external investors could prove viable in many cases, as elsewhere in southern Africa, but further legislation is likely to be needed to promote and regulate these. Although the land law refers to the need for private claimants to negotiate with customary occupants, and for investors to develop viable land use plans, mechanisms for establishing genuinely participatory management plans for natural resource concessions have not yet been considered.

A wider resource management issue, not resolved by the law, and applicable to arable concessions as well as forestry and hunting, is that of the land use planning regulations which are to govern the exploitation plans to be drawn up by investors, their environmental sustainability, and their technical and financial adequacy.

Institutional capacity

Developing effective institutional capacity will be a prerequisite of successful policy implementation, at a number of different levels, some of which are likely to need donor support. These include:

- provincial and district mechanisms of land allocation and registration; here issues of equity between the commercial and family sectors, transparency, and practical land suitability for development are all important considerations
- institutions for land adjudication, between and amongst the different land claimants in both communal and commercial sectors
- local institutions for land management: the nature and capacity of community-based land management institutions is an issue, as is the question of the articulation between customary and formal state authority, at locality and district levels
- surveys and mapping is several decades out of date, DINAGECA (Surveying and Mapping Department) remains weak with limited technical and staff resources likely to be severely stretched by the land registration process
- NGO capacity for advocacy and technical assistance, surveying and registration at community level will also need to be developed.

6. SOUTH AFRICA

Background

The commitment of South Africa's new majority government towards redressing the injustices of the apartheid era presents the need for a programme of land policy change and land reform, unprecedented elsewhere in Africa in terms of scale and complexity. As a result of previous apartheid policies, land distribution is highly inequitable and racially skewed, and over 80% of land was owned by, or reserved for, whites (12.6 % of the population). Some 3.5 million black South Africans lost their established, customary rights to land and natural resources through forced removals in urban and rural areas. The majority of the population remain confined to around 13% of the territory, principally under some form of customary tenure on marginal land in the former homelands, suffering from severe overcrowding, resource depletion, and lack of services. Approximately 8 million South Africans are affected by unemployment and poverty, the majority of these in rural areas (Adams, 1995; DFID, 1995).

The ANC government has embarked on a national Reconstruction and Development Programme (RDP), driven, in part, by the need to develop a comprehensive and far reaching land reform programme. Under the RDP, government's aim is to achieve some transfer of land in the former white commercial reserves to black farmers and to improve land rights and security for the majority under diverse forms of tenure, replacing the insecure permit system. Government policy provides for action on three fronts:

- land tenure reform
- land redistribution
- land restitution.

It should be noted that land policy reform on a national scale in South Africa is complicated by tremendous geographical and cultural diversity, and specifically, by the array of multiple, overlapping and conflicting land claims. Land policy must provide a basis for resolving disputes and the chaotic situation of overlapping rights, as well as addressing the fundamental problems of insecurity and inequality in land rights.

Despite the early stage of development of the new land policies, and the huge contextual differences between South Africa and the wider region presented by the levels of inequality and development, the policy process in South Africa does present a number of instructive lessons for southern Africa as a whole. These are set out in Box 5, Chapter 9.

Land reform

Within the RDP, the Department of Land Affairs' (DLA) Land Reform Pilot Programme (LRPP), supported by DFID together with DANIDA and the EU, is playing a critical role in land redistribution and the development of effective institutional mechanisms for land reform. It focuses on districts with the most pressing land problems in all nine of the country's new provinces, and undertaking ongoing monitoring and evaluation of progress, to feed back into programme management and detailed policy development.

In place of large-scale land acquisitions by government, the LRPP provides grant aid and credit for people to acquire land and basic services on a community basis, while supporting priority groups, including women and the dispossessed, to plan, negotiate and implement settlement schemes.

Important features of the approach to land redistribution are that the process is:

- demand-led, based on communities' expressed needs, and willingness to organize in pursuit of land claims; and,
- market-assisted, utilizing a system of land grants to support people to purchase land as it becomes available on the market.

The redistribution process is accompanied by a programme of land tenure reform intended to extend secure land rights to all South Africans under diverse forms of tenure. This has involved an ongoing series of legislative reforms which serve to protect the rights of labour tenants and those holding informal rights to land, to develop communal forms of tenure, and to support those with historical claims to land appropriated by the settler regime.

The Communal Property Associations Act, 1996, creates communal property associations as legal institutions through which groups can hold land and property on a communal basis. An Interim Protection of Informal Land Rights Act protects people against dispossession pending more definitive tenure reforms.

Government has been anxious to avoid political conflict over land redistribution, and the ANC has negotiated with the National Party over the wording of a property clause in the national constitution. This now allows for expropriation of private lands where there is demonstrable need for land reform, but government has accepted that the vast amount of land for redistribution is to be acquired through the market, on a willing seller, willing buyer basis. Exceptions will be cases of land restitution, which, although politically significant, is not expected to transfer large areas from the commercial sector. Political agreement has now been reached to guarantee consideration of all claims for restitution of lands alienated from indigenous South Africans since 1913, and a new Land Claims Court has been created. However, commercial farmers remain nervous about continuing demands for pre-1913 restitution claims to be considered.

To date the most comprehensive statement of government policy, land reform programmes, and the institutional arrangements, is the Green Paper on Land Policy (DLA, 1996). The Green Paper is the result of extensive public consultation, research and work on the ground over two years, including a Land Redistribution Options Conference hosted by the Land and Agriculture Policy Centre in 1993 (LAPC, 1993), development of a Draft Statement of Land Policy and Principle, and a National Land Policy Conference in 1995. The Green Paper in turn provides a basis for consultation on a more definitive policy statement, in the form of a parliamentary White Paper. A National Land Committee, including NGOs and representatives of farmer's organizations, provides a vehicle for ongoing consultation on land policy, and maintains significant ownership of South Africa's land reform process.

Institutional capacity to implement large-scale land reform remains weak, however, and administrative reform and capacity building of national and local government must proceed simultaneously with land reform. The DLA, charged with overseeing the land reform process centrally, is not large, and capacity is particularly weak in the provinces and for the administration of the communal sector. There are nine new provinces, only two of which correspond directly with the old federal divisions, and because of the lack of decentralized capacity, the DLA will be unable to spend its budgets quickly, and is likely to come under increasing pressure to deliver improved land rights. In the longer term, government is also anxious to avoid a high cost system of land delivery. There is likely to be a need for constructive partnerships with the NGO sector for advocacy (Budlender, 1996), to overcome resistance to reform and inaction, within government and from the private sector.

The communal sector

Government faces challenges both in responding to the political demands within the communal areas and in a sensitive handling of traditional chiefs and local customs. Although widely regarded as conservative, the chiefs retain considerable legitimacy. Country-wide imposition of universal democratic principles in land rights risks generating political problems at local level, and flexibility will need to be maintained. In the early 1990s, the previous government attempted to individualize communal tenure. This encouraged corruption amongst traditional authorities and led to

dispossessions of the most vulnerable. Although many chiefs accept that they hold land in trust for their peoples, and there is no support for imposing the individualization of communal land, there are demands for individual title within communal areas as a means to extend tenure security, and government needs to respond.

On the other hand individual land title does not provide a general solution to problems of insecurity: the current permit system allocates rights of occupancy in communal areas to heads of household, usually male, who can transfer land to the detriment of other family members. As a result there is a need to develop viable forms of communal tenure on a kin-group basis, devising legally workable formulae, and to institutionalize effective customary systems of land allocation and management. The lack of institutional capacity and accurate records of land occupation in communal areas, however, present serious problems to be overcome.

The role of the World Bank

Following the transition to democracy, the World Bank attempted to steer the policy development process in South Africa from an early stage. Bank advisers sought to promote a set of options for land reform, based on the break-up of large, inefficient settler land holdings, and their redistribution to market-oriented 'emergent' or 'aspirant' farmers, capable of more productive aggregate use of the land, under individual freehold title (Binswanger and Deininger, 1993; Kinsey and Binswanger, 1993). The approach was based on economic models of the relative efficiency of smallholders and large estates, and a set of assumptions which have been widely criticized (see for example, Williams, 1993). As outsiders with predetermined policy preferences, Bank analysts appear to have under-estimated the institutional and policy constraints in developing models of land reform and achieving "a vast programme of resettlement" (Williams/LAPC, 1993), such as the entrenched domestic and export marketing monopolies which favour the settler estates. In addition, the poverty issues, the cost implications, and the political risks of conflict, deriving from competing land claims both between blacks and whites and amongst blacks, were not properly considered. An ambitious initial target for redistribution of 30% of commercial farmland within five years, proposed by the World Bank, has been abandoned as unrealistic.

Some elements of the World Bank's approach have found resonance within South Africa, notably the market-assisted approach to land reform and the system of land grants to facilitate acquisition. Real progress with land policy development has been possible, however, because South African intellectuals and policy makers were able actively to resist the Bank's influence over the policy process, by widening the debate, and by commissioning, or nominating their own advisers rather than have them imposed from Washington. As a result, national views and research findings were incorporated into key policy papers (World Bank/LAPC, 1993) and the overall approach adopted, now being translated into policy, was one of addressing multiple needs, and gradually creating scope for advancing land acquisition, tenure security, economic opportunity, improved services and good governance.

7. TANZANIA

Background

The current land tenure system in Tanzania is largely derived from colonial times, although the state abolished the category of freehold (less than 1% of the land) after independence. Customary rights, however, became more insecure than they had been previously, as a range of parastatal companies encroached upon peasant land, and government launched a villagization campaign (Operation Vijiji) to resettle dispersed farm households (Palmer, 1996).

During the 1970s Operation Vijiji moved some 7 million mostly scattered rural people into new village communities with the aims of improving agricultural productivity and rural service provision (Shao, 1986). Villagization reorganized land use and political life, extinguishing the authority of the chiefs and customary institutions. Under a centralized system of one party rule, the lowest tier of local government came to be controlled by party-appointed village councils. Many people lost customary lands in their areas of origin, and others found themselves dispossessed by new settlers. Pastoralists as a whole were particularly affected, steadily losing land rights to farmers.

In the 1980s restrictions on outside investors began to purchase land from the state, as restrictions were lifted as a result of trade liberalization, and pre-existing customary rights were again overridden (Palmer, 1996), leading to a proliferation of land disputes.

In the early 1990s legal suits by former customary land owners sought to recover lands lost as a result of villagization. The success of some of these claims caused official alarm and pushed the government into passing legislation extinguishing customary rights on land affected by villagization, although this was later repealed (Shivji, 1994).

A Land Commission was appointed in 1992, but government went ahead independently to develop a new land policy which was passed in Parliament in mid-1995. A land bill has been drafted but remains controversial, and has been criticized for failing to provide security of land rights for the majority of rural people.

The principal issues and steps of the convoluted and unsustainable policy process are described below.

The land policy process

In 1992 the Presidential Commission of Enquiry into Land Matters, led by Professor Shivji, identified problems of widespread insecurity of tenure, lack of transparency and participation in land administration, breakdown of land allocation systems and deep apprehension over the future of village lands (Government of Tanzania, 1992; Palmer, 1996). The Commission recommended an overhaul of the national land tenure system, and emphasized needs to avoid widespread privatization of land, to develop local mechanisms for resolution of land disputes, and for community control of land allocation. This was to be achieved by devolving power to village assemblies and an independent National Lands Board, and grounding land tenure in existing customary systems (Shivji, 1994). It outlined ways of encouraging accountability and local empowerment, backed up by an effective legal structure (Coldham, 1995).

Under the system proposed by the Land Commission, a multiple tenure system would be introduced with land divided into two categories: Village Lands and National Lands. A village assembly (all village adults) would hold the rights to the village lands, and a Certificate of Village Land would be issued to the assembly. Any changes to land use and ownership would require the consent of a village majority. Intra-village disputes would be settled by an elected body of elders. Village lands would not be alienable to outsiders, other than through leases issued by the village assembly for limited areas for

a maximum of ten years. National Lands would be lands not previously subject to villagization, and rights of ownership would be vested in a Board of Land Commissioners, accountable to Parliament. Two forms of tenure would be recognized on national lands: rights of occupancy, equivalent to leasehold, and available to both individual smallholders and the private sector; and customary rights, to be administered through customary institutions in a way similar to village lands.

The Land Commission had consulted widely, travelling to most of the regions and investigating specific conflicts. Its report is an in-depth study of Tanzanian land issues, including historical analysis revealing the lack of post-colonial change in land legislation, the extent of tenure insecurity in the customary land sector, and the conflation of the legal and administrative basis for land delivery, which has led to confused policy implementation and a lack of transparency in land allocation (Sundet, in progress). Interestingly, Shivji had refused funding for the Land Commission from the World Bank.

Although the Commission's work and recommendations are widely regarded as exemplary amongst NGOs and academics concerned with land issues, its recommendations have been partly rejected by government. Government did not facilitate public debate on the recommendations, as the Commission had recommended.

Government had also established a parallel body to work on land policy, a Ministerial Committee within the Ministry of Lands. The existence of two committees working on the same issue led to competition and tension. The Ministerial Lands Committee took an administrative approach to land policy and has sought ways to implement government policy on investment promotion through control of land allocation, based on a traditional approach to land use planning and land capability assessment. It sought the legalization of the informal land market (with some controls to avoid negative impacts on the poor), and customary law was not encouraged because it was seen as holding back modernization. The Committee also believed that mortgaging land was essential for development, and that the registration of village titles, as proposed by the Presidential Commission, would prevent 'progressive' farmers from obtaining individual title (Sundet, in progress).

The World Bank advised privatization of land, and following the Land Commission's report the Bank assisted the establishment of a Land Policy Advisory Unit in the Ministry of Lands, providing consultancy assistance to the Ministerial Committee in drafting policy.

In 1995 a national workshop comprising mainly government representatives was held to debate the two sets of proposals, steered by a government document setting out a tentative policy position (Government of Tanzania, 1995a), which, notably, rejected the proposed system of national lands and village lands as too complicated to administer. Although the workshop rejected many of the Land Commission's recommendations, consensus was reached on a number of key points, such as the need to recognize the market value of land, equal rights of occupation and disposal for husbands and wives on customary land, and the jurisdiction of the village assembly (rather than the old, party-dominated village councils) over village lands.

Nevertheless, as elections approached, government discarded the findings of the workshop, and rushed through parliament a national land policy (Government of Tanzania, 1995b) which substantially preserved the *status quo*. The policy vested control over village lands in the village councils, rather than village assemblies, reverted to the definition of women's rights according to custom and tradition, opened the way to joint commercial ventures between external investors and Tanzanian nationals, and provisionally approved an open land market for Tanzanian citizens (Sundet, in progress). In 1996, following the elections, government then proceeded (with British technical assistance) to draft detailed legislation, based on the policy adopted by Parliament.

The land policy, and the lack of transparency in the policy process have been criticized by Shivji, as chair of the Presidential Commission, and by NGOs. Shivji himself established an independent Land Rights Research and Resources Institute (LARRRI) which organized a workshop on the National Land Policy with participants from government, university, NGOs and researchers. The workshop found that the National Land Policy was deeply flawed and that customary land tenure security had not been provided. It also identified an over-emphasis within the policy on encouraging outside investment, and criticized government's failure to organize a national debate, or even publish a white paper based on the Ministerial Committee's report before moving to legislation (Oxfam, 1996), which was due before Parliament at the end of 1997.

8. NAMIBIA

Background

Prior to independence in 1990 Namibia was administered as a province of South Africa, under a highly inequitable, dualistic land policy. The majority of rural people were confined to indigenous 'homeland' areas, now known as the communal lands, with the greater part of land in the hands of white commercial farmers. This situation has remained unchanged in the last seven years.

As a result of Namibia's arid climate, livestock accounts for the vast proportion of agricultural production. Mixed farming is possible only in the higher rainfall areas of the north, the great majority of which is communal land. In view of the limited scope for agricultural production, the communal lands are extremely overcrowded, complete food security is not possible, and residents are highly dependent on remittances from migrant labour and welfare payments.

Although the inequity between commercial and communal lands is a major political issue, demands for redistribution of commercial land to communal farmers are attenuated by the fact that the majority of Namibians originate from the north, SWAPO's political heartland, to which many farmers and urban migrants remain strongly attached. Elsewhere in the country, questions of land rights and redistribution are more pressing (although they affect fewer people) since communal farmers are confined to the most marginal land, suitable only for limited sheep and goat production.

Policy issues in the communal lands

There is evidence that inequities are increasing within communal areas, in terms of livestock ownership and access land (Tapscott, 1990; Tapscott and Hangula, 1995), as a result of the creation of private grazing blocks, prior to independence, and spontaneous land enclosures.

Many of the better-off communal farmers and urban migrants, including members of government and SWAPO, maintain large livestock herds, frequently aspiring to land ownership and, in areas with adequate rainfall, commercial cattle production. Following independence and the return of refugees and former guerrilla fighters from neighbouring states, the process of rangeland enclosure accelerated, as livestock owners sought to acquire individual land holdings, sanctioned by traditional chiefs.

Enclosure was further hastened by the unplanned provision of boreholes in programmes of drought relief, and other water development schemes, which have provided a focus for rangeland development in formerly marginal areas. Since poorer farmers have been hard hit by drought, often losing their herds entirely, and access to pasture and water for animals is limited, livestock ownership is becoming concentrated in fewer hands. The maintenance of dual grazing rights by land enclosers – utilizing common resources as a fallback against overgrazing of enclosed land – has compounded the situation for the poor.

The legitimacy of traditional authority and institutions is widely questioned because of the way in which the system was manipulated under South African rule (Cox and Behnke, 1995), particularly during the independence war. Customary leaders were given incentives to collaborate directly with the South African authorities, notably through powers, to levy land allocation and grazing fees. Their resulting monetary interests in land allocation have contributed to the breakdown of effective systems of common property management (Quan *et al.*, 1994). In order to establish some basis for the effective management of remaining commons, land policy will need to address the role of customary leaders with care.

The policy process

Despite sporadic episodes of public consultation on lands issues, government has, on the whole acquiesced in the *status quo*, seeking to avoid confrontation with commercial farmers on land redistribution, while tacitly endorsing the process of enclosure in the communal lands. Government has effectively abandoned the platform of land reform on which it came to power. This is widely attributed to the fact that members of government have substantial personal interests in communal area land acquisitions (Birch *et al.*, 1996) while remaining concerned about disrupting the commercial livestock industry.

In 1991 an officially supported Lands Conference agreed that inequitable land distribution should be tackled by a programme of phased government purchases of under-utilized commercial farms for resettlement of communal area farmers (Palmer, 1996). In practice no progress was made until Parliament passed an Agricultural Commercial Land Bill in November 1994. Also in 1994, NGOs organized a People's Land Conference, in an effort to encourage public debate which put pressure on government to accelerate the pace of reform in both commercial and communal sectors.

The Commercial Land Bill became law in March 1995. The Act gave government powers to acquire commercial farm land for redistribution through a preferential right to purchase from willing sellers, and through compulsory purchase of under-utilized or excessively large farms. In addition the Act restricts the rights of foreigners to Namibian land to maximum ten year leases (Cox and Behnke, 1995).

Criteria for compulsory purchase are not fully specified, however, and in practice, many commercial farmers have ventured successfully into game ranching and tourism, where livestock production is in cases unprofitable. Although poor land management is implicated in serious problems of bush encroachment in the commercial sector, causing production losses, the majority of commercial farmers affected would appear to maintain sufficiently large enterprises and capital reserves to stay in business, although the removal of drought subsidies may gradually increase the supply of land available for purchase by government (Quan *et al.*, 1994).

Moreover, the question of who should benefit from land redistribution, the most needy or those best qualified to take up commercial livestock farming, remains unresolved by the legislation, although broad options have been proposed and assessed by DFID-supported research (Cox and Behnke, 1995).

A Communal Land Bill has long been expected but has been continuously delayed. Although the intention is to maintain land rights held under customary law (Government of Namibia, 1994), this is inherently problematic because of the controversies surrounding customary law, and the widespread enclosure of grazing commons by private individuals, authorized by traditional leaders authorities. Measures proposed in early drafts would benefit the better off, by legalizing *de facto* enclosure of formerly communal land. Where government seeks to avoid public legitimation of the privatization of communal land, while also tacitly endorsing the process in its own interests, decisive policy action remains unlikely.

9. CONCLUSIONS AND LESSONS LEARNT

African governments have been unwilling to formally declare private land tenure systems or to merely legalize these where they seem to have emerged illegally.....the attitude of most Governments seems to have been to turn a blind eye to emerging informal land privatization processes. The African state seems torn between its nationalist obligation to ensure land access for all, and its desire to avoid responsibility for anticipated land alienation that follows legal land privatization on a national scale. Yet to survive politically, the state tends to have to satisfy the private land-owning aspirations of the emerging black bourgeoisie. (Moyo, The land question in Zimbabwe, 1995)

This concluding chapter summarizes a number of common features and cross-cutting questions can be identified amongst the land policy issues facing the countries of the region. Specific lessons for the focus countries of Malawi, Zimbabwe and Mozambique are set out in boxes, as are the lessons of South Africa's recent experience of land policy reform for the wider region. Finally, the practical question of how donors might assist the development of effective and equitable land policies is addressed.

Cross-cutting issues in regional land policy

Redistribution and resettlement

Major inequalities in land distribution between commercial and customary sectors will be a continuing political issue throughout the region, and especially in those countries with a legacy of racially based, dualistic colonial land policies.

Land scarcity and population growth in the customary sectors is a cause of food insecurity and a potential source of political conflict and instability. Further resettlement programmes are likely to be needed, but these must be complemented by the development of new farm-income opportunities and creation of off-farm employment. Resettlement itself should be carefully planned, and focused on combating poverty, land pressure, and environmental degradation in overcrowded communal areas.

The scope for introducing commercial sector land and water taxes should be fully assessed, with a view to their introduction as policy instruments to discourage land concentration, encourage willing sellers and promote more equal land distribution.

Given the difficulties encountered in obtaining sufficient private land to meet demands for resettlement, redistribution of under-utilized public land should be a priority for all countries of the region.

Nevertheless, even on the most optimistic assumptions resettlement schemes alone will not substantially reduce land pressure on communal lands in the near future; resettlement is no substitute for communal area agricultural and economic development, and family planning to reduce population growth.

Incorporation of customary tenure in land policy

Throughout the southern African region, customary institutions and forms of tenure retain widespread legitimacy amongst rural people. Replacement by uniform systems of private individual tenure would be unacceptable and unworkable, except in cases where customary systems have been extinguished or broken down, and where land disputes are prevalent. Customary tenure will continue to have a clear place within pluralistic tenure regimes, alongside the existence of leasehold and freehold title, but the coexistence of different forms of tenure within village communities is probably undesirable.

Box 2: Lessons for Malawi

- There is no *a priori* case for establishing a universal system of individual leasehold tenure, as proposed by some donors.
- A combination of customary and leasehold tenure is quite possible at national level but is likely to prove inequitable within individual communities. Following the end of the tobacco quota system there is no need for the further development of the estates sector and the main case for further leasehold registrations is to resolve the confusion and complexity surrounding land rights in recent years.
- In determining appropriate reforms for customary lands, much more needs to be known about the current dynamics of customary practice, and the interaction with the estates sector.
- Resettlement schemes targeting under-utilized public and private lands, and overcrowded customary communities as beneficiaries will be needed. Resettlement schemes should be carefully planned and monitored so as to allow learning from experience and they should include full consultation with both beneficiary and host communities, especially where these are ethnically distinct. Possibilities of resettlement in ethnically homogeneous areas of neighbouring countries should be investigated.
- Donors should provide the Land Commission with funding support and technical assistance for a process of participatory debate and consultation; this could include a National Lands Conference to debate Land Commission recommendations and government's response.
- The Land Commission's role should be carefully co-ordinated with the LPPU which has potential to act as a technical advisory body, but stands in need of appropriate technical assistance; the Tanzanian case illustrates the dangers of maintaining parallel advisory bodies and policy processes.

The debate about customary tenure raises important questions about the nature of rural governance. Customary tenure needs to be recognized and somehow incorporated into land law, through codification of its general principles, and the authority of customary institutions should be carefully articulated with that of the state at local level. Customary land management systems also provide the basis of consolidating new local institutions for common property resource management. These however will require enabling legislation, capacity building and investment in mechanisms for dispute settlement and conflict resolution.

Box 3: Lessons for Zimbabwe

Although Zimbabwe itself probably has the richest experience of policy change and resettlement in the region, there are a number of lessons to be learnt from elsewhere, especially South Africa.

- Policy reform still requires wider and fuller debate, and government should be wary of overly hasty reform, and of perceived inaction, since both are potential sources of instability and political conflict.
- Government and donors could strengthen the legitimacy of policy reforms by supporting the creation of a representative non-governmental body, along the lines of the South African National Land Committee, and the promotion of National Lands Conferences.
- Resettlement schemes should not be regarded primarily as a means of promoting agricultural development but as a means of reducing land pressure and poverty in the most crowded and marginal communal areas, whilst improving equity in land ownership over all.
- Although a leasehold model may be appropriate for resettlement schemes, careful attention should be paid to questions of gender rights, poverty alleviation, natural resource management, and social cohesion in the design of resettlement schemes.
- The social and environmental cost-benefits, in addition to questions of agricultural productivity and growth, need to be carefully weighed up for the various resettlement policy options.
- The questions of tenure security and gender rights in overcrowded communal areas merit further investigation and debate before determining the roles of customary authorities and the appropriate local institutional arrangements for land allocation and management.

Gender rights

Careful articulation of customary practice and statute law will be required in the areas of gender rights and inheritance; equal rights for women are acknowledged in national constitutions, but customary practice is highly variable and subject to change, and discrimination is widespread. The actual situa-

tion of women's land rights on the ground, and the development of legitimate appropriate mechanisms for advocacy and resolution of disputes merits further study and debate.

Box 4: Lessons for Mozambique

- Although Mozambique has resisted external demands for the full privatization of land, agricultural policy distinguishes between commercial and communal land, there has already been extensive land allocation to private investors, and the widespread competition for productive land risks the dispossession of smallholders and marginalization of the poor in fragile, less productive lands. Mozambique should avoid the establishment of a dualistic land system, with all the attendant problems of demand for resettlement, land restitution and political conflicts, which other countries of the region have been struggling to overcome.
- The process of land allocation to the private sector needs to be regulated through the introduction of mechanisms for consultation and negotiation and equitable partnerships with local people, including their right of veto over commercial land, and for supervision of investors' compliance with agreed land and resource use plans.
- Although there is no policy requirement for registration of customary land, in order to protect small farmers from external land claims, community land registration will be required. Mechanisms for group titling and representative local decision making need to be explored through action research.
- The extent of overlapping and competing land claims, amongst smallholder farmers, and between farmers and private investors, requires investments in effective local mechanisms for conflict resolution and settlement of disputes.
- The capacity of community groups, NGOs and government needs to be developed to support the processes of resolving competing claims, and the mapping and registration of community lands.
- The land and resource rights of women under customary land management and inheritance practices require further study, and women's groups will need support at local level to ensure that smallholder land registration does not concentrate control of community land in the hands of minorities of male power-holders.
- It will be necessary to monitor the continuing allocation of land concessions, and land-related socio-political problems, such as landlessness, land disputes, the growth of informal markets and distress sales, especially in areas of land scarcity.
- The readiness to accept external investments to develop virgin territory suggests that the possibility of a donor-funded resettlement programme to accommodate residents of overcrowded, ethnically similar and adjacent areas of Malawi might be considered.
- Continuing consultation and debate, drawing on appropriate research is needed so that the Lands Commission can craft detailed regulations and further legislation required to implement the new land law and eliminate ambiguities concerning the procedures and institutional aspects of community land registration, management and dispute resolution. Legislation must nevertheless be sufficiently flexible and carefully worded so as to accommodate the diverse and complex situations which exist at local level.

Development of smallholder land markets

Informal land transactions occur in communal lands throughout the region and the growth of informal markets may need to be regulated to prevent increasing landlessness and land concentration. The introduction of land titling is unlikely to curb this situation, although it would formalize unregistered transactions. On the other hand, land titling does not automatically bring about the development of land markets, or prevent the continuation of customary practices of inheritance and subdivision of plots, even where these are desirable. Regulation of emerging land markets through limitations on minimum and maximum land holdings, and the introduction of transparent local systems for smallholder registration may provide a better solution.

Institutions for land delivery and adjudication: cost effectiveness

Formal systems of land survey, mapping registration and titling are expensive to develop and maintain, there is very little scope for cost-recovery unless land delivery is to be skewed towards the better-off, and consequently the cost-benefits are likely to be negative. By contrast, local land registers, and customary mechanisms for settling disputes are relatively low cost and these need to be developed, supported and recognized in law. Given the widespread legitimacy of customary law, there is a good

argument for the state to minimize its own involvement in administering and delivering land in communal areas, and concentrate instead on supporting local institutions for adjudication between land claims. There are, however, few precedents for such an approach in the region, although it has been endorsed by Land Commissions in Zimbabwe, Mozambique and Tanzania.

Policy delays and land grabs

Despite pressing needs and demands for reform, in a number of countries policy change has suffered serious delays. The state has proved reluctant to legislate against large commercial land holdings, because of the export earnings they generate; to guarantee land rights for all; or, to formally sanction the creeping privatization of customary lands. There is a tendency for the governments of the region to acquiesce in the *status quo*, having vested interests in situations in which national élites can access land holdings for private gain.

While there is a need for resolute action to stem landlessness, political demands and environmental degradation, the complexity of lands issues also requires extended debate and consultation with stakeholder groups, which would help bring about more consensual policy reform. One solution may be to promote interim legislation pending comprehensive policy change, as in South Africa, for instance to protect the rights of labour tenants, widows, or to prevent land speculation and excessive concentration.

Consultative and participatory processes in land policy development

The appointment of Presidential Land Commissions represents an opportunity for the state to broaden consultation and participation in land policy development, but in practice the record of land commissions in the region has been mixed. Genuine debate and widespread consultation engenders national legitimacy and a sense of stakeholder ownership for land policy, however, and as such participatory policy development is a worthwhile investment. A role for non-governmental representative bodies such as the South African Land Committee also strengthens the legitimacy and accountability of policy change.

What can donors do?

Support for national policy processes

1. Independently of their practical support to land-related projects, donors can support the policy development process, by providing *funding and technical assistance to promote stakeholder participation, through public meetings, stakeholder workshops, lands conferences, consultation exercises, participatory appraisal and process monitoring*. This is particularly necessary in Malawi. Throughout the region, more open dialogue between stakeholders and government, and greater transparency in policy making need to be promoted.

2. High level *policy advice and assistance for government on lands issues* are also needed, including *the appraisal of policy options, social and economic analysis, and legislative reform*. Specialist advice in areas such as the design of taxation systems, inheritance law, and common property resource legislation is also relevant.

3. In Mozambique, further consultation and transparent debate are needed in the continuing development of policy and detailed legislation is needed for successful implementation of the new land law so as to improve smallholder land security and curb uncontrolled private land allocation. Donors can support study and consultation focusing on issues such as the establishment of legitimate representative institutions for land management at community level, the regulation and monitoring of land concessions, mechanisms for dispute resolution, and the operation of inheritance rules and agenda rights. This might include technical assistance to the National Land Commission, DINAGECA, the Lands Studies Unit at the University, to help develop workable procedures and guidelines, together with financial and practical support for provincial consultation exercises.

Box 5: Lessons from South Africa for the wider region

Partnership between the state and civil society

NGOs and community-based groups will need to assist with advocacy to extend land rights and with the process of land delivery for the poor. The level of development of the NGO sector in South Africa is a clear advantage, but governments elsewhere could do well to recognize the roles of NGOs in policy debate, and in facilitating land access for the poor, rather than imposing wholly state-led solutions.

The demand-led and market-assisted approach

Government aims to respond to demands for land from different quarters of the black majority population, using a system of land grants to assist the poor, rather than targeting land redistribution at the most productive farmers. Although the principle of responding to demand is critical, the mechanism adopted is only appropriate if the landless are able to acquire land title on the market, and to make some financial contribution. If it is planned to redistribute land to emerging small-scale commercial farmers the formula of farmer financial contribution plus grant aid could reduce the burden of government in land acquisition. However, governments would still need to intervene in making valuations and holding purchases of large estates, pending resale of smaller units to smallholders, as well as in the administration of the grants.

National ownership of land policy development

The role of national, or nationally appointed experts has helped South Africa resist external policy interventions. The roles played by the National Land Committee and National Land Conferences in the policy process has encouraged a sense of stakeholder ownership over land policy. Other countries could take a similar approach.

The importance of capacity building and effective, decentralized mechanisms for land reform

Since South African land policy is wholly new, the lack of institutional capacity in the new provinces is a major constraint to implementation. Although the situation is probably more complex than elsewhere, in all cases, local institutions will be needed for land delivery, adjudication and administration. Over-ambitious policies should therefore be resisted, and attention must be paid to their institutional implications, if reforms are to succeed.

A focus on land rights within a diversity of forms of tenure

Establishing and securing rights to land for land users is a basic demand from different sections of society, and various forms of tenure are able to deliver those rights. A pluralistic approach working through existing systems of tenure, including customary and group tenure systems is therefore more appropriate than the promotion of particular forms of tenure across the board.

Programmes for the protection and security of farm labourers and tenants

These will need to be a component of land policy for any country with an estates sector, especially in Malawi, also in Zimbabwe, and as time goes by, in Mozambique. Although the issues have not been reviewed in depth in this report, there will be much to learn from South Africa's experience.

The priority release of public lands for redistribution

Public policy which emphasizes the need for redistribution of under-utilized or excessively concentrated private lands will be less credible if the state itself retains under-utilized or inefficient estates. Wherever there are programmes for the redistribution of private land, governments should also be seen to release some public land, in order to increase the overall supply for the landless.

Support for resettlement programmes

4. If a further phase of resettlement is to go ahead in **Zimbabwe**, in addition to financial support for land acquisition, *support for the resettlement planning process*, is also needed. This should seek to:

- balance productivity/efficiency objectives with poverty alleviation, social development and sustainable natural resources management
- adopt participatory, client-centred methods
- take full account of the social, environmental and economic cost benefits of different options and models for resettlement.
- learn from experience, incorporating mechanisms for monitoring, review and programme adaptation.

Caution in relation to tenure reform

5. Tenure reform is not a solution to land management or distribution problems. In **Malawi** there is a need to *reserve judgement on options until more is known about the needs of the customary areas*, and hasty support for comprehensive land registration, based on partial knowledge, should be avoided. Existing research and analysis needs to be followed up by pilot studies and stakeholder consultation to design policy measures, possibly including tenure reform, and resettlement measures, focused on priority geographical areas where poverty and land degradation are concentrated.

Linking land access and agricultural development

6. Although land re-distribution or improved tenure security may sometimes be necessary for agricultural development, in themselves they are not sufficient. *Where donors support land reform and resettlement, investment in appropriate agricultural services is also required*, for instance in **Zimbabwe**. Equally, there is a need to *integrate questions of land policy, access and security in the design and management of programmes for rural development and natural resources management*.

Advocacy and empowerment for the poor

7. In programmes geared to addressing poverty, whether bilateral, multilateral, or through NGOs, donor support should *target the most vulnerable and marginal communal lands, and promote improved land and resource rights for the poor, alongside practical assistance with income generation, social development and appropriate agricultural support*.

8. Where there are parallel systems of land rights and land allocation, and resulting insecurity for the poor, as in **Mozambique**, there should be *continued support to advocacy for smallholder land rights and group titling of land, and social impact monitoring of concession allocation and land transactions*. Incidences of landlessness, land disputes, and evictions provide useful indicators.

Support for viable common property management systems

9. Within programmes to support resettlement, land registration, or agricultural development, donors should support *capacity building for community-based organizations to provide effective management of common grazing, woodland, wildlife and wetland resources*, along the lines of the CAMPFIRE schemes in Zimbabwe.

Possible regional initiatives

10. The development of *indicators and monitoring arrangements for conditions of land pressure, degradation and land-related instability in the region* would assist in refining governments' and donors' strategies on land issues.

11. In the context of renewed donor assistance to the policy development process, there is a case for carefully focused support to a *programme of exchange visits and study tours for Land Commission members, policy makers, stakeholder groups, and scholars*.

Land policy research

12. In order to inform land policy development and appropriate donor support, more needs to be known about:

- informal land transactions and the factors which drive emerging markets, including the roles of population growth, cash crop development, credit provision, land speculation, and macro-economic conditions;
- differential gender rights in customary tenure, inheritance law and the implications for policy reform;
- the interactions of customary and formal institutions at local level, and the appropriate institutional arrangements for common property management, land adjudication and conflict resolution, in different local circumstances;
- the extent to which landlessness, tenure insecurity and land fragmentation contribute to the emergence of socio-political problems.

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ACRONYMS USED IN THE TEXT

ANC	African National Congress (South Africa)
CAMPFIRE	Communal Areas Programme for Indigenous Resources (Zimbabwe)
CLUS	Customary Lands Utilization Study (Malawi)
DANIDA	Danish International Development Agency
DFID	Department for International Development (UK)
DINAGECA	Direcção Nacional de Geografia e Cadastro (Mozambique)
DLA	Department of Land Affairs (South Africa)
ELUS	Estates Lands Utilization Study (Malawi)
EU	European Union
FAO	United Nations Food and Agriculture Organization of the United Nations
FRELIMO	Frente de Libertação de Moçambique
LAPC	Land and Agriculture Policy Centre (South Africa)
LLDP	Lilongwe Land Development Programme (Malawi)
LPPU	Land Policy Planning Unit (Malawi)
LRPP	Land Reform Pilot Programme (South Africa)
LTC	Land Tenure Commission (Zimbabwe)
MOALD	Ministry of Agriculture and Livestock Development (Malawi)
NGO	Non-governmental organization
ODA	Overseas Development Administration
ORAM	Organização Rural de Apoio Mutua (Mozambique)
PLUS	Public Lands Utilization Study (Malawi)
RDP	Reconstruction and Development Programme (South Africa)
RENAMO	Resistência Nacional Moçambicana
SWAPO	South West Africa People's Organization
UGC	União Geral de Cooperativas (Mozambique)
UNAC	União Nacional de Camponêses (Mozambique)
UNDP	United Nations Development Programme
USAID	United States Agency for International Development
VIDCO	Village Development Committee (Zimbabwe)
WADCO	Ward Development Committee (Zimbabwe)
ZWRCN	Zimbabwe Women's Resource Centre and Network