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THE USE OF COMMUNAL LAND TENURE SYSTEMS IN ADDRESSING LAND REFORM

by

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A research report submitted to the Faculty of Management, University of the Witwatersrand, in partial fulfilment of the requirement for the degree of Master of Management in the field of Public and Development Management (MM-P&DM)

March 2009

DECLARATION

I declare that this report is my own, unaided work. It is submitted in partial fulfilment of the requirements of the degree of Masters of Management in the field of Public and Development Management (MM-P&DM) in the University of the Witwatersrand, Johannesburg. It has not been submitted before for any degree or examination in any other University.

Madie Angelina Mametja
13 March 2009

DEDICATION

THIS WORK IS DEDICATED TO THE MEMORY OF MY LATE PARTNER

FRANK MAGEZI MASHIMBYI

ACKNOWLEDGEMENTS

I want to thank my supervisor, Dr Horacio Zandamela for all his meticulous guidance throughout the research period.

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Most importantly, I want to thank my parents, Wellington and Makalape Mametja, for their unconditional love, guidance and commitment to giving me a good foundation in education …. something they never had.

THANK YOU ALL….

ABSTRACT

The Department of Land Affairs has been given a constitutional mandate to redistribute 30 per cent of agricultural land from white farmers to black people in South Africa. Since its inception, land reform has been heavily criticized for its failure to produce a new farming class among blacks, for contributing to the current food shortages, and to job losses in the agricultural sector. Government has bought tracts of land for blacks over the past thirteen years, but most of this land is lying fallow. Although a number of reasons are given for the collapse of land reform projects, this research was aimed at gaining a deeper understanding of the contribution of the communal land tenure systems in the form of Communal Property Institutions (CPIs), which are being used by land reform beneficiaries for land-holding and management purposes.

Qualitative research methodology was used in the research. Two land reform projects were selected in the Nkangala District of Mpumalanga Province, namely the New Life Kibbutz Communal Trust and the Simangwe Poultry and Distribution cc.

The research found that the grant system used by the Department of Land Affairs for land acquisition purposes forced people to mobilize one another into groups of varying sizes in order to get enough grants to pay for the land. This phenomenon is commonly known as ‘rent-a-crowd’. Conflict within these groups is rife, making it difficult for people to work together. Individual rights within the groups are not properly defined and/or understood by the members, making it difficult for them to work the land individually or even to sell their rights. The constitutions for the groups are often poorly drafted and barely understood by the beneficiaries themselves.

Any farmers would be willing to invest in their land if they are able to claim its ownership. Thus, for land reform to work, the manner in which land is held and managed needs to be reviewed.

LIST OF ACRONYMS

CASP	:	Comprehensive Agricultural Support Programme
CC	:	Closed Corporation
CDE	:	Centre for Development and Enterprise
CPA	:	Communal Property Association
CPI	:	Communal Property Institution
DLA	:	Department of Land Affairs
DALA	:	Department of Agriculture and Land Administration
LRAD	:	Land Redistribution for Agricultural Development
PLAS	:	Proactive Land Acquisition Strategy
PLRO	:	Provincial Land Reform Office
S/LAG	:	Settlement and Land Acquisition Grant

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CHAPTER ONE

INTRODUCTION

1.1 Introduction

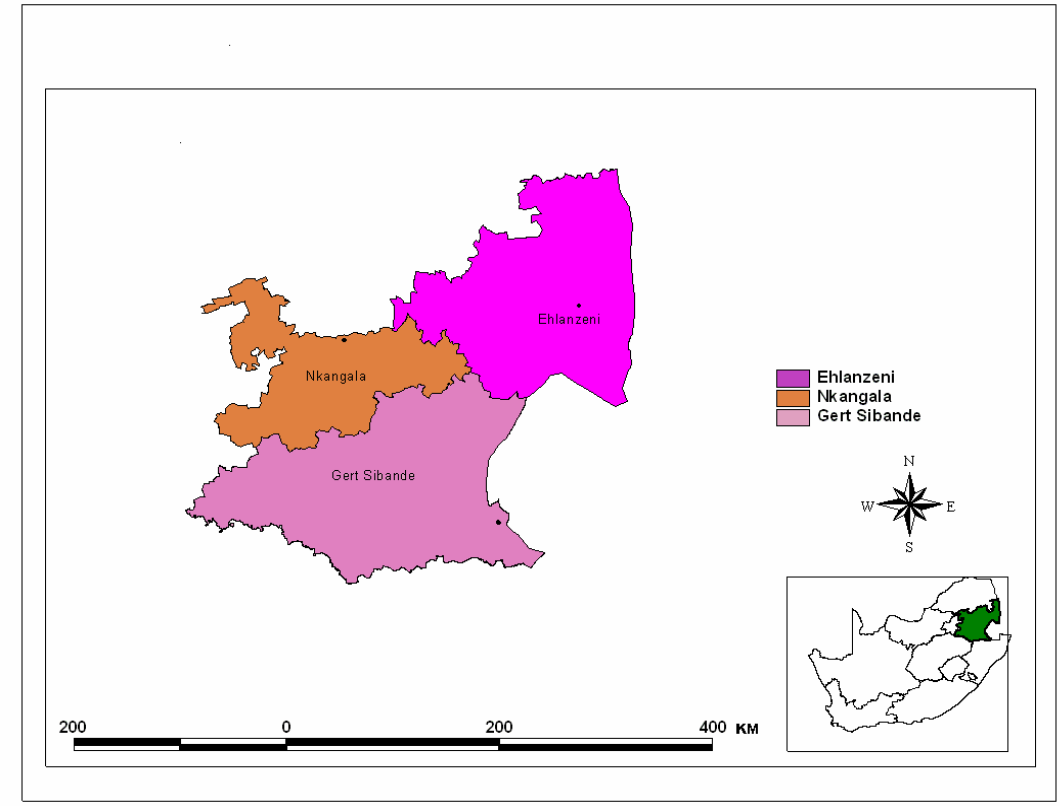
This research centres on the use of communal land tenure systems in the form of Communal Property Institutions (CPIs) in addressing land reform in the Nkangala District of Mpumalanga Province, South Africa. The Nkangala District Land Reform office, a component of the Department of Land Affairs (DLA) in Mpumalanga, has redistributed about 60 farms to black land reform beneficiaries. Of these 60 farms, only eight seem to be functioning. Although a number of factors are blamed for the poor performance of these projects, the researcher would like to examine the contribution of the communal land tenure systems in the form of CPIs that the Department uses as a vehicle for land holding and management, to the poor performance of these projects.

The South African land reform programme is made up of three principal components, namely land redistribution, land restitution and land tenure reform. Land restitution is a component which involves restoration of rights to land to communities who were dispossessed of their land since 19th June 1913 because of racially discriminatory laws. Land redistribution is a sub-programme which makes it possible for poor and disadvantaged people to buy land with assistance from the state through grants. Land tenure reform is a sub-programme that seeks to create a unitary non-racial system of legal tenure rights in the former homelands as well as on farms.

For the purposes of this study, the researcher selected two land redistribution projects situated in the Nkangala District of Mpumalanga. These projects were selected purely on the basis of convenience as the researcher is working within the Nkangala District.

The map below shows the location of the Nkangala District within the province of Mpumalanga.

Map 1: Map of Mpumalanga district boundaries



(Source: Department of Land Affairs, National Information Spatial Framework)

1.2 Background

1.2.1 Historical Background to Land Ownership in South Africa

Until 1994, black people were not allowed to own land in South Africa due to the discriminatory laws that had existed for decades. Blacks only occupied 13 per cent of land in the country as they were deemed second class citizens (DLA, 2006). They did not even own this per centage of land

that they occupied, but were only given permits or permission to occupy (PTOs), which left them with vulnerable tenure.

The Native Land Act, No. 27 of 1913, followed by the Native Trust and Land Act, No. 41 of 1936 were effected to justify the actions that were presented as a legal process of colonial rule. The 1913 Native Land Act was explicit in the way land in South Africa was to be owned, and the areas in which blacks could access land.

The apartheid regime through its land laws thus created reserves for African people and used these reserves as dumping grounds. The reserves, also known as Bantustans or homelands, were established on the basis of ethnicity, thus Venda in Venda, Tswanas in Bophuthatswana, Xhosas in Transkei, etc. The system of inferior rights was introduced in the homelands in the form of permission to occupy (PTO). The permits were issued through a tribal authority and endorsed by the local magistrate, and given to the holder to use a portion of land allocated by the tribal authority for agricultural and/or settlement purposes. A permission to occupy which was issued for business other than agriculture required that the owner apply for a trading licence with the relevant authorities before using the allocated portion of land for the business. In some cases the tribal authority issued a letter with a tribal stamp for allocating a land parcel.

In other situations people would pay a fee to the tribal authority and a land parcel for both agriculture and residential purposes was be allocated. The *indunas* of the tribal authority also allocated land to people without any documentation in some areas.

1.2.2 Background to Land Reform in South Africa

With the advent of democracy, the South African land reform programme was introduced in 1995 as a pilot programme and the White Paper on

South African Land Policy was adopted in 1997, the main objective being to address the skewed land ownership in the country. The new government also needed to provide people whose tenure was insecure, with greater security. The other challenge was to formalize permits such as Permission to Occupy (PTOs) to recognizable title. It also had to consider developing new rights which could be recognized in law.

The Department of Land Affairs (DLA) was then established and mandated to redistribute 30 per cent of white-owned agricultural land to blacks, a target that has to be met by 2014 (Department of Land Affairs, 2006-2009 Strategic Plan). The Department has since been faced with massive criticism about the slow pace of delivery as to date only 4.7 per cent of land has been redistributed since the inception of land reform in 1995 (CDE, 2005). Apart from the slow pace, there is also criticism around issues of sustainability on the land parcels that have already been transferred into the hands of blacks. The policy is criticized for its failure to produce a new farming class, failure to create new jobs and failure to alleviate poverty.

In the statement made by the Ministry for Agriculture and Land Affairs, in the Department's 2008-2011 Strategic Plan (DLA, 2008) the Minister stated that "our land reform programme has not made a significant impact on our stated objective of undoing the impact of the colonial and apartheid legacies: poverty, inequality and joblessness – consequences of years of colonial and apartheid policies and practices – continue to characterize the daily experiences of the majority of Black South Africans, particularly those in the rural areas". This statement seems to confirm the criticism of the programme. Added to these criticisms, land reform in South Africa has recently come under the spotlight for its contribution to the national food shortages in the wake of global food scarcity. One of the land reform principles as set out in the White Paper on South African Land Policy is

that priority should be given to the poor “in need of land to contribute to income and food security” (DLA, 1997:12)

The Department has over the years reviewed its vision statement in order to capture the element of sustainability and economic development:

> To be a global leader in the creation and maintenance of an equitable and sustainable land dispensation that results in social and economic development for all South Africans (DLA 2006-2009 Strategic Plan).

However good this vision statement is, what is happening on the ground negates it. One of the objectives of land reform was to contribute to economic development and become an engine for growth, particularly in the rural areas. The programme has, however, failed to address issues of sustainable rural development. A number of reasons have been advanced for this failure, ranging from large group land ownership, lack of financing for start-up capital, lack of post-settlement support, lack of farming experience, and lack of training.

In an article by Qoba in the City Press (*City Press Business*: 19/10/2008), the Industrial Development Corporation’s chief economist, Lumkile Mondi, is quoted as saying: “we must not cheat ourselves into believing that land reform will deliver much” Maybe this assertion is trying to demonstrate that the South African government has been over-ambitious when introducing land reform.

The CDE (2008) reported that most black South Africans felt that a job and a place to live were more important than access to rural land. According to the CDE, quality education, employment, urbanisation and a new strategic vision for the economic development of the rural areas are needed as answers to rural poverty, rather than only rural land reform. Other important socio-economic aspects challenging land reform and South

Africa generally are the high unemployment rate, lack of education, a high crime rate, the HIV/Aids epidemic and high levels of poverty.

Good agricultural land has been transferred over the past 14 years from the hands of white South Africans to some black South Africans and that land is now lying fallow. Photo 1 below shows a farm bought for a land reform project (New Life Kibbutz Communal Trust) lying fallow during planting season, thereby confirming the foregoing statement. Photo 2 shows maize planted on a neighbouring private farm. The photos were taken on the same day.

Photo 1: Farm bought for the New Life Kibbutz Communal Trust, a land reform project – land lying fallow during ploughing season.



(Source: Photo taken by researcher during field visit on 14/11/2008)

Various observers outside of the Department of Land Affairs are making strong arguments that land reform is not improving the situation of either its beneficiaries or the country, and little is gained in the long run if justice turns out to be purely symbolic, leaving people poorer or even aggravating grievances (Bernstein: 2008).

Photo 2: A commercial maize farm adjoining CPI-owned land.



(Source: Photo taken by researcher during field visit on 14/11/2008).

In another article by the Centre for Development and Enterprise (CDE: 2008) reference is made to a farm in Mpumalanga in which the Department had bought some land parcels, in a single transaction, in the amount of R70 million; within a period of 12 months “those farms have been reduced to grass and weeds”. This can also be evidenced by Photo 1 above.

Table 1 below gives an indication of the amount of money that has been spent by the Mpumalanga Provincial Land Reform Office of the Department of Land Affairs for land acquisition purposes over the past six years. It should be noted that this budget excludes the budget for acquisition of land and compensation via the land restitution sub-programme. It is only for land acquired through the land redistribution and the land tenure reform sub-programmes.

Table 1: Mpumalanga PLRO's expenditure on land purchases for 2003 – 2008

	2003/04 '000	2004/05 '000	2005/06 '000	2006/07 '000	2007/08 '000
Total budget allocation for Transfer Capital and PLAS	**51,428**	**87,763**	**98,748**	**102,332**	**380,039**
Budget spent on LRAD	32,887	81,216	87,752	27,942	16,858
Budget spent on PLAS	0	0	0	48,423	304,755
Budget spent on other subprogrammes	19,711	7,817	8,046	20,275	98,112
Saving / Deficit	**-1,170**	**-1,270**	**2,950**	**5,692**	**-39,686**

(Source: Adapted from DLA. (n.d.): Early Warning Report: Programme 5, Land and Tenure Reform Branch, unpublished, Department of Land Affairs, South Africa.)

The budget allocated for land reform in Mpumalanga Province between the 2003/04 and the 2006/07 financial years show a steady, but not significant, increase. During the 2005/06 financial year, the total budget allocation for land redistribution in Mpumalanga was R98.7 million (le Roux, 2008). The budget allocation for the 2007/08 year rose to a significant R365.7 million, an increase of 257 per cent. This allocation was further increased to R380 million in January 2008 due to the demand and the consequent overspending on the Proactive Land Acquisition Strategy (PLAS) projects.

The budget allocated to the province for the 2008/09 financial year is R546.3 million; a 49 per cent increase from the previous year's baseline allocation (le Roux, 2008: 40). Because of this increasing percentage of budget allocated for land acquisition, it will be of major importance to establish, at some stage, the benefit derived for government, the public sector and the beneficiaries involved, and to assess the return on investment.

1.2.3 The South African land reform grant system

When land reform was introduced, the government developed a grant system which enabled individual households to access a total grant of R16,000 for the purpose of land acquisition (DLA, 2000). Due to the small size of the grant amount, implementers of land reform and land reform beneficiaries had to develop creative means of enabling them (beneficiaries) to pay for the land. One of these means was for beneficiaries to pool their resources, thereby organizing themselves into groups, big and small, so that they were able to combine their grants to attain the purchase price.

These groups of beneficiaries had to organize themselves into Communal Property Institutions (CPIs) and register as a legal entity. The most commonly used CPIs among land reform beneficiaries are Communal Property Associations (CPA), Trusts, Agricultural Co-operatives, Closed Corporations and to a smaller extent private companies (Proprietary Limited). In establishing these institutions, the beneficiaries elect a management/ executive committee to oversee the running of the project.

In 2000, the Land Redistribution for Agricultural Development (LRAD) grant was introduced. This grant enabled individuals to access a minimum of R20,000 and a maximum of R100,000 for land acquisition purposes. This grant was subsequently increased in 2008 to a minimum of R111,152 and a maximum of R430,857 (DLA 2008). This increase did not, however, help much in averting the “rent-a-crowd” phenomenon as land prices have escalated massively in recent years.

1.2.4 Communal land tenure

Since access to land in most rural areas in South Africa has always been determined by traditional or indigenous communal tenure systems, the

Department adopted similar systems, but making use of modernized communal systems in the form of CPIs.

Communal land tenure refers to the terms and conditions through which people hold, use and access land in common (Cousins, 2006). Under the indigenous or traditional communal tenure systems, chiefs and their tribal authorities are in charge of the processes of using and accessing land under their jurisdiction, while the modernized communal tenure systems make use of elected committees and are often governed by a democratically crafted constitution.

As part of the attempt to reform tenure in the country, particularly in the rural areas, in 2004 the Department of Land Affairs enacted the Communal Land Rights Act, No. 14 of 2004, which seeks to address the rights of people on communal lands that are under chiefs and their tribal authorities. This Act has been criticized on the basis that it shifts the balance of power in the communal areas away from individuals and families towards the group and its authority structure. It enhances the powers and status of traditional authorities, with a negative impact on the decision-making powers of individual rights holders. This Act has gained extensive criticism as the Department attempted to implement it in the rural areas of KwaZulu-Natal. It sparked some controversy and people took the Department to court in opposing the provisions of this Act. Their argument, included, for example, that the Department is forcing people back under the control of chiefs, taking away their autonomy/power to decide what has to be done on their land (Cousins, 2006). This shows that people are no longer comfortable with the communal systems, particularly where chiefs are involved as they see them as agents of former colonial rule.

The researcher wants to highlight through this background that communal tenure systems may have been suitable and effective means of holding

and managing land during the colonial period, but that they may no longer be as relevant or effective in modern South Africans' lives.

African elites, colonial administrators and foreign aid donors have historically viewed indigenous land holding systems, which have always been communal, as obstacles to increasing agricultural output and economic development. Whether or not the modernization of such systems makes any difference is a matter that calls for further scrutiny.

An interesting fact about indigenous communal tenure systems is that although land is held in common, individual households are allocated fields to plough on their own, thereby having exclusive rights on those fields, making it easy for that household to work the land if they want to, or to lease it, although they cannot sell these fields. This is a practice that the researcher has not observed in any of the land reform projects, which uses modern communal tenure.

1.2.5 Legislative Framework for Land Reform in South Africa

The legacy of apartheid and internal pressure from South Africans emphasised the need to broaden the foundation of land ownership. To address the consequences of the legacy of forced removals, dispossession and distribution of land resources through racial preferences, the South African Constitution includes clauses to address constitutional requirements to broaden the basis of land ownership and to confirm rights in land. Section 25 of the Bill of Rights states with regard to the right to property: "No one may be deprived of property except in terms of law of general application, and no law may permit arbitrary deprivation of property". The Constitution seeks to achieve a balance between the protection of existing property rights and constitutional guarantees of land reform (DLA, 1997).

The Department of Land Affairs has been mandated in terms of section 25 of the Constitution of the Republic of South Africa to address the goals set for government's land reform policy. The Constitution provides the legal background to discourage forced removals and land deprivations that were inspired by racially discriminatory laws and, therefore, required the state to take steps to promote equitable access to land. A variety of laws were promulgated to achieve this aim.

During the early days of land reform, the South African parliament enacted the Restitution of Land Rights Act, No. 22 of 1994. The purpose of the act was to assist people who were dispossessed of their rights after the 1913 Land Act. The Act was aimed at finding alternative redress for cases which, after investigation, were found to be legitimate. Redress could be in the form of getting back the dispossessed land, alternative land or monetary compensation. This Act serves as a legislative vehicle for driving the land restitution sub-programme.

The Provision of Land and Assistance Act, No. 126 of 1993 aimed at land redistribution, was promulgated for land redistribution purposes. It is aimed at facilitating the release of grants for the purposes of acquiring land for settlement and/or agricultural production purposes, thus Settlement and Land Acquisition Grant (S/LAG) and Land Redistribution for Agricultural Development (LRAD).

In 1996 the Land Reform (Labour-Tenant) Act, No. 3 of 1996 was promulgated. The purpose of the Act was to protect labour tenants from arbitrary eviction by land owners and made provision for them (labour tenants) to apply for the acquisition of right in the land they reside on, thus ownership. Labour tenants are those people who stayed on farms through consent by the owner, are given rights to graze a limited number of their livestock and use an allocated piece of land, usually very small, to grow

crops, and in return they offer their labour to the owner, either for free or minimal payment in cash and/or in kind, e.g. a bag of mealie meal per month. The acquisition meant that compensation has to be paid to the owner by the labour tenant by means of the government grants.

The Interim Protection of Informal Land Rights Act, No. 31 of 1996, was also introduced with the purpose of protecting the rights of those people who had permission to occupy (PTOs), issued by tribal authorities but were not registered with the magistrates, to protect people who had had letters from tribal authorities to use land or those who have paid a fee and were allocated land. The Act was intended to be for an interim period until such time that a permanent legislation, which will provide the security of tenure for people with insecure tenure in the former homeland areas and on state land, could be enacted. This Act is however, still operational to date.

The Extension of Security of Tenure Act, No. 62 of 1997 was introduced for the purpose of protecting people staying on private farms as farm workers or occupiers, who were not protected by the Land Reform (Labour Tenant) Act. Furthermore, the Act is aimed at regulating evictions of farm occupiers. The Act makes provision for off and on farm tenure security. The off farm tenure security means that an occupier can acquire a piece of land either on the farm or on another farm but have full ownership, whereas the on farm settlement meant that an occupier can enter into long term arrangements in which servitude is registered against the land owner's title deed that the occupier will not be evicted and the grant from government will be used for development on the farm.

The Communal Land Rights Act, No. 14 of 2004, seeks to formalize the permits which were issued by the tribal authorities in former homeland areas. The Act will also investigate types of rights which will emerge from the discussions of the communities in terms of how best land can be

administered and managed in these areas. The Act will then make provision for those new rights to be registered. Because the Act is not yet implemented in the country, it is evident that dealing with tenure reform in the former homelands will be difficult and complex as shown in the criticism already levelled against the Act. The promulgation of this Act was to replace the Interim Protection of Informal Land Rights Act (IPILRA) of 1996, but because the Act is not yet implemented in the Department, the IPLRA is still in operation.

1.3 Problem Statement

When land reform policy was introduced and implemented, the Department of Land Affairs (DLA) decided to use modern communal land tenure systems in the form of Communal Property Institutions (CPIs) like Communal Property Associations, trusts and co-operatives for land holding and management, with the assumption that these institutions would be effective instruments for holding and managing the granted land. The experiences so far suggest that this assumption may have been erroneous.

The Department has spent large sums of money to purchase land for beneficiaries, but most of these beneficiaries remain in a worse situation than previously, since they are largely unable to make productive use of this land or even sell or lease it to people who can use it.

The researcher selected two land reform projects in the Nkangala district of Mpumalanga Province, namely the New Life Kibbutz Communal Trust and the Simangwe Poultry and Distribution cc. The New Life Kibbutz Communal Trust consists of ninety (90) beneficiaries, who acquired a commercial agricultural land through the grants offered by the Department of Land Affairs in 2004. The land is now lying fallow and the majority of beneficiaries of this project cannot be located. The Simangwe Poultry and

Distribution cc is made up of eight (8) members coming from three households. They acquired land for the purpose of establishing a poultry project in 2006. The project fared fairly well for a period of a year, but disputes ensued between the three households, leading to the abandonment of the land. The land holding and management mechanism for each of these projects is a form of communal property institution. It is believed that the respective internal dynamics led to the collapse of these projects.

Previous research on South African land reform projects (CDE, 2005; CDE, 2008; Cousins, 2002; Groenewald 2004) blame the poor performance of such projects on a number of factors, but do not go deeper into the contribution of each of these factors, such as the communal land tenure systems that the Department uses as a vehicle for land holding and management, to the collapse of these projects. The lack of financial and technical support to these projects is blamed, but does not specifically look into the inherent dynamics of the systems.

1.4 Purpose Statement

The purpose of the study is to examine the contribution of the communal land tenure systems on the poor performance of land reform projects in the Nkangala District, Mpumalanga Province. It is also aimed at gaining a deeper understanding of the relevance of these land tenure systems in today's changing society, and how these systems can be improved to benefit land reform beneficiaries.

1.5 Research Questions

The research seeks to address the following questions:

5.1 What are the assumptions underpinning the use of Communal Property Institutions in land reform?

5.2 How are the rights of individuals defined within the CPI?

5.3 Do CPIs as presently configured represent an appropriate vehicle to achieving sustainable land reform?

1.6 Significance of the Research

The research will assist anyone wishing to explore further the limitations of using communal land tenure systems, with particular reference to modernized systems, in ensuring sustainable land reform in South Africa. Officials implementing land reform within the Department of Land Affairs and all relevant stakeholders and those conducting further research in the field will be able to draw on the results. The systems themselves appear to be working well regarding acquisition of land and meeting the targeted number of beneficiaries and hectares as set by government. However, in terms of sustainable utilization of such land, it will be beneficial if informed policy decisions can be taken by the implementers of land reform. The study hopes to contribute in this regard.

1.7 Limitations

The researcher is employed by the Department of Land Affairs, implementing land reform at Nkangala District Land Reform Office. The projects identified for the study were done by the researcher from inception to land transfer. The project beneficiaries as subjects for the study had a tendency to provide skewed information in order to maintain a positive image of the work done by the researcher. In order to overcome this, the researcher reassured the interviewees that the research is for the purpose of her studies and whatever they say will not be used against

them. She also requested the interviewees to pretend where possible that they did not know the researcher.

While care was taken in selecting participants to be interviewed, the process was influenced by availability of interviewees. The researcher is not proficient in Zulu/Ndebele, so language was a limiting factor and the researcher requested a colleague from the local Department of Agriculture to interpret. In order to ensure that the translation process flowed smoothly, the researcher briefed the colleague beforehand on what the research is about.

1.8 Outline of Chapters

The research report will consist of the following chapters;

CHAPTER 1: Introduction

This chapter contains an overview of the land reform policy in South Africa. The various communal land tenure systems are highlighted. The problem statement, the purpose of the research as well as limitations of the study will be dealt with in this chapter.

CHAPTER 2: Literature Review

The researcher highlights the various literature on the subject in this chapter. A balanced view of literature supporting the communal land tenure systems and those criticizing them will be presented. The researcher also looked at literature written about the systems in other countries.

CHAPTER 3: Research Methodology

This chapter looks at the methodology the researcher has used to undertake the study. A clear outline of how the study took place will be given, e.g. how data was collected.

CHAPTER 4: Data Presentation

In this chapter, the researcher will present the findings of the study. The findings will be coded into the categories as guided by the three research questions. The data will be presented raw.

CHAPTER 5: Data Analysis

A clear analysis of the data based on the researcher's own assumptions, the data collected through interviews and documentary analysis as well as literature review will be outlined.

CHAPTER 6: Conclusion and Recommendations

Based on the background given about the problem, the literature reviewed, the research methodology, the data presented and analyzed, the researcher will draw conclusions. Recommendations will be made as informed by the outcomes of the research.

1.9 Concluding Remarks

This chapter introduced the rationale and background to land reform in South Africa, looking at legislative frameworks governing the programme, the grants system and the financial implications of the programme.

In this introduction, one can make a deduction that land reform was introduced with the broad aim of instituting social justice in South Africa. It is also clear that there has always been criticism levelled against the programme around its slow pace, lack of sustainability and its failure to create a new farming class of blacks. Critiques of the South African land reform programme, like the CDE, have argued that the government has been over-ambitious and presumptuous when introducing land reform. The truth of the matter is that most of the land reform projects continue to perform poorly.

CHAPTER TWO

LITERATURE REVIEW

2.1 Introduction

There is a saying that ‘that which is everyman’s is no man’s’. Whether or not this is true when it comes to common property, particularly land resources, will continue to be debated. One can also ponder whether what is happening with the land reform situation in South Africa can be equated to the analogy of ‘The Tragedy of the Commons’, as presented by a famous scientist, Garrett Hardin. Is common ownership of land a guaranteed road to agricultural and ecological disaster? Is privatization of land ownership the most suitable way to protect agricultural production and the environment, especially in the current context of national and global food shortages? It is likely that most economists and development planners will agree with this assertion.

There is extensive literature about various forms of land tenure systems, including communal land tenure. The relevance of this literature to the study is to give theoretical perspectives and previous research findings regarding land tenure systems, and particularly communal land tenure systems.

In this chapter, the researcher will give an exposition of land tenure systems, followed by definitions of communal land tenure systems as described in the literature, and examine the historical background of the systems within the African context. The researcher will also look at communal tenure from the perspective of the concept of social capital, and then discuss Communal Property Institutions in the South African land reform context. The researcher will also make a comparison of modern and indigenous communal tenure and look at whether communal tenure

offers the security of tenure necessary for farmers to invest. An exposition of land tenure in other African countries will be given, as well as a perspective on whether individual titling is the solution to the challenges posed by communal land tenure.

2.2 Land Tenure Systems

The term ‘tenure’ comes from English feudalism, denoting ‘holding’ or ‘possessing’ or ‘occupancy’. According to Midheme (2007: 10) land tenure denotes the mode in which rights to land are held by people, either individually or as groups within a given society, and the social relationships that emerge as a result of such rights. Land relationship underpins the concept of land tenure, hence the character of this relationship derives from the rights or interests those persons or organizations have in land. Lamba (2005) considers land tenure to be the social contracts by which individuals or groups acquire, hold or transfer rights in land. Social relationships are therefore embedded in land tenure.

Land tenure systems on the other hand refer to the authorities, institutions, rules and norms governing access to, and control over land, determining who can use what resources, to what extent, for how long and under what conditions (IFAD, 2008). According to Lamba (2005, 24) land tenure systems are those legal, contractual or customary arrangements whereby individuals or organizations gain access to economic or social opportunities through land.

Land tenure systems are an outcome of historical and cultural forces and reflect the relationships between people and the land on which they live. In most developing countries, including South Africa, land tenure systems have been shaped by former colonial land policies, which have overlaid established patterns of land distribution. These patterns have led to a multiplicity of overlapping and at times contradictory rules, laws, customs,

traditions, perceptions and regulations that govern how people's rights to use, control and transfer land are exercised.

Land tenure systems can be informal or formal; statutory or customary; legally recognized; permanent or temporary, of private ownership or of common property; primary or secondary. According to Midheme (2007: 10) most countries of the South are characterized by 'legal pluralism', with two broad tenure types, namely, customary and statutory tenure. Governments in most developing countries have, however, been promoting land tenure reforms geared towards formalization and legalization of rights and land titles registration, thus achieving security of tenure. This is made possible either through titling or leasehold.

Within the context of land tenure, concept of land tenure security is embedded. "Security of land tenure is said to exist when individuals or groups perceive that they have the right to a piece of land on a continuous basis, free from imposition or interference by outside sources, as well as the ability to reap the benefits of labour and capital invested in such land, either in use or upon transfer to another holder" (Midheme, 2007: 12). Land tenure security refers to an assurance that a person occupying land will continue to occupy the land and benefit from the resources of the land without the threat or risk of involuntary removal, and that they can only be evicted by means of a known and agreed legal procedure which must be objective, equally applicable, contestable and independent (Lamba, 2005: 23).

Lamba (2005: 20) describes land tenure as having evolved in three time horizons, namely:

- Long term, referring to land tenure changes that are influenced by the history, culture and ideology of a society

- Mid to short term, referring to land tenure changes occurring in response to societal needs, and
- Changes within the existing land tenure framework, referring to land tenure changes brought about while enforcing land policy and land laws, such as the implementation of land reform programmes.

Most developing countries, South Africa included, are characterized by legal pluralism, with two broad tenure types ─ customary/communal and statutory tenure. Land tenure rights are defined in different ways and contexts. The difference in defining land tenure lies in the extent of exclusivity or exclusivity.

2.3 Defining Communal Land Tenure Systems

Törhönen (2003: 8) views land tenure as more than just the manner of holding land, but as relationships between individuals and groups that define their relation to land, such as rights and restrictions. Communal land tenure refers to common ownership and management of land, and to collective ownership and use of all land and natural resources on the land. All members of a group have rights of access to this land by virtue of membership of the group.

Access to such land is therefore determined by membership in the community to which the land belongs. Cousins (2006: 2) defines communal land as “land occupied or used by members of a community subject to the rules or customs of the community” and he further defines the community as “a group of persons whose rights are derived from shared rules determining access to land held in common by such groups”.

Communal tenure can either be indigenous/ traditional or modernized. In indigenous communal land tenure systems, the members of the group are governed by a tacit ethical code and the management of the land is in the

hands of the chief, while in the modern communal tenure, members have to abide by a formally adopted and endorsed constitution and the management of the land lies with the executive committee elected from time to time by the group members.

According to Platteau (1995: 18), communal tenure, also referred to as 'corporate ownership', means that there exists a corporate entity, which can be a tribe, the village, the lineage, or the extended family, acting as a joint ownership unit. This, in the rural context, implies that the collective territory of a rural community is actually regulated by an authority that decides the allocation of available lands, distributes land use rights to member families, determines the use to which the land is put, supervises land exchanges, and litigates land-related problems. In such cases, the practice is that the territory is divided into several portions according to the nature of the land rights defined over them.

Communal land tenure systems are inclusive in nature as opposed to exclusivity of individual tenure. Winnie (1965: 7) explains that in communal tenure, the holder of rights to the land has only usufruct rights, i.e rights to its use and products. They do not have the right to alienate the land they use.

Below are some characteristics of communal land tenure as outlined by Pienaar (2008):

- In communal land tenure, land rights are embedded in a range of social relationships, including household and kinship networks, and various forms of community membership, often multiple and over-lapping in character.
- Land rights are inclusive rather than exclusive in character, being shared and relative, but generally secure. In a specific community, rights maybe individualized, e.g. dwelling; communal grazing, hunting, fishing and trapping; or mixed i.e. seasonal cropping combined with grazing and other activities.

- Access to land is guaranteed by norms and values embodied in the community's land ethics. This implies that access through defined social rights is distinct from control of land by systems of authority and administration.
- The rights are derived from accepted membership of a social unit and can be acquired by birth, affiliation, allegiance or transactions.
- Social, political and resource use boundaries are usually clear, but often flexible and negotiable, and sometimes the source of tension and conflict.
- The balance of power between gender, competing communities, right-holders, land administration authorities and traditional authorities is flexible.
- The inherent flexibility and negotiability of land tenure rights mean that they are adaptable to changing conditions, but susceptible to capture by powerful external forces like the state, or processes like capital investments.

Based on these characteristics, one can argue that these are characteristics of indigenous communal tenure. Whether or not they are applicable to modern forms of communal tenure is a matter that is debatable.

2.4 Historical Background to Communal Land Tenure Systems

According to Cousins (2006) communal land tenure systems in the African context started during the colonial periods when people where forced to come up with creative ways to preserving the remnants of what was rightfully theirs, the land. During this period, there was generally shared opposition to individual land ownership within African societies because the so-called "settlers' had a tendency to indiscriminately increase their land holdings and to limit those of Africans. They would do so by targeting individual land owners and giving them small items like a mirror, in exchange for their land. Communalism was a way of certifying African control of occupation and use of land. Individual title was as Cousins (2006: 6) asserts, "a code word for sale to Europeans".

In the South African context, communal tenure is a product of apartheid's forced removals where people were dumped in areas under the jurisdiction

of chiefs who were recognized by the colonial government. In the African context, history has shown that customary or communal law and tenure were the joint creation of colonial officials and African leaders, with territoriality confused with sovereignty. Kariuki (2004: 15) makes a nested characterization of most communal land rights systems within a hierarchy of neighbourhoods, sub-villages, villages, wards and chieftainships. This has inherent consequences of making communal land rights conflict-ridden and overlapping with those of other members within the hierarchy.

Modern forms of communal tenure systems in the form of co-operatives or co-operativization of production, were introduced in Tanzania in the early 1970s and proved disappointing in terms of both productivity and farmer participation with reasons suspected as being the inherent non-viability of the model and mismanagement. Because of these failures, Tanzania started moving from this type of tenure system to long term leases for individuals (Bruce, 1988: 36). Bruce further mention examples from Ethiopia that proves that land owned under individual freehold or leasehold is more productive than that farmed collectively. O'Flaherty (1998: 13) argues that both indigenous and modernized communal tenure share common roots in colonial attempts to impose indirect rule by self-serving elites of these regimes.

2.5 A comparison of Indigenous Communal Tenure and Modernized Communal Tenure

Cousins (2002: 2) asserts that historically, most of the rural areas in South Africa are in the former homeland areas where land is registered in the name of the state and held in trust by chiefs and tribal authorities, for common use by the residents under that chieftaincy. This form of tenure is known as indigenous or customary communal tenure. Customary tenure refers to land held under customary laws and governed by traditional rules and regulations (Obala and Kinyungu, 2006: 8). It is, in most cases, based on communal ownership with each family within the village having an

entitlement to user rights of well-defined plots for building a homestead and for agricultural or pastoral use. This form of tenure is also referred to as *de facto* rights.

The chief and the tribal authority have absolute powers in determining the right of access to the land for residential and productive purposes and the residents have to pay allegiance to the chief. The chief or the tribal authority, in the South African context, holds the land in trust for the various ethnic groups, hence these lands are commonly known as Trust Land. The legal ownership of this land lies with the Ministry of Land Affairs. This form of tenure lacks adequate legal recognition. It is susceptible to abuse by powerful elites and has led to conflicting claims to land and bitter disputes over authority (Cousins, 2002). This results in severe constraints being placed on development efforts. In most parts of Africa and other developing countries, this form of tenure is becoming eroded due to the commodification of land. As a result, modern systems of tenure based on individual ownership have been enacted. Increase in population and disintegration of the social fabric that formerly bound communities together have contributed to the erosion of the indigenous tenure systems.

Modernized communal tenure systems on the other hand were adopted as a means to avert problems that came with the traditional communal tenure (Obala and Kinyungu, 2008: 10). In this type of tenure, a group of people come together and register a communal property institution, i.e a legal entity to hold and manage land. The members of the institution will draft and adopt a constitution that governs the running of the land. They also elect a group of representatives in the form of a management or executive committee that manages the land on behalf of the bigger group of beneficiaries.

All forms of communal land tenure systems are based on the principle that everyone within the community of origin has rights to land. However, that

individual's rights are balanced against their obligations to the social group, since rights are shared and relative. Obala and Kinyungu (2006: 15) make an assertion that communal tenure, either indigenous or modernized, involves some form of social relations. Modernized communal tenure in a way replicates or imitates the customary or traditional practices. In both instances, these practices are the basis for expectations that the land rights obtained by an individual will be defended by the others in the group against any challenges. In both instances, the administration of the land is done by a group leader on behalf of the group and this reproduces a line of authority that is familiar with traditional decision-making processes by families, clans and ethnic groups.

Platteau (1995: 12) asserts that individual tenure can exist under a general system of corporate ownership, thus a coexistence of *de facto* and *de jure* rights. He sees communal tenure arrangements as having a genuine multi-tenure system, with different land uses calling for different tenures, and that land use rights, especially on a specific plot of land, are held by individuals or households. "Such systems are flexible enough to allow the proportion of lands held under relatively well-secured rights of individual possession to increase as the need arises for agricultural intensification and the accompanying long term investments" (Platteau, 1995: 7). This is indicative of the fact that African indigenous tenure systems are dynamic arrangements that have come to recognize increasingly individualized land rights for individuals and households under the pressure of rising land values.

It is also important to note that there are scholars who present an argument that indigenous tenure systems were never as static as western-based conceptions of African property systems had made them to be. It is believed that there has always been a spontaneous individualization of land rights over time, which allowed families to acquire a broader and more powerful set of transfer, and exclusion rights over their land as

population pressure and agricultural commercialization proceeded (Kariuki, 2004).

2.6 Is Social Capital the Rationale behind Communal Land Tenure

South Africans have a history of powerful collective social action, built upon long-established norms and networks of community engagement, which has in the past proved to be a positive force for nation building. Social capital is defined by Munslow (2001: 2) as features of social organization, such as networks, and norms and trust that facilitate co-ordination and co-operation for mutual benefit, thereby leading to social empowerment. According to Boutlier (2007: 12) the core of social capital is the goodwill available within individuals or groups, social norms, dense network ties, trust and shared codes and for it to be effective, there is a need for an element of equality among the beneficiary community. Jaffe, Carciente and Zanoni (2007: 23) views social capital as an important source of social cohesion and a key ingredient for socioeconomic expansion in developing nations.

Obala and Kinyungu (2006: 5) provide some interesting insights on the relevance of social capital in communal tenure in a case study done in Kenya, Nairobi. A number of people in Nairobi use strong social links of family and ethnicity and the institution of leadership to form and maintain actual and potential group actions. These groups, commonly known as land buying associations, are established along social and cultural relationships where trust, ethnicity and geographic origin are very important. They also have to be on similar income levels and have similar interests. These people come together and pool their resources for the purpose of purchasing big land parcels, jointly, which are later subdivided. In each case, access to information about the planned action of buying the land jointly is through networks of kin or ethnic group. Trust is an important element for one to access such networks, thus the importance of social

capital (Obala and Kinyungu, 2006). Before the land is subdivided, each member of the group is given a share certificate, indicating the value worth of their individual portions of land. Thus the share ownership is given on pro rata basis, i.e. the extent of land allocated is equivalent to what an individual has paid. It is believed in this context that the land rights obtained in this form by an individual will be defended by others in the group against any challenges by outsiders.

In the South African context, Communal Property Institutions were presumed to harness existing social capital within groups that are presumed to be autonomous and to have a common desire for land. Against this backdrop, the Department of Land Affairs made an assumption that if people pooled their resources, social cohesion will intensify and rural poverty will be eradicated. These presumptions were based on the knowledge that South Africans have succeeded in overcoming the evils of apartheid through collective social action, and what brought people together at that time will keep them together for the good of society. However, this, according to Cousins (2006), has proved to be disappointing because of a variety of pitfalls such as unorganized and disintegrated groups/communities, self-serving elites, opposition, lack of trust and conflicting stakeholder demands.

Alexander (2007: 2) advances an argument that over the years, there has been increasing inequality among individuals, making it more difficult to relate to each other's expectations, decreasing trust and undermining conditions necessary to sustain long term co-operation, hence diversity and inequality undermines the benefits of social capital. With increasing population growth and mobility, society is becoming more diverse and more unequal. "What may at first seem to be an unambiguous goal of promoting social capital becomes at best an extremely difficult goal to achieve and at worst a questionable sort of social engineering" (Alexander, 2007: 7).

Cousins (2006) makes a similar argument that population growth, new economic opportunities and increase in mobility adversely affects social integration. Similarly, Bruce (1988: 30) makes an assertion that communal land tenure systems, particularly the indigenous tenure, are commonly in the process of adjusting to changing demands of their environment. These demands vary from commercialization of African agriculture, social mobility and increased population pressure on the land resource.

2.7 Land Tenure Reform: Examples from other Countries

Many African countries share a common colonial history of land dispossession, dual land tenure systems and the creation of rural labour reserves. In this historical context, one can say that communal tenure was developed specifically to deny the indigenous populations their property rights. In many African countries, land ownership patterns and policies are characterized by the interaction between western land law and African customary land law – dual tenure systems. Currently most of these countries are implementing land and tenure reform programmes, or developing new land laws that reflect the democratic aspirations of their populations in the post-colonial period.

In Ghana, a number of rural traditional communal tenure systems coexist with other legislated forms of tenure. Ghana has recently embarked on a process of integrating customary tenure systems into sustainable arrangements for the allocation and management of land rights. This came after realization that land titling and attempts to do away with customary tenure has proved expensive and divisive and in most cases only benefited small and high income groups (Arko-Adjei, 2005: 13). Land ownership under the Ghanaian customary tenure is fundamentally based on paramount title from which all other lesser titles, interests and rights in the land derive. These lesser titles include sub-paramount title,

usufructuary or determinable title (customary freehold). Customary practices in Ghana guided the state in designing a formal administrative framework consisting of a number of land sector agencies to facilitate a rational and relatively orderly system of land administration. Despite attempts by government to improve security of tenure in Ghana, very little success has been achieved.

In Kenya, the colonial experience introduced a dual land law system with customary tenure in native reserves and statutory tenure in the white highlands and urban centres. In Nairobi, innovative tenure systems characterized by the existence of a mixture of customary, informal and formal practices has been introduced in order to increase the level of access to land, especially for the poor (Obala and Kinyungu, 2006: 9). Organized groups such as co-operatives, companies and associations come together to pool their resources for purposes of buying land. They contribute money and purchase large parcels of land and sub-divide it into small plots among themselves.

This form of tenure in Nairobi is defined as neo-customary tenure as it uses practices that draw from traditional social relations, using strong social links or networks of family, and/or ethnicity and the institution of leadership to form and maintain actual and potential group actions. Trust is an important element for one to access such networks, thus the importance of social capital. Once the land is acquired, it is held in common and the members are given rights to use the land immediately through the use of a share certificate, until it is subdivided.

Interestingly, in other parts of Kenya the Community Land Trust approach is used in which a community collectively buys land, demarcates and erects beacons for individual plots, while the title for the whole property remains in a single title. These individual plot owners are then given long term leases. According to Obala and Kinyungu (2006: 5), this form of

tenure does not exist in Nairobi due to diversity in political interests and conflicts prevalent in the area. This form of tenure does not place any restrictions on whom the original beneficiaries can sell or give their land rights to.

The concept of collective rights within a statutory context was introduced for pastoralists in Kenya (Kariuki, 2004:7). Under this system, communal lands were divided into smaller units/ranches, which are then registered in the names of group representatives elected by the members of the group. Every member of the group is accorded ownership rights of the group land in undivided shares, while the authority of the land is exercised through the group representatives, who will in most cases be younger and less influential members of the indigenous society. This is so because the common practice was that those who are able to read and write are the ones elected to office. Leadership problems and community conflicts continued to impact on the functioning of the elected representative.

In Zimbabwe, the pattern of land tenure following the fast-tracking of land redistribution in 2000 is said to be dualist. Resettlement areas are designated as either ‘A1’ or ‘A2’, with ‘A1’ consisting of family plots with additional rights to grazing land, whose users are issued with offer permits which are inheritable but non-marketable (Chimhowu and Woodhouse, 2008: 22). The ‘A2’ areas, on the other hand, are allocated as commercial farms held as 99 year leases, which can be used as collateral for securing loans and have prospects for eventual transfer through a land market.

In Tanzania, the process of nationalization of land took place after independence in 1961. According to Midheme (2007: 19), the independent government maintained the colonial structure of land tenure in which a minority held granted rights of occupancy, while the remainder had their land holdings under the deemed rights regime – with later developments depicting the creation and encouragement of individualized freeholds,

which were considered a superior replacement for customary land rights. Gradually, freeholds were abolished and converted into government leases. All land in Tanzania is owned by the public and vested in the president as a trustee for all citizens. Land holding therefore, only bestows usufructuary rights upon the holder.

In Zambia, two main forms of land tenure systems exist, namely, customary land tenure and leasehold tenure which exists mainly on state-owned land. Customary land is administered by chiefs and sub-chiefs for their subjects. The chiefs have powers conferred upon them by the Lands Act of 1995, in terms of allocating land rights. Conversion of customary land to 99 year leasehold commenced in 1985 as this is viewed as offering greater security of tenure and greater security to lenders through mortgaging of the land title. The statutory systems in Zambia provide for leasehold title deed for a renewable period of 99 years (Adams, 2003: 25). This provides a sense of security and provides value for commercial transactions. Customary tenure is perceived to be insecure in Zambia because governments continue to give it second class status.

2.8 Communal Property Institutions (CPIs) in the South African Land Reform Context

When the South African land reform programme was introduced, the Department of Land Affairs enacted a considerable number of legislations through parliament, amongst them, the Communal Property Associations Act, No. 28 of 1996. This Act provides for the establishment of legal entities, specifically Communal Property Associations (CPAs) that will enable groups of beneficiaries to acquire, hold and manage property on a communal basis within a supportive legislative framework (Kariuki, 2004). A prerequisite of the Act is that these primary objectives of acquiring, holding and managing property in common must be fulfilled in accordance with a written constitution, which should embody the principles of democracy, inclusion, non-discrimination in any form, equality,

transparency and accountability. However, the drafting of the CPA constitutions is more often done on a *pro forma* basis, without sufficient attention being given to providing procedures for the determination and allocation of individual user-rights or benefits (Sustainable Development Consortium, 2007: 272). This is often the source of conflict inherent in this form of communal tenure.

Although the Communal Property Associations Act of 1996 established a legal framework for communal ownership of land, the majority of CPAs established since the inception of land reform have collapsed. This collapse, according to Kariuki (2004), is sometimes blamed on financial problems, but more often owing to insufficient attention being paid to the tenure arrangements encompassed by such associations.

Research findings by McCuster (2004) suggest that there are social forces found to block rather than drive socio-economic changes in the lives of land reform beneficiaries in South Africa. McCuster (2004) identified four underlying causes that blocked effective land transformation in the Communal Property Associations (CPA) holding and managing the acquired land.

First, McCuster argues that the actual management of the farms by the membership was erratic, difficult and ineffective as some farms had as many as 400 beneficiaries, making it difficult for members to organize, maintain and develop their CPAs as an economic unit. There is evidence of lack of managerial skills as the membership and leadership of the CPAs were not chosen specifically on the basis of their expertise in farming and running a farming business. Member's participation in the CPA activities was found to be minimal as few members attended meetings or any other farming activities. Lack of membership participation is a key obstacle to positive progress on land reform farms in South Africa. Similar problems were found in most African countries utilizing communal tenure systems

for land holding and management. Studies in most of these systems have found a high degree of social disruption and general disorganization among redistributed and resettlement projects.

McCuster (2004: 25) further makes an argument that the poor participation can be linked to the land reform policy itself which has largely ignored or made presumptions about group dynamics. The South African land reform policy, particularly the grant systems that have been applied, encouraged better informed individuals to lobby other people so as to make up the critical mass needed to qualify for enough grant money to purchase the land, thereby 'renting-a-crowd'. The land reform policy failed to recognize that the cost of land acquisition and input capital was too high and offered inadequate grant systems such as the Settlement and Land Acquisition Grant (S/LAG), in which members of a household would qualify for a R16 000 grant; and the Land Redistribution for Agricultural Development (LRAD) grant, in which individual members, not households, would qualify for a minimum grant of R20 000 and maximum grant of R100 000, depending on the amount of own contribution they each make (DLA, 2000). Still the policy failed to recognize the escalating cost of land and these two grant models failed to match land prices, thereby encouraging the 'rent-a-crowd' practice.

In the Land Redistribution for Agricultural Development (LRAD) grant size review conducted by the Department of Land Affairs in 2005, it was found that the grant in its current state is insufficient for beneficiaries with no or minimal own contribution (DLA, 2005). Beneficiaries accessing the minimum R20 000 grant still form large groups to acquire further grants, additional mortgage and production finance. These large groups often have nothing in common, but pooled together in order to afford the purchase of an identified farm. This 'rent-a-crowd' occurrence contributed to problems with regard to group production, decision-making and the control of resources (Hall, 2004). Hall further states that "escalating land

prices are a factor cited as inhibiting land redistribution". The grant size has not increased with the rise in land prices, meaning that in real terms, the grant size has actually been declining.

McCuster's second cause of the CPA failure is associated with a short supply or under-utilization of labour and capital needed for effective land use. He argues that most of the economically active population is engaged in labour migration to more industrialized cities in Gauteng, for example. On the other hand, most of the farms purchased for land reform purposes were under-capitalized, with few implements and production capital.

Thirdly, marginalization of women had a dramatic effect on the productive capability of the CPAs as their labour was not fully realized. This is a hindrance to rural development as women in most cases do not engage in migrant labour systems as they have to look after the children while the fathers migrate. Female-headed households are according to McCuster (2004) subject to general social marginalization.

Fourth, the element of age distribution on land reform projects limits the amount of actual physical labour that can be undertaken, since on most of these projects half the membership is over 50 years of age. There is general lack of interest of young people in participating in agriculture. McCuster makes an argument that the tenure system within CPAs is confusing and does not provide for widespread security to its members as they are confronted with competing claims on their plots.

Lahiff (2002) brings another dimension to the matter, which is linked to McCuster's argument. He argues that when land reform and the Communal Property Associations (CPAs) were introduced, the Department of Land Affairs generally failed to understand the multifaceted composition of rural livelihoods, hence lack of increase in productive land use. Participation in CPA activities decreased as people chose to engage

in other livelihood activities given that access to their acquired land failed to produce meaningful results.

Current land and agrarian reform continues to focus narrowly on agriculture as a driver of the rural economy and core component of rural livelihoods. In other words, the land reform policy lacks a strong livelihoods focus and diversity in rural areas of South Africa. Participation in CPAs therefore becomes ineffective when members sense that other activities could be more helpful in securing their livelihoods than agriculture. Although land reform policies promote access to land, individuals in CPAs are not found to be using the assets of the CPA effectively, i.e the land. This land thus tends to be an inactive capital ─ no-one can use it and no-one can sell it.

Cousins (2002) mentions that in South Africa, more than 500 Communal Property Associations (CPAs) and community trusts have been registered and have acquired land since 1996, but many of these are now dysfunctional. In his study he found that constitutions of these CPAs and trusts were poorly drafted and often misunderstood by members, and the rights of the members were poorly defined, resulting in endemic in-fighting. Since most of these CPAs are in the rural areas within the indigenous communal tenure under the rule of chiefs, the traditional leaders have often contested the authority of the elected trustees and committee members. In other cases, elites have captured the benefits of ownership. Cousins (2002) associates the problems within CPIs with a fundamental mismatch between the land titling model and the realities of African land tenure. He also advances an argument that the support provided to these groups by government is completely inadequate.

Kariuki (2004) concurs with Cousins when he argues that the cause of problems within CPAs is not really the fact that CPAs are a form of shared ownership, as most people desire a system of group tenure. He concedes

that communal tenure has proved resilient and persistent in Africa and elsewhere, and that the problems within CPAs are a result of the minimal support provided to these groups by government, both in the initial stages of establishment and subsequently. The committees of these CPIs are not always able to compile and maintain records of land tenure rights.

The experience with CPIs in South Africa demonstrates the inherent difficulties of creating legal entities to manage land communally, without attending to the question of institutional capability and their appropriateness to the social environment (Kiriuki, 2004). In his opinion, Kariuki views CPAs in particular as combining strong procedural rights with weak substantive rights, or the content of land tenure rights.

Kariuki (2004) also makes an interesting comparison, which is ironic, of the CPA and the currently legislated Communal Land Rights Act (CLRA) of 2004. It is envisaged in this Act that Land Administration Committees that will be established based on the same constitutional principles as those of the CPAs should be capable of maintaining records and allocating a new order of rights. As with the tensions between CPAs and chiefs, similar tensions are inevitable between these land administrations and local institutions such as municipalities, given the far-reaching management powers these committees are accorded by the Communal Land Rights Act. This raises questions around difficulties faced when establishing freehold tenure based on a group context.

2.9 Do Communal Tenure Systems Offer Security of Tenure Necessary for Farmers to Invest?

Most communal tenure systems appear to have evolved to ensure adequate security of tenure, but only in the context of subsistence use of relatively abundant land. The present reality, however, is that land has become a critically scarce resource due to increased population pressure.

Under communal tenure systems, a farmer can have as much land to use on availability, but conflict and jealousies may soon develop within the broader group of beneficiaries. Within these systems, abuse of power by the traditional administrators in hierarchical systems or the executive committees in charge of the land, coupled with their ineffectiveness in undertaking their responsibilities and obligations, becomes eminent.

According to Bruce (1993: 40) the challenge facing communal tenure land-holders is that community-sanctioned land use practice may require the participation of all landholders. At the same time, individual rights and needs must be consistent with those of the broader community. This is not always possible and in most cases, if not all, the community may prohibit individual activities and thereby constrain innovation. Thus an individual farmer may not be in a position to decide to intensify production without the broader group's approval.

Bruce (1993: 38) states that the establishment of sustainable land use for agricultural purposes requires new tenure rules which will enhance farmers' rights in the land. He argues that enhanced individual tenure offers the freedom of action and economic incentive to conserve resources on the land. However, the freedom enhanced by individual ownership needs to be coupled with proper land use practices and reduction in ecological stress; if this is not done, it is likely that the resources will become degraded. Land reform beneficiaries will be inclined to make long term investment in their holdings if they are secure in their expectation of reaping the benefits; thus farmer autonomy over land use and management decisions makes for sound reasoning in a market economy.

Groenewald (2004: 680) refers to Hernando de Soto's comments where he stresses the importance of "converting ineffective systems into a modern property rights system where assets become accessible to everyone and easy to transact. Without that there is no way to build a

system of securitization that will give the farmers access to credit". He further argues that the United States, Belgium, France and Holland are generally accepted as leading agricultural producing countries, and in all of them, the form of tenure used plays a major role.

O'Flaherty (1998), referring to communal tenure in Zimbabwe, states that common property regimes have long been dismissed as economically unviable and failed to cater for the development needs of the individual within the regime, thereby preventing economic independence.

It is important to note that within a CPI, there is often a well-defined social unit that owns the common property resource, land, but its use is never as efficient as under private property, as is sometimes believed. The challenge is that the group of CPI users may be well-defined, but all of them are free to behave as they wish with regard to the land. Platteau (1995) refers to this as "unregulated common property" tenure. He argues that the use of common property resource is more efficient under unregulated common property than under open access, yet it is also less efficient than under a single or private owner regime. If the size of the rights-holding group is large, the degree of relative inefficiency of the common ownership compared to the private property is also larger because the users are less able to take into account the negative consequences of their actions on the overall productivity of the common property. Platteau (1995) maintains that there is a noticeable difference between a situation characterized by a single private owner and a situation of collective ownership

In Ghana, for instance, a serious constraint to growth of large scale farming lies in the difficulty of obtaining personal entitlement to land. Arko-Adjei (2005) writes that when it comes to productive land use, customary tenure system in Ghana is more subsistence-oriented and is based on customs and traditions that are applied in all lands. Trewin (2002) argues

that individual titled farmers are likely to invest more in land, use more inputs and produce more outputs than untitled or communal farmers, resulting in higher agricultural revenues.

The Kenyan tenure individualization reform has, in terms of purely economic indicators, led to an overall increase in productivity (Kariuki, 2004), and has resulted in a marked improvement in land use and environmental management.

It is argued that “communal tenure entails an absence of individual rights and a domination of group rights, so that the individual land user faces insecurity of tenure which, in turn, constitutes a disincentive to the investments needed for increasing productivity and efficiency on which agricultural development and general social progress must be based” (Peters, 2007).

2.10 Is Individual Land Titling a Better Form of Tenure?

Land titling is viewed as one instrument for improving land tenure security. It refers to the legal recognition of ownership or of interest in a parcel of land and is concerned with the rights, restrictions and responsibilities associated with forms of ownership and use of such parcel of land, often geometrically described in the title deed. It also includes rights to transfer, mortgage or lease. It cannot be ignored that many developing countries are facing rapidly increasing demands land as a scarce resource. Such demands are imposing associated pressures on traditional or informal titles to land, thereby highlighting the need for stronger and more effective property rights.

Trewin (2002) affirms that land is the main productive asset in many developing countries as property rights in land account for about 70 per cent of family assets, as compared to the United States, were it only

represents 40 per cent of such assets. Customary land rights and other forms of communal tenure offer access to land and security of tenure to many poor households. It is, however, acknowledged that while they provide limited access to formal credit and input markets and to sales outside the group, opportunities for productive exchange and access to credit remain limited.

Mwangi (2006) argues that although land titling has often been advocated as the optimal solution for granting tenure security and land access, it often involves high transaction costs. Mwangi maintains that land titling may benefit farmers of high value commodities, while on the other hand it is usually impractical for poor resource farmers. She also argues that the link between land titling and tenure security, credit availability, and investments have not been well established in Africa. African countries have, as a result, ceased attempts to abolish customary tenure, notwithstanding the fact that various governments, international financial institutions, and the private sector outside Africa are reluctant to work with, or even to begin to understand, its strengths. On the other hand, Trewin (2002) cites examples from Honduras, Paraguay and Ecuador which proves that individual titled farmers have greater access to credit, both in terms of numbers receiving credit and, more significantly, the average amount of credit received, and that such farmers also invested more than twice as much as untitled farmers. This is echoed in De Soto's findings that investment in property increased nine-fold when squatters in Peru formalized their property titles.

Adams (2003) cites a study done by Smith in 2001 relating to the question of whether different land tenure conditions affect the organization and performance of small farmers, and whether customary land tenure must be converted to statutory individualized land tenure systems as a pre-requisite for investment in farm improvements and obtaining credit. Although this study was done in the Southern Province of Zambia, and has failed to provide evidence that individual tenure leads to investments

in farm improvement and obtaining credit, Smith cites examples from Asian countries such as Taiwan, South Korea and Thailand. These countries are said to have achieved significant agricultural and economic development after granting freehold to small farmers. This example reinforces the strongly expressed desire for title.

It is the view of institutions like the World Bank that customary/communal land rights, however well protected and secured, do not count. Only registered titles that are individually owned or jointly owned by a spouse, and governed by received law, are acceptable security for loans by private sector banks and building societies. Platteau (1995) cites available empirical evidence from Kenya, Rwanda, Senegal and Ghana, in a study by the World Bank, that there is no significant relationship between the possession of a title and the use of formal credit. An explanation for this may be that land titling is obviously ineffective if titled land is not considered reliable collateral by credit-givers because it is difficult to foreclose or in the case of land market slow down it is not easy to dispose of in case of default. In Kenya, for example, lending authorities have had great difficulty foreclosing on land mortgages mainly because the presence of many kin around mortgaged land makes it politically unfeasible to auction the holdings of defaulters.

Titling as a private or individual tenure system is, according to Midheme (2007), intended to ostensibly ensure the most intense and efficient use of land, and is most favoured by societies that place priority on the rights of the individual. Individual tenure gives the owner an absolute title, thereby giving exclusive rights, allowing them to enter into agreements which bind the parties person to person, but do not burden the land with rights of ownership, other than those vesting in the owner who initiates the agreement. Titling fully commodifies land, making it free of hindrances and encumbrances which supposedly impede its optimal utilization. Individualization of land and property is espoused in the works of De Soto,

who advocates for the formalization of property as the key to overcoming the failure of capitalism in the South.

A controversial statement is made by Platteau (1995) that “there is no positive value to society of creating clearly defined property rights in land, especially because the costs of enforcing these rights are high when rural dwellers are scattered and population densities are low”. He also makes a counter argument that where there is an increased commercialization of agriculture in the wake of market integration, communal ownership becomes unstable and produces harmful effects in the form of mismanagement and/or over-exploitation of the land as a resource. In order for this not to happen, property rights theorists maintain that the creation of freely tradable private property rights is crucial. Platteau’s argument is based on an influential school of thought, deeply influenced by the property rights view that land rights have to benefit from maximum security, implying that formal private property rights, also known as *de jure* rights, must be established and duly recorded by using titles based on precise cadastral surveys.

Land titling and registration is also viewed by Trewin (2002) as having the ability to offer associated public benefits such as an apparatus for better planning, as well as indirect benefits such as incentive through the provision of stronger property rights for owners to take better care of their land. An opposing view is that land titling, if not properly implemented, can exacerbate economic inequality, environmental stress and political instability.

Formalization of land rights is considered to be an important step towards promoting intensive agricultural practices, as it engenders both a demand and supply effect. On the demand side it provides incentives for investing in soil conservation measures, land improvements and other productivity-enhancing operations since farmers are assured of reaping the future

benefits of their present efforts (Trewin, 2002). It leads to efficient cropping choices as it removes decision biases in favour of short-cycle crops that arise from tenure insecurity. On the supply side, individual land titling is thought to give farmers access to the finance required for undertaking their investment projects. It is also important to note that a thriving land market promotes agricultural investment by causing the emergence of a rural credit market. Land titling is also assumed to have the effect of eliminating all causes of land disputes.

Kariuki (2004) argues that the debate on the efficacy of individual titling is driven more by 'economic reductionism' that tends to link individual tenure as a key prerequisite to agricultural modernization. This approach, as he argues, ignores the wider social and political contexts that shape access to land and the inherent and often resilient power relations that define property relations within communal land systems.

2.11 Concluding Remarks

From the readings, it appears that no single form of tenure can be said to be a panacea for land ownership. In some instances communal tenure may be preferable over individual tenure. It is interesting to note that some scholars feel that the indigenous form of communal tenure produces better results as compared to the modern form of tenure. This can be attributed to the fact that people in indigenous tenure systems hold their traditional leadership in higher regard as compared to the committees that characterize the modern forms of communal tenure. It was found in the literature that indigenous forms of tenure are said to be flexible and have shown resilience over time. This gives rise to the question of why people are trying to get rid of these systems by introducing the modernized forms of communal tenure.

Again in this chapter one can also make a deduction that individual tenure is preferred and has worked well in other countries. It is said that this form of tenure makes economic sense. One of the objectives of land reform in South Africa is to promote economic growth among black people in the agricultural sector. However, a form of tenure that has been proved to be economically non-viable in other countries has been adopted in carrying out land reform. There is thus little return on the investment that government has made in acquiring land for land reform beneficiaries.

Both individual and communal systems have their unique advantages and limitations. It is also clear that customary or indigenous tenure has become susceptible to commercial pressures that erode the social cohesion from which it derived its legitimacy in the first place. There is indeed no significant difference between the traditional and modern tenure systems.

Individual tenure systems or titling have the benefit of transparency and efficiency, but its critiques argue that they have proved singularly weak in enabling the poor to obtain land and shelter. This implies that no single tenure system provides advantages without major limitations. There are many factors that define the success of farming; land titling being only one of them.

It is also clear from these readings that access to land and the conditions and security of that access critically affect the livelihoods of many of the rural poor and the landless. It is also clear from the Kenyan example that South Africa's CPI tenure regime is premised on some failed hypotheses other African countries have attempted. Freehold tenure is often linked with increased investment and production. It is also clear that the challenge lies in entrenching freehold tenure within the context of groups.

CHAPTER THREE

RESEARCH METHODOLOGY

3.1 Introduction

In the preceding chapter, the researcher gave some background to the issues of land ownership and land reform in South Africa. In this chapter, the researcher presents the methods used to undertake this research. As stated in Chapter 1, the research seeks to address the following research questions, which are aimed at exploring how the use of communal land tenure systems in the form of Communal Property Institutions contributes to the collapse of land reform projects:

(a) What are the assumptions underpinning the use of Communal Property Institutions in land reform?
(b) How are the rights of individuals defined within the CPI?
(c) Do CPIs as presently configured represent appropriate vehicles to achieving sustainable land reform?

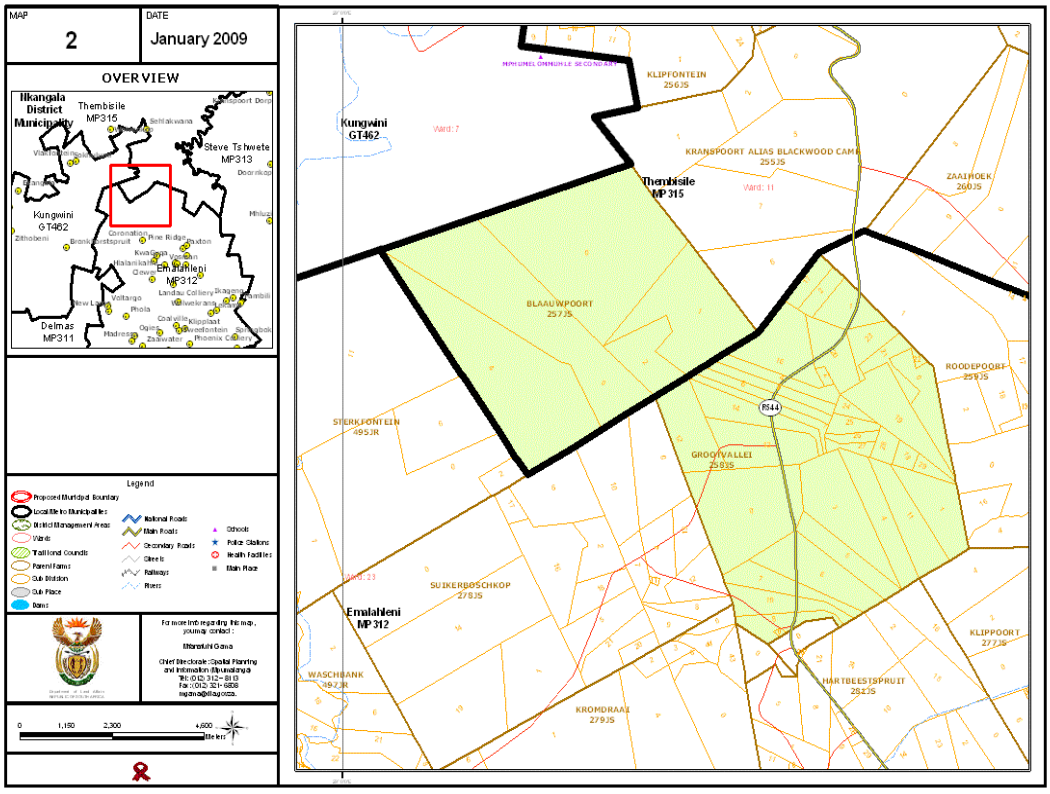
3.2 Research Approach

The researcher used qualitative research approach to undertake this study because qualitative research provides an in-depth contextual perspective on the issues that one may not get in a standardized survey questionnaire. Qualitative research allowed the researcher to get the specific views of people involved in land reform programmes in the Nkangala District of Mpumalanga, namely the officials from the Department of Land Affairs, whose role is to implement land reform; land reform beneficiaries; Land Bank officials who offer financial assistance in the form of loans to land

reform beneficiaries; and officials from the Department of Agriculture and Land Administration who offer post-settlement support to the beneficiaries.

Of the 60 land reform projects done in the Nkangala district through the land redistribution sub-programme, the researcher has selected two projects, namely the New Life Kibbutz Communal Trust and the Simangwe Poultry and Distribution CC. The map below shows the location of the farms bought for these projects.

Map 2: Location of the farms: Portion 3 of the farm Blaauwpoort 257 JS and portion 38 of the farm Grootvallei 258 JS.



(Source: Department of Land Affairs, National Spatial Information Framework)

Although this is not a comparative study, the selection of the two projects was aimed at providing evidence of whether the size and/or type of the group that buys land in common makes any difference to the success or failure of projects. The New Life Kibbutz project consists of 90

beneficiaries of mixed gender, mixed backgrounds and religious convictions and the Simangwe project consists of only eight female beneficiaries.

Mason (1996: 6) argues that qualitative research is an approach that should produce social explanations to intellectual puzzles, i.e. the problem that the researcher wishes to explain. Qualitative research, according to Welman and Kruger (1994: 8), is aimed at establishing a socially constructed nature of reality subjectively as produced by the minds of the respondents. The researcher wanted to explore the point of view of the research participants. The research was aimed at obtaining a clear and deeper understanding of the extent to which the use of communal tenure systems contributes to the collapse of land reform projects.

3.3 Data Collection

The researcher used a number of techniques to generate the desired data as guided by the research questions and employed a more humanistic approach to the participants being researched, as new understanding was developed during the process of research by observation and also by having experienced the reality on the land reform farms through field visits.

Primary and secondary data collection methods were used. Subjects were interviewed in-depth, simple observations were made during field visits to the selected farms and documents kept in the Nkangala District Land Reform Office's project files were analyzed.

The researcher interviewed a total of fifteen (15) participants. Within the selected projects, the researcher interviewed eight (8) beneficiaries, five from the New Life Kibbutz Communal Trust and three from the Simangwe Poultry and Distribution CC. These projects were selected on the basis of proximity and convenience. They are both located in the Nkangala area

and most of their beneficiaries reside in the local township of Witbank. This made it easier for the researcher to contact and access the beneficiaries. Two of the New Life Kibbutz Communal Trust beneficiaries interviewed reside on the farm and were interviewed on the farm, while others were interviewed at their respective homes and other convenient places. The researcher reassured the participating beneficiaries that they will remain anonymous, and they are therefore referred to by code names.

The researcher had in-depth interviews with two district managers in the Mpumalanga Provincial Land Reform Office of the Department of Land Affairs, an in-depth telephonic interview with one official from the Monitoring and Evaluation Unit of the Department in Pretoria, and a Chief Planner based in the Mpumalanga Regional Land Claims Commission of the Department of Land Affairs.

The researcher also interviewed two extension officers from the Witbank office of the Department of Agriculture and Land Administration (DALA) to obtain their views on extension support being offered to beneficiaries owning land in common.

An official from the Land Bank in Middelburg was also interviewed as they offer financial services to farmers, including development clients such as land reform beneficiaries.

3.3.1 Documentary analysis

The researcher analyzed documents for each selected project, including the selected projects' files available at the Department of Land Affairs in the Nkangala District office. Particular attention was paid to the process of drafting and adopting constitutions for the CPIs, the legal mechanisms for the establishment of each CPI, the rights of individuals within the CPI, and the powers of the CPI as an entity. Although the researcher intended to go

through the records that the CPIs' management committee maintains, such as minutes of their meetings, financial records, membership lists, etc, this was not possible because the researched CPIs did not keep any records and the chairperson for the New Life Kibbutz Communal Trust was uncooperative. The researcher therefore relied on the project files kept in the district land reform office.

Silverman (2004: 57) emphasizes the importance of incorporating a clear understanding of how these documents are produced, circulated, read, stored and used for a wide variety of purposes within these CPIs. The researcher had a particular interest in understanding the extent to which the beneficiaries within the CPIs understand and identify with the contents of their constitutions and other relevant documents. The overall management of these CPIs is guided by these constitutions, and the research could not be adequately investigated without reference to the production and use of such documentary materials. These documents are social facts in that they are assumed to be produced, shared and used in socially organized ways, hence the researcher consider them fundamental to this study.

Bailey (1987: 291) gives an outline of the advantages of using documentary analysis in any research, the crucial one being that documents are non-reactive and do not change the nature of the data being collected. It eliminates error caused by memory failure of subjects under study as well as bias due to hesitancy to admit the degree of irregularities, if any, within the project. Research participants may show resistance to being interviewed or supply inaccurate information as a result of apathy, wilfulness, modifying behaviour or information to create a better impression, or deliberately misinform the researcher. As Mouton (2002: 141) states, in social science research, human beings are often aware that they are objects of investigation when they participate in research and they tend to react to this. The other advantage for the researcher is the

relatively low cost or no cost of accessing these documents as they are gathered together in a centralized location, namely the Department of Land Affairs or with the secretary of the Communal Property Institution. Bailey (1987: 291) also mentions disadvantages of this method, such as bias in the sense that they may tend to include only the information that makes the CPI or its committee look good and exclude those that cast them in a negative light.

3.3.2 In-depth Interviews

In preparation for the interviews, a telephonic discussion was held with the selected respondents to request their participation in the research as well as to agree on a date suitable for the interview. The researcher indicated the purpose of the study and assured confidentiality and anonymity. A time-frame suitable to the interviewee was negotiated and adhered to. This ensured full participation and minimised the result of possible refusals due to time constraints and other commitments.

The researcher travelled to the farm Blaauwpoort to conduct the interviews with the beneficiaries residing on the farm and also to make observations of the activities taking place on the farm. This made make the beneficiaries on the farm feel more comfortable and confident as they were not hurried. The interview took place after work as they currently work for the adjacent farmer. This ensured minimal disruption for their work. The flexibility and adaptability of face-to-face interviews is a great advantage, and for the researcher nominal costs were involved as the distance from Witbank town to the farm and back is only about 85 km. Less than 50 km were travelled to access the beneficiaries in the township.

The researcher requested the services of a colleague from the local Department of Agriculture and Land Administration to help as an

interpreter because of the language problem. This arrangement came at no cost at all and was very beneficial for the interview process.

The researcher used both face-to-face interactions with the respondents as well as telephonic interviews with officials based outside of the Land Reform Office in the Mpumalanga Province, through the use of semi-structured interviews. In other words, the researcher developed a list of predetermined topics and questions but also left some space for following up on interesting but relevant topics should they arise.

Silverman (2004: 137) asserts that qualitative interviewing provides the opportunity to collect and rigorously examine narrative accounts of social worlds. Open-ended types of questions were asked of the respondents as guided by the three research questions. In using these types of questions, Rugg and Petre (2007: 139) warn about asking respondents questions that are steering them towards an answer which the researcher may want to hear, probably because of some personal hidden agenda involving advocacy as opposed to research. In order to avert this, the researcher had to maintain consistency of the research questions by developing standardized interview schedules for the interviewees.

The researcher made use of open-ended questions to allow more freedom regarding the responses. No technical terms were used, especially for land reform beneficiaries, as the different respondents' literacy levels were taken into consideration. Accurate information was needed from the respondents and therefore they had to understand exactly what was asked of them.

In-depth interviews with the officials from the Department of Land Affairs, Department of Agriculture and Land Administration as well as the Land Bank and the land reform beneficiaries explored the contemporary

dynamics around the use of Communal Property Institutions in land reform projects.

Through interviewing, the researcher asked the research participants about their own personal understanding of what is happening within these institutions that hold and manage land in common. In doing the interviews, the researcher did not ignore the fact that because of the social nature of the research, there may be potential for all types of bias, inconsistencies and inaccuracies.

3.4 Data Analysis

Mouton (1996:161) views data analysis as 'the construction of a whole out of its parts. The researcher looked at the importance of the overall coherence and meaning of the data collected as more important than the specific meaning of its parts. This required the use of data analysis methods that are more holistic and interpretative in nature.

In analyzing the data, the researcher had to sort and sift the data, thereby searching for types, classes, sequences, patterns or wholes (Seidel: 1998). This process is aimed at reconstructing or assembling the data in a meaningful or comprehensible fashion, the coding of data. By coding, the researcher was able to create order with the data on hand. The researcher compared and contrasted each of the data collected in order to discover similarities and differences, build typologies or find sequences and patterns.

In analyzing the data, the researcher identified the following three themes as guided by the three research questions as outlined in Chapter 1 and the beginning of this chapter:

(a) The use of Communal Property Institutions in land reform;

(b) Rights of individuals; and
(c) Appropriateness of CPIs for achieving sustainable land reform.

The researcher then identified pertinent issues within these themes, identified commonalities and contradictions, and then drew inferences based on these themes. The interview-based data was then contrasted with the data sourced from the documents of the selected projects.

3.5 Validity and Reliability

Golafshani (2003) argues that the concepts of validity and reliability are misleading in qualitative research and instead, uses concepts like consistency, credibility, and applicability. In this research, consistency and credibility of data will be ensured by keeping process notes and the raw data collected during the interview process. All the steps of the research can be verified through examination of the raw data and the process notes, hence examination of trustworthiness of the research report is crucial.

CHAPTER FOUR

DATA PRESENTATION

4.1 Introduction

This chapter seeks to present the data as collected during the interview process, the observations made during the visits to the projects, analysis of documents that are kept in the project files in the Nkangala District Land Reform Office of Mpumalanga Province, as well as photographs taken by the researcher during visits to the projects. The researcher will also make use of the findings from the literature review when presenting the data as there is some similarities between some of the interviewees' responses and the views of certain scholars about various forms of tenure.

The interview-based data was collected from four (4) Department of Land Affairs' officials who are directly involved in the implementation of land reform and organizing land reform beneficiaries into various forms of Communal Property Institutions (CPIs); two (2) Department of Agriculture and Land Administration officials, whose role in land reform is to provide settlement support once the land is granted to beneficiaries; five (5) land reform beneficiaries from the New Life Kibbutz Communal Trust; three (3) land reform beneficiaries from Simangwe Poultry and Distribution cc; and one (1) official from the Land Bank, Middelburg branch, whose role is to offer financial support in the form of loans to farmers, including land reform beneficiaries. In total fifteen (15) research informants were interviewed.

This presentation is informed by the research questions as presented in chapter one of the study;

A. What are the assumptions underpinning the use of Communal Property Institutions in land reform?
B. How are the rights of individuals defined within the CPI?
C. Do CPIs as presently configured represent appropriate vehicle to achieving sustainable land reform?

In the presentation of the data, three themes evolved out of the three research questions, namely:

(a) The use of Communal Property Institutions in Land Reform;
(b) Rights of individuals; and
(c) Appropriateness of CPIs for achieving sustainable land reform.

The researcher will, in presenting the data, give background to the two projects selected for the study, namely; New Life Kibbutz Communal Trust and the Simangwe Poultry and Distribution CC. This background is informed by the documents that were found in the project files in the Nkangala District Land Reform Office, enquiries with the extension officers from the Department of Agriculture in Witbank and the Land Bank in Middelburg, as well as the researchers' own knowledge of the projects.

4.2 Background of the Units of Analysis

4.2.1 New Life Kibbutz Communal Trust

The New Life Kibbutz Communal Trust is a trust established in terms of the Trust Property Control Act, No. 57 of 1988 and consists of ninety (90) beneficiaries. The Trust was established in 2002 for the purposes of purchasing and taking transfer of land, portion 3 (a portion of portion 1) of the farm Blaauwpoort 257 JS, measuring a total of 1027.8235 hectares in extent, situated in the Witbank area of Nkangala District, Mpumalanga

Province. The Trust approached the Department of Land Affairs through the Land Bank, Middelburg Branch, for assistance with grants to purchase the said land. The Trust had engaged the services of a consultancy company known as Season's Find 25, to assist them in planning the project.

Of the 90 beneficiaries, 55 per cent are members of the New Life Church, while the remaining 45 per cent are members of other church denominations. The beneficiaries qualified for a total grant of R3,175,020 from the Department of Land Affairs and also obtained a capital loan of R1,500,000 plus a production credit of R160,000 from the Land Bank. They had a total finance package of R4,835,020 and the purchase price of the land, including implements and 89 head of cattle, amounted to R4,400,000. This means that the beneficiaries remained with a total of R435,020 to be used for production purposes. The land was transferred into the name of the Trust in 2004.

Photo 3: Derelict implements on the farm of New Life Kibbutz Communal Trust: Irrigation pipes.



(Source: Photo taken by the researcher during a field visit: 14/11/2008)

The farm lands consisted of 40 hectares irrigated land, 290 hectares dry arable land, 148 hectares planted pastures (Smuts finger) and 549

hectares natural grazing. The farm infrastructure consisted of two large sheds, a pig sty, feed-lot facilities, grazing camps, irrigation systems, tobacco dryers/ovens, a dairy, a poultry house, boreholes, two farm houses, and a number of implements that formed part of the transaction sale, i.e. three tractors, a harvester, truck, a road grader, 20 point milking unit, 1 250 litre milk tank, maize cultivator, bailing machine, lime spreader and a considerable number of other loose implements. Some of the implements are shown on Photos 3 and 4.

Photo 4: Some of the implements bought together with the farm New Life kibbutz Communal Trust: A bailing machine and trailer.



(Source: Photo taken by the researcher during a field visit: 14/11/2008)

The loan that the Trust obtained from the Land Bank was issued on condition that the then land owner would remain on the farm for a period of six months for proper hand-over to and orientation of the new owners (Trust), including introducing them to his markets. However, after the land was transferred into the name of the Trust, the chairperson of the Trust allegedly instructed the previous owner to move off the farm, as he intended to occupy the farm house and start working the lands. This happened just before the start of the planting season in 2004.

After the transfer of the land, extension officers from the Nkangala office of the Department of Agriculture and Land Administration went to the farm to

collect soil samples for analysis so as to advise the beneficiaries on the suitable cultivars of crops and to assess the levels of chemical composition of the soils and the types of fertilizers best suited to the soil. However, before the results of the soil survey were available, the beneficiaries had already bought and planted crops that were not suitable, resulting in a poor harvest for that season. As they had dairy cattle at that time, they focused their energy on milk production, but were again unsuccessful as they could not maintain the quality of the milk produced. The cheese company known as Star Cheese contracted to purchase from them terminated the relationship and no longer purchased the milk.

In the beginning of 2005, some of the beneficiaries of the Trust came to the Nkangala offices of the Department of Land Affairs to complain about the manner in which the farm was run. These were mainly the non-church members of the project. Their concern was that the chairperson of the project was excluding them from participating in the activities of the farm and was denying them access to the farm.

Meetings were held to try and resolve these concerns, and it became apparent during these meetings that the majority of the beneficiaries of the Trust were not aware that they had registered a Trust as a legal entity owning the land and that they had a Trust deed which served as their constitution. They did not have access to the Trust deed and were unaware of its provisions. As the Trust deed was read and scrutinized in the meetings that were held, the beneficiaries indicated that they wanted the document to be amended as it was not drafted in consideration of their interests. The document gave the Trustees unlimited powers, while the rights of the beneficiaries were not even entertained. At the same time, the Trust deed did not stipulate any term of office for trustees, thus a trustee could be a trustee for life if they so wished. (Annexure B – Extracts from the Trust Deed).

According to the Trust Property Control Act, No. 57 of 1988, trustees of a Trust can only be removed from serving as trustees if they resign voluntarily or if they are found guilty in a court of law after committing certain offences as stipulated in the Act. The Act also requires Trustees to appoint auditors and to submit annual audited financial statements. Although the Trust has appointed a firm of auditors for auditing of their books, they have not submitted financial statements to the Master of the High Court, the Department of Land Affairs or the Land Bank, as required.

Some of the Trustees of the Trust, mainly the chairperson, were aware of the provisions of their Trust Deed, and to a limited extent had knowledge of the provisions of the Trust Property Control Act. These Trustees refused to step down in order to allow for democratic processes of electing new trustees and amendments of the Trust deed to take place. This made it impossible for the Trust to be amended, and the only option that the beneficiaries had was to pass a vote of no confidence and notify the Master of the High Court, as the registrar of Trusts, to dissolve the Trust. For the beneficiaries to do this, they needed to hold a general meeting attended by at least 75 per cent of the members. The challenge was that in all the meetings that they organized they failed to form even a simple majority of 50 per cent + 1. The Trust Property Control Act does not give officials from the Department of Land Affairs authority to intervene or dissolve the Trust, as this is at the sole discretion of the Master of the High Court.

While the disputes were continuing within the Trust, farm assets were removed, allegedly by beneficiaries. This included cattle and implements. The farm lay fallow, implements started to rust and everyone within the Trust claimed to be in charge. Of the 89 cattle bought with the farm, only less than 20 are still available and the beneficiaries cannot account for the missing cattle.

With all these events, the Department of Land Affairs and the Land Bank did not succeed in getting things back to order on the farm. Land Bank served the trustees with notices to honour their debt with the Bank, but could not recover any money. Land Bank's hands were tied when the Minister of Land Affairs instituted a moratorium on foreclosures on land reform projects by the Bank.

4.2.2 Simangwe Poultry and Distribution CC

Simangwe Poultry and Distribution CC is a close corporation registered with the Companies and Intellectual Property Registration Office (CIPRO) of the Department of Trade and Industry. The close corporation is made up of three households, consisting of eight beneficiaries, that is, three women who were friends, and their children. One of the women within the project mobilized the other two women and initiated the process of registering a close corporation, looking for the land, and applying for funding.

The beneficiaries did not have any constitution. This is not a requirement by CIPRO for registration of closed corporations. After registration, they were given a Certificate of Incorporation, which confirms membership to the registered close corporation (see Annexure B: CK 1) This document outlines the extent of the shareholding that each member of the close corporation has, but offers no further explanation as to who is entitled to what. The Certificate of Incorporation shows that the three women each have a shareholding of 15 per cent, while their five children own a share of 11 per cent each.

The beneficiaries approached the Department of Land Affairs for assistance with grants to purchase and take ownership of the farm, portion 38 Grootvallei 258 JS, situated in the Witbank area of Nkangala District in Mpumalanga Province. The land measures a total of 8.4636 hectares in

extent and the beneficiaries wanted to use it for poultry and vegetable production purposes. The infrastructure on the land consists of a farm house (Photo 6), a store room, a concrete water reservoir, a brick tank stand with a water tank, a chicken coop (Photo 5 below) and a pump house with a borehole.

Photo 5: An abandoned chicken coop on the farm owned by Smangwe Poultry and Distribution cc



(Source: Photo taken by researcher during field visit: 14/11/2008)

The eight beneficiaries qualified for a total grant of R160,000 from the Department of Land Affairs and the land, including the existing fixed infrastructure, was bought for R140,000. They remained with a balance of R20,000 to be used for other on-farm developments. The farm was bought and transferred in 2006.

Upon occupation of the land, the beneficiaries utilized the farm house to grow day-old chicks for sale. They allocated themselves rooms within the house (Photo 6) so as to operate independently, thus two women shared the house and the third woman took over the chicken coop. They continued to operate peacefully, growing chickens and selling to hawkers in the nearby townships of Witbank. According to a senior extension

officer, Ms Ubisi[1], from the Department of Agriculture in Witbank, the two beneficiaries sharing the house were each able to keep about 400 chickens per cycle of six weeks, while the other beneficiary using the chicken coop was able to keep up to 1 000 chickens per cycle because she extended the coop on her own.

Photo 6: An abandoned house on the farm of Simangwe Poultry and Distribution cc.



(Source: Photo taken by researcher during field visit: 14/11/2008)

One of the beneficiaries, Mrs Nkwe[1], allegedly had a car accident in late 2007, and could neither travel to the farm nor continue to make use of the room that she was using for keeping her chickens. Allegedly, conflict started when the lady using the coop, Mrs Yabisi[1], wanted to take over the room that was allocated to the woman involved in an accident. The disagreements could not be resolved and the women abandoned the farm.

[1] Interviewees were assured of anonymity. All names used are not real names.

4.3 Research Findings

4.3.1 Land Reform and the Use of Communal Property Institutions (CPIs)

On the research question regarding the assumptions underpinning the use of Communal Property Institutions in land reform, several sub-questions were developed relating to:

(a) reasons for the use of CPIs;
(b) Awareness of legislative frame works/constitutions for CPIs; and
(c) Monitoring of CPIs.

4.3.1 (a) Reasons for the Use of Communal Property Institutions

On the underlying principle for the use of CPIs in land reform, the study indicates that there are three key reasons why CPIs are preferred as modes of ownership for farms acquired through land reform, namely, financial limitations in terms of the grants the government offers for land acquisition; compliance with land reform policies; and the assumption that communities will be able to work well together as expected.

Five out of the eight beneficiaries interviewed indicated that the formation of legal entities in the form of CPIs was thought to be a pre-condition for accessing grants from government, while others indicated that they needed to get enough grants to cover the purchase price of the land, hence they had to get as many people as possible into the group. Of the eight land reform beneficiaries interviewed, only one felt that the use of CPIs by the Department helps in reaching out to as many people as possible. The other respondents did not see any value in using CPIs for land-holding and management. They felt that they had to do it as a means

of compliance with the requirement by the Department, to get enough grants to cover the land price.

The beneficiaries' concerns about the use of CPIs as a framework for land-holding ranged from its inability to prevent or mitigate negativities such as in-fighting, lack of consultation, lack of reporting, misuse of powers by trustees/committee members, dictatorship by leadership, inability of government officials to intervene when there are disputes within the CPIs, lack of authority as everyone wants to exercise control, and that other beneficiaries do not want to work, but want to share in the profits.

4.3.1(b) Awareness of Legislative Frameworks

Regarding the awareness of legislative frameworks governing the CPIs, the research found that there is general lack of awareness by beneficiaries of the legislative frame work and/or the constitutions that govern their legal entities. Both officials from the Department of Land Affairs and the land reform beneficiaries conceded that there is very little training given to beneficiaries, and if it does happen, as one respondent noted, "the constitutions are often written in a language that the majority of the beneficiaries understand less". One respondent indicated that "whilst there may be workshops around legal entities, these are generally held to direct a group to a particular CPI" (Ms Tsemo: interview: 15/11/2008). Another respondent from the Department of Land Affairs indicated that the beneficiaries seem to pay more attention to land acquisition, with no interest shown in the legal entity process.

None of the beneficiaries from the New Life Kibbutz Communal Trust attached any value to their constitution. They indicated that they were never consulted when the constitution was drawn up. They felt that the consultant who drafted the constitution did not know the interests of the

beneficiaries and consultations were only made with the Trustees as the constitution only works in favour of the trustees, not the beneficiaries.

The beneficiaries from the Simangwe Project did not have a constitution as it is not a requirement for registration of a close corporation. They indicated that they were operating on the basis of trust as they are a small group of women who were friends. They, however, conceded that if they had a constitution over and above their close corporation certificate, their conflict situation may have been averted and the farm would still be operating.

4.3.1(c) The Monitoring of CPIs

With regard to the monitoring of CPIs, all four interviewees from the Department of Land Affairs indicated that although provision is often made in the constitutions of the CPIs for measures to ensure compliance with relevant legislation under which they are established, there is no monitoring capacity to ensure adherence to these measures. Beneficiaries are often not informed that they need to provide reports, such as audited annual financial statements, to relevant authorities as required by their constitutions. One respondent stated that the Department of Land Affairs concentrates on buying more land and no attention is paid to issues of monitoring and evaluation.

4.3.2 Rights of Individuals

The second research question aimed to establish how the rights of individuals are defined within the CPI. There is a general understanding by beneficiaries that they should enjoy certain rights, yet these are seldom explained and enforced. The interview-based data will be interfaced with the analysis of the relevant documents governing the establishment of

each CPI, i.e, a trust deed for the New Life Kibbutz Communal Trust and the Certificate of Incorporation for the Simangwe Poultry and Distribution cc.

The following sub-themes were identified in the data collected, namely:

(a) Allocation and exercising of individual rights;
(b) individual land rights versus constitutional provisions; and
(c) Individual rights versus group rights

4.2.2(a) Allocation and Exercising of Individual Land Rights

On the issue of allocation and exercising of individual land rights, the research found that there is general lack of awareness on the part of the beneficiaries regarding their basic rights such as rights to be treated equally, equal right of access, use and occupation of the property, including all amenities, resources and facilities, rights to participate in all activities of the CPI, rights to inspect records of the CPI, and rights to a copy of the constitution.

The beneficiaries from both projects selected for the study felt that they did not have any real rights. Although some of them indicated that they had rights of access to the farm, they felt that it was limited by the fact that they have to obtain permission from the committee to get to the farm. Some indicated that they were made to feel like labourers on land they are supposed to own. Another beneficiary from the New Life Kibbutz Trust indicated that he had to force his way to get to the farm and another indicated that she never had access to the constitution and had to fight to get a copy.

All beneficiaries indicated that individual rights were never allocated to them. Only the two beneficiaries of the New Life Kibbutz Communal Trust

who reside on the land clearly indicated that they have rights of residence as they had been staying on the farm long before the Trust took ownership of the land. These beneficiaries stated that they take orders from the trustees or other dominant members of the trust.

One beneficiary from the Simangwe Project indicated that at one time they informally allocated each other rooms within the house that they used to grow chickens and this arrangement became the source of their conflict later on. Another beneficiary from the same project said: "we were mobilized by one person to come join the group, so we thought that the land, after acquisition, actually belonged to that person" (Mrs Nebema[1]: interview, 18/11/2008).

4.2.2(b) Individual Land Rights Versus Constitutional Provisions

On the other matter regarding the rights of individuals as practiced versus those contained in their constitution, the study found that there is no relationship between what the rights of individuals are in terms of the constitution and what is practiced.

The Trust Deed for the New Life Kibbutz Communal Trust carries a clause that talks about Terms and Conditions of Beneficial Interests in which all beneficiaries are given an equal share in the trust assets or trust fund, a right to cede or transfer their interest or a portion thereof, without ceding their liabilities or obligations as per the provisions of their deed; they may thus be held liable for debts incurred by the Trust even if they cede their interests in the Trust. The Trust deed is silent, however, on how these rights are exercised by the beneficiaries, for example, whether each beneficiary will be given a share certificate or whether and how they can access, use and occupy the Trust property. The Trust deed is also silent about the beneficiaries' right of participation on activities of the trust.

[1] Not her real name

The Certificate of Incorporation for the Simangwe Poultry and Distribution cc confirms membership of the beneficiaries to the registered close corporation. This document only outlines the amount of shareholding that each member of the closed corporation has, but offers no further explanation on individual entitlement. The certificate of incorporation shows that the three women in the project each have a shareholding of 15 per cent, while their five children own a share of 11 per cent each.

Although both the New Life Kibbutz Communal Trust and the Simangwe Poultry and Distribution cc have some form of regulatory document that encapsulate rights that the beneficiaries hold, none of the beneficiaries knew what rights are contained in such documents. Lack of access to the document was cited as the main reason for this. The two beneficiaries from the Simangwe project did not seem to be aware of their shareholding within the close corporation as they thought that Mrs Yabisi[1] owned everything on the project.

Some officials saw the CPI constitutions as window dressers as beneficiaries are not knowledgeable about the contents. All four interviewed officials from the Department of Land Affairs indicated that although individual members of the CPIs may have rights and obligations, as stipulated in their constitutions, they often lack capacity and are not knowledgeable about such rights. One official stated that some leaders often take decisions on behalf of the entire membership for their own individual benefit.

Another official stated that individual members of the CPIs often lack access to information, only the leaders have access to primary information and do not cascade it down to the other members. This is attributed to the fact that members, even if they have access to their constitution, do not

[1] Not her real name

understand their constitutions and as result, they can easily be swayed by the committee or those powerful members of the CPI. One official stated that project officers often appoint consultants to develop constitutions for CPIs and these consultants often fail to inform beneficiaries about their rights and responsibilities.

4.2.2(c) Individual Rights Versus Group Rights

The third sub-theme relates to the existence of a balance between individual and group rights. Three of the four DLA officials interviewed felt that there is no balance between individual and group rights.

Beneficiaries from the New Life Kibbutz Communal Trust felt their constitution only favoured the trustees and not the members of the Trust. They say that attempts to get the constitution amended were always blocked by the Trustees. One beneficiary said: “our constitution only allows trustees to make decisions, as an individual I have no say” (Mr Lindisa[1]: interview, 17/11/2008). It was also found that although individuals may want to use some land for their own benefit, permission has to be obtained from the entire group and it is often difficult to get the group to attend meetings. The Trust Deed for the New Life Kibbutz Communal Trust is not clear about the rights of the trust and those of individual members of the trust.

4.3.3 Use of CPIs to Achieve Sustainable Land Reform

The third research question needed to establish whether Communal Property Institutions as presently configured represent an appropriate vehicle to achieving sustainable land reform. The following sub-themes emerged out of the data collection process:

[1] Not his real name

(a) The appropriateness of CPI framework ;
(b) Support given to CPIs; and
(c) Alternative form of land ownership.

Different set of questions were asked of the DLA officials, the beneficiaries, officials from the Department of Agriculture and Land Administration (DALA) and the official from the Land Bank.

4.2.3(a) The Appropriateness of the CPI Framework

With regard to the issue of appropriateness of CPIs framework for achieving sustainable land reform, the following were the findings:

The majority of interviewees felt that CPI frameworks are not appropriate for sustaining land reform. Of the four DLA officials interviewed, two felt strongly that the current CPI framework is not an appropriate instrument for achieving sustainable land reform, and that it promotes the "rent-a-crowd" practice because of the small size of the grant. It also forces people from different cultures and backgrounds, with little prospect of forming a long-term working relationship, to try and do business together. "Although CPIs, particularly Communal Property Associations (CPAs) are legal institutions, their recognition by commercial banks is one aspect that renders them unattractive and ineffective", said Mr Mashaba (interview: 20/11/2008). When asked for his views on group tenure systems as a tool for land reform delivery, the official from the Land Bank said: "this is a recipe for disaster. History has taught us the hard way in that all the land reform projects under the system in question collapsed due to, amongst others, in-fighting and lack of co-operation. This can also be attributed to lack of vision and common purpose" (Mr Ndeko[1]: interview, 17/11/2008).

[1] Not his real name

The officials interviewed indicated that because these CPIs are often made up of too many beneficiaries from different backgrounds, with different interests, they are prone to perpetual conflicts, hence some projects fail to take off. They indicated that it is difficult for decisions to be made in such groups as most members do not even attend meetings. One official from the Department of Agriculture, Mr Kozi[1] (interview: 19/11/2008) said: “the communal system of land tenure fails to identify beneficiaries who really need land for production purposes…. the manner in which services are rendered will favour those who use those services effectively”. These officials felt that the size of the groups needs to be reduced in order to improve service delivery to land reform beneficiaries.

During an interview, a beneficiary from the New Life Kibbutz Communal Trust said “being in this trust has been of no value; it has been stressful and brought anger into my life. There is no unity in the group, some members, especially the trustees, wanted to benefit quicker than others. As for the trust deed, it caused the division within the group” (Rida: interview, 16/11/2008).

Four of the fifteen interviewees felt that there was nothing wrong with the CPI framework, and that it will work much better with small groups. One official from the Department of Land Affairs felt that group ownership should be preferred, especially in cases where the need for land is mainly for security of tenure, i.e settlement. However, in cases where the same group is interested in farming commercially, they should register a private company or a close corporation to run the business aspect of the land.

4.2.3(b) Support Given to CPIs

The next theme with regard to the appropriateness of Communal Property Institutions as vehicles for sustainable land reform delivery related to the support offered to these institutions. The research found that there is some form of support given by the Department of Agriculture and the Land Bank. However, officials interviewed from the Department of Land Affairs conceded that there is no support given to the CPIs before and after their establishment and this contributes to the decline of the projects. Another official attributed this lack of support to lack of capacity within DLA to monitor all CPIs.

All the beneficiaries interviewed from both the New Life Kibbutz Communal Trust and the Simangwe Poultry and Distribution indicated that the support they got from both the Departments of Land Affairs and Agriculture was minimal. They acknowledged that they were offered some training, but felt that without agricultural inputs support, the training was not enough.

The officials from the Department of Agriculture and Land Administration confirmed that they do render technical support to land reform beneficiaries on various commodities such as crop production and animal production, offering short courses on project management, conflict management and financial management, marketing and institutional support. They also offer infrastructural development support through the Comprehensive Agricultural Support Programme (CASP) to stimulate production. They also indicated that it was difficult to work with CPIs because there is a lack of commitment, co-operation and lack of access to financial resources.

The Land Bank official confirmed that as a bank, they have financed eight land reform projects in the Nkangala district and that these projects failed to honour their commitments in terms of loan repayments. He attributed

this to lack of commitment from the beneficiaries, poor financial management, marketing risk, and to a certain extent, the current economic conditions. The official confirmed that as a bank they do not have any capacity to offer technical after-care services to land reform clients and they rely on their "good and healthy mutual relationship they have with the local Department of Agriculture" for extension support services.

4.2.3(c) Alternative form of Land Ownership

The third sub-theme that emerged under this theme relates to alternative forms of tenure. The general feeling of the interviewees was that individual tenure would be more appropriate in achieving sustainable land reform. Three of the four officials interviewed indicated that individual or household land holding would be the most appropriate form of ownership, as in group ownership some people become 'free-riders'. One of the three officials, Mr Mabasha[1] (interviewed 20/11/2008) said: "I prefer individual title because collective ownership is problematic as it creates entitlements that are not supported by commitment on the part of the group". This form of ownership will, according to the respondents, lessen the unmanageable levels of conflict that are currently experienced. Another official indicated that CPIs promote elitism and patriarchy. This is so because knowledgeable members within the institutions are the ones with access to information and often use this information for their individual gain, and furthermore that men within these institutions still have power over women.

The beneficiaries who reside on the land declared that during the times of the previous owner, they had jobs, food, the lands were worked and all the enterprises on the land were active, but now, because of the group ownership, the land is lying fallow and they are hungry. One beneficiary said: "the trustees in our trust signed for a R160,000 loan from the Land

[1] Not the real name

Bank without informing us, but now we are told that we are all responsible for repaying the loan. Because of the failure to honour the loan, we will be blacklisted for the money we never even saw" (Mr Mda, interview: 18/11/2008). Most of the beneficiaries from both projects indicated that they would prefer individual or family land ownership if they had a choice because the groups face challenges with regard to the management of the land.

4.4 Concluding Remarks

The research found that the use of Communal Property Institutions, as currently configured, work against the attainment of sustainable land reform. The failure of these systems to achieve sustainable land reform can be attributed to lack of capacity by officials and the land reform beneficiaries, lack of commitment from the beneficiaries, poorly drafted and inaccessible constitutions. It is clear that there is no proper monitoring within the Department of Land Affairs to ensure that once the CPIs are established there is proper compliance with specific legislative requirements for each type of CPI.

It is also clear that the size of the grant offered by the Department contributes to the "rent-a-crowd" practice as the more people there are in a CPI, the greater the amount of grant the CPI gets.

The Communal Property Institutions' constitutions are not properly workshopped with the beneficiaries as most of them do not seem to know what these entail. There is no clear definition or understanding of individual rights within the CPIs. This could be attributed to the lack of access to this trivial document by ordinary beneficiaries. Individual forms of tenure emerged as the preferred form of land ownership.

In the next chapter, I will give an analysis of the data as presented, interfacing with the literature reviewed as well as my personal views.

CHAPTER FIVE

DATA ANALYSIS

5.1 Introduction

While Chapter 4 presented the data using categorization according to themes and sub-themes, here the data is analyzed, linking it to the literature reviewed, the project documents analyzed and the researcher's opinion. The data collected during this research was aimed at gaining a deeper understanding of whether the use of Communal Property Institutions (CPIs) for purposes of land holding and management contributes to the collapse of land reform projects.

5.2 Analysis of Data

5.2.1 The use of Communal Property Institutions in Land Reform

As indicated in the preceding chapter, this question needed to establish the assumptions underpinning the use of CPIs in land reform. It is clear from the data presented that the rationale behind the use of these institutions is mainly to counteract the limitations of the grants provided by the Department of Land Affairs. People come together to form a group so as to pool grants to make up the purchase price of the land. This implies that the bigger and more expensive the land, the more people will be recruited to join the group, a phenomenon commonly known as "rent-a-crowd". What informs the criteria for renting such a crowd is not clear. One would like to assume that the 'crowd' would be made up of people with similar interests or backgrounds. As noted in the reading by Obala and Kanyungu (2006), any form of communal tenure should involve some kind of strong social and cultural relations, like family links, ethnicity, or similar

interests governed by trust. This view is also supported by Lamba (2005) when he writes that social relationships are embedded in communal land tenure. From the New Life Kibbutz Communal Trust experience, it is clear that the assumption of social capital as outlined in the literature review is not present. This group did not have any homogeneity, although it may have had if it had comprised only members of the same church. This does not necessarily mean that the group would have common interests or even trust, which forms the crux of social capital.

One wonders how a farm that has only been able to sustain one white farmer and his family, while creating jobs for a number of farm workers, who in turn sustain their families, suddenly has to create a living for a large number of beneficiaries and their families. What are the plans that the Department of Land Affairs has in place to ensure that productivity of these farms is maintained at levels that would ensure sustainable food security and even security of tenure? Even if there are such plans, how will commitment and the will to farm the lands from beneficiaries be ascertained?

Another interesting deduction that one can make from the data presented in the preceding chapter is the fact that although legal institutions for land-holding purposes like Trusts and Communal Property Associations have constitutions as a statutory requirement, most beneficiaries are not able to identify with these documents. This became very clear during the interviews with the beneficiaries from both the New Life Kibbutz Communal Trust and the Simangwe Poultry and Distribution. This means that the documents are of no value to the very same beneficiaries they (documents) are meant to guide. The argument made by Kariuki (2004) that constitutions for the Communal Property Institutions are often drafted on a *pro forma* basis, seems to be the norm.

The fact that some beneficiaries are not able to access such crucial documents is cause for concern. The fact that land reform beneficiaries lack awareness of the legislative frameworks and/or constitutions governing their legal entity of choice is something that can probably be blamed on the fact that the documents are written in a language that most of them do not understand. Even if these documents were to be translated, it is unclear whether this would make them more accessible or even make any difference at all.

If one looks at how indigenous tenure systems have worked over generations, it is fascinating to observe that people under this form of tenure did not have written rules governing the use of their land, but rather authority from those in charge of the land, namely their traditional leadership. As indicated in the reading by Platteau (1995), the traditional authority decides on the allocation of available lands, distributes land use rights to member families, supervises land exchanges, and most importantly, litigates land-related disputes. People in this form of tenure are governed by a tacit ethical code. This practice is not present in Communal Property Institutions. One can assume that the level of authority that the committees or trustees of these CPIs have is not recognized by their members. Traditionally, people have always shown great respect for traditional authorities, a practice embedded in African culture that has been passed from generation to generation. Is the 'equality' clause inculcated in the constitutions for CPIs creating the problems now seen in these institutions?

Making matters even more complicated is the argument presented by Alexander (2007) that there has been increasing inequality among individuals over the years. Trust has decreased among individuals, making it more difficult for them to relate to each other's expectations and undermining the conditions necessary to sustain long term co-operation. This may be something that the land reform policies have overlooked in

expecting people to work together in groups. If Alexander's argument is accepted, then this may give rise to questions about the validity and relevance of the Communal Property Institutions in today's changing society.

One of the critical questions that emerged during this research process is whether the officials in the Department of Land Affairs are conversant with legislation like the Trust Property Control Act that regulates the formation and use of Trusts. If the Department is not able to intervene confidently in matters affecting Trusts, for example, what would the point be of continuing the use of such institutions as vehicles for land-holding and management? It is also clear from the findings that the Department of Land Affairs has little capacity to monitor the CPIs once land has been bought for them.

5.2.2 Rights of Individuals

The research question under this theme needed to establish how the rights of individuals are defined within the Communal Property Institutions. It is apparent from the data presented that land reform beneficiaries generally lack awareness of their rights and responsibilities as individuals and those who know these rights are generally those in positions of power, such as the Trustees. Those in power within the CPIs usually use this knowledge to promote their own interests or to oppress the ordinary beneficiaries, thereby abusing their power. Kariuki (2004) outlines the principle governing common property ownership, namely democracy, inclusion, non-discrimination in any form, equality, transparency and accountability. None of these principles were observed in the projects studied. Kariuki (2004) further states that constitutions for these institutions are often drafted on a *pro forma* basis and insufficient attention is given to providing procedures for the determination and allocation of individual user rights. This implies that there is a 'one size fits all' approach in developing

constitutions for these CPIs and this has proven to be disastrous in any development-oriented practice.

It is also clear that the level of engagement between land reform beneficiaries and the officials from the Department of Land Affairs on the formulation of these legal institutions is nominal. The fact that the constitutions for these legal entities are written in a language that the beneficiaries do not understand defeats the purpose of having them. From my general observation in any land reform project, including the projects selected for this study, a majority of land reform beneficiaries are not able to read or write, much less understand English as the language in which the constitutions are written.

This research also found that there is a lack of balance between individual rights and those of the group. In the reading by Bruce (1993), he talks about the challenges of consistency between individual rights and those of the group, as in most cases the group may prohibit individual activities which in turn constrain innovation. As one of the respondents has stated, even if as an individual he may want to use some part of the land on his own, the group has to give him permission to do so, which has proven uworkable. This may also explain why the farms for the two projects, and many other land reform projects, are lying fallow and neglected. The saying in my introduction on the chapter on literature review, that 'that which is everyman's is no man's' – seem to be visible in most, if not all, land reform projects, and this indeed constitutes a 'tragedy of the commons'.

Individual rights are never allocated to beneficiaries within a group. In the literature reviewed, the article by Platteau (1995) categorically asserts that individual tenure can exist under a general system of corporate/ communal ownership, that is, land use rights especially on a specific plot of land can be properly allocated to individuals or a family. This kind of rights

allocation was not observed in any of the projects studied, and to the best of my knowledge and personal experience based on my tenure in the Department of Land Affairs, this has never been done.

Although the beneficiaries from the Simangwe project engaged in a process of informal allocation of rights, they were no specifics with regard to how these rights are supposed to be exercised or what happens when one member fails to exercise those rights. What is interesting in the Simangwe case is that they still maintained during the interviews that they did not have real rights and that they have been operating on the basis of trust. As can be seen on the attached Certificate of Incorporation (Annexure C), the main members owned equal individual share of 15 per cent of the close corporation and their dependants share the remaining shares, thus each owns 11 per cent of shares. However, the members did not seem to know what that shareholding means to them and how this translates into their rights as individuals.

One wonders who is responsible for creating this awareness among the beneficiaries. Should it be the officials from the Department of Land Affairs or should it be assumed that when people register certain kinds of legal entities like close corporation and private companies, which are generally business-oriented, they must take the responsibility themselves to become acquainted with the provisions of their legislative frameworks.

5.2.3 Appropriateness of CPIs for Achieving Sustainable Land Reform

The research question needed to establish whether Communal Property Institutions as presently configured represent an appropriate vehicle for achieving sustainable land reform. The findings from the research indicate that the CPI frameworks are not appropriate for sustainable land reform. These findings resonate with McCuster (2004) argument, that the tenure

system within CPIs is confusing and does not provide for widespread security to its members.

The data in the preceding chapter captured issues of support offered to the CPIs which raises some contradictions in terms of what some critiques of land reform (Cousins, 2002 and Kariuki, 2004) say about the lack of support in land reform projects as being the main reason for their poor performance.

In the study, two projects were presented, one representing people with diverse backgrounds and interests, with a large number of beneficiaries – New Life Kibbutz Communal Trust. They benefited from support from the Department of Agriculture and the Land Bank. The other group, Simangwe Poultry and Distribution CC, consisted of people who had common interests, they were friends, they were all women who belong to the same church and had been involved in some kind of businesses at individual level. The group is small and has been able to get extension support from the Department of Agriculture.

The question that one asks is whether the size of the groups in the legal entity makes any difference in sustainability of land reform. This will be followed by whether there is any significant relationship between the support to these projects and the level of success. At this point one can agree with Alexander (2007) that society has changed and it has become significantly difficult for people to relate to each other's expectations. Social cohesion has come under threat.

One of the interviewees from the Department of Land Affairs raised concerns that some legal entities, like Communal Property Associations, are not recognized by commercial banks for funding, yet the Land Bank confirmed that they have funded eight land reform projects in the Nkangala District, which have failed to honour their commitments in terms

of repaying their debts. Maybe one needs to question the kind of support that should be offered to land reform beneficiaries. Do these beneficiaries really need to become farmers? One is tempted to agree with the statement by the chief economist from the Industrial Development Corporation (*City Press Business*: 19/10/2008) and the CDE that what most land reform beneficiaries want is a job, not to become farmers. Is the government's land reform programme too ambitious, as some critiques like the Centre for Development and Enterprise (CDE) have suggested?

Although a few participants did not see anything wrong with the use of CPIs, they felt that the institutions will work better in small groups. This view is countered by the Simangwe project scenario, which provides a clear example of social capital going wrong and presents the question: is it about the size in reality?

It is interesting to note that even the interviewees who felt that there was nothing wrong with the use of CPIs, suggested that individual form of tenure is more appropriate and will ensure sustainability of land reform projects. In his study, Kariuki (2004) found that individualization of tenure in Kenya led to overall increase in productivity of land. Most writers have argued that individual land titling is the best instrument for improving land tenure security (Trewin, 2002; Adams, 2003; Platteau, 1995; Midheme, 2007 and Kariuki, 2004). These writers, however, acknowledges the costs that come with this form of tenure.

5.3 Concluding Remarks

From this analysis, it can be said that Communal Property Institutions in their current form do not enhance sustainability of land reform projects. This has been proven by the research findings and substantiated by the findings from the literature reviewed. The communal land tenure system in its current form has proven to be complex, both for the beneficiaries

involved and the officials responsible for instituting them. It is also clear that communal forms of tenure do not necessarily provide security of tenure for individuals.

Although some critiques have argued against individualized form of tenure because of its exclusivity, it became apparent in this study that this form of tenure is the more preferred. Indeed, if one looks at the most successful commercial farmers in South Africa, one notices that such farmers hold their farms as individuals or trusts within a family.

In the next chapter, the researcher will provide conclusions to the study followed by recommendations on making sustainable tenure reform in South Africa.

CHAPTER SIX

CONCLUSION AND RECOMMENDATIONS

6.1 Introduction

This study was aimed at examining the contribution of the communal land tenure systems, in the form of Communal Property Institutions, to the poor performance of land reform projects in the Nkangala District, Mpumalanga Province. It was also aimed at gaining a deeper understanding of the relevance of these systems in today's changing society, and how these systems can be improved to benefit land reform beneficiaries.

In chapter two, the researcher undertook a review of literature on land tenure, paying particular attention to communal forms of land tenure. This provided some scholarly insights on the area being researched. Chapter three outlined the methodology followed by the researcher in undertaking the study. The qualitative research approach was used in the study. In chapters four and five the data collected through in-depth interviews, field visits and documentary analysis was presented and analysed through the use of categorization.

Three categories were developed, namely:

(a) Land reform and the use of Communal Property Institutions (CPIs);
(b) Rights of individuals; and
(c) The appropriateness of CPIs for achieving sustainable land reform.

My conclusion and recommendation will be built around the appropriateness of the Communal Property Institutions in achieving sustainable land reform.

6.2 The use of Communal Property Institutions in achieving sustainable land reform

In my introduction to chapter two, I spoke of the 'Tragedy of the Commons', a concept coined by Garreth Hardin. Hardin painted a scenario to illustrate the Tragedy of the Commons, postulating an agrarian community where all citizens graze their livestock on a commonly owned field. The field can only support a limited number of animals before it is denuded and ruined. The benefit for one head of cattle added to the grazing field is accrued to the individual owner alone, while the harm to the commons is shared proportionally across all its users. All the users can decide to put in as many cattle as they wish, thereby damaging the fields for generations to come. What happens if the very same fields are lying fallow and no one can work or transact on them? This to me is a tragedy, especially in the wake of the national and global food shortages.

Based on the research findings and the above analogy, one can conclude that Communal Property Institutions in their current form are not an appropriate vehicle for sustainable land reform delivery. The manner in which they are configured contributes to the collapse of land reform projects. The institutions are not properly formulated and do not meet the needs of the intended beneficiaries. Beneficiaries' individual rights are not properly defined and allocated to them. Although there are legal frameworks guiding the use of these institutions, there are problems of compliance as no proper monitoring and evaluation is done. It became clear in this study that officials from the Department of Land Affairs are not capacitated to properly guide and empower land reform beneficiaries in the CPIs.

Studies in South Africa and Africa in general have revealed that land held in common fails to produce profitability and satisfy the hopes of the members involved. In the current form of communal tenure, it becomes

difficult for beneficiaries to become economically independent and to value the asset that they own as a collective; hence there is lack of increase in productivity, but rather an increase in abandonment of such assets. One can also conclude that the South African Communal Property tenure regime is premised on some failed hypothesis other African countries have attempted, that is, trying to institute freehold tenure within the context of a group.

One can also conclude from the findings of this research that individual land tenure is more preferred as a means of attaining sustainable land reform. The group form of ownership was found to be limiting and conflict-ridden. The groups in a CPI are organized mainly to acquire as many grants as possible. The element of homogeneity and trust, which forms the basis for social capital, are not considered when formulating these groups. It was also found that group dynamics pose challenges, even if the group is homogeneous. One can conclude that the size of the group does not necessarily matter when it comes to group dynamics that can limit performance.

A critical issue that can be raised in the implementation of land reform is how land reform beneficiaries can be held accountable for the grants they get from the state. History has taught us that if people get things for free they tend to misuse them as they have nothing to lose. People should make a real contribution to the acquisition of land. If people commit their own hard-earned resources to anything, they tend to ensure that they get a return on their investment.

In conclusion, communal ownership of land is highly complex and does not always promote economic viability within the land reform context.

6.3 Recommendations

This section presents recommendations to the implementers and policy-makers of land reform that can help to make land reform sustainable.

It should be acknowledged that land reform in South Africa is a complex programme that is open to criticism. In order to make the programme work for the people of this country, it is crucial for policy-makers to objectively understand the nature and extent of the demand for land. Although the Department of Land Affairs is mandated to implement land reform, it is not known how many people want land and for what purposes. Although the manner in which Communal Property Institutions are currently configured can be blamed for the collapse of most land reform projects, it seems that there is no proper interrogation of the needs of people within these institutions. People seem to just come together only to be able to get enough land acquisition grants with less interest in agriculture.

If government is indeed committed to the establishment of a new farming class, the group freehold of land in the form of CPIs needs to be reviewed. This will require some policy shift away from group ownership to individual tenure, particularly in cases where people have ambitions to farm commercially or have household tenure with proper titling. Studies in developing countries have shown that group tenure does not create conditions suitable for economically viable agricultural production.

Government should objectively take stock of the land that has been bought. More money is continuing to be spent and large hectares of land acquired, but productivity on these farms is declining. There is definitely no return on investment on the part of government when it comes to land reform.

It cannot be denied that the shift from group freehold tenure to individual freehold will create untenable pressure on the country's fiscas. This situation can be averted by introducing a different form of funding for different land reform projects. It could be recommended that projects that have to do with the security of tenure for farm workers and occupiers on farms should have 100 per cent subsidization by government. However, for people who want land to farm either commercially or for subsistence purposes, there should be different financing packages, which will require people to tangibly contribute towards the acquisition of land.

Soft loans with minimal interest rates, supplemented by minimal grants and subsidization on inputs can be made available to such people. This will prevent the "rent-a-crowd" practice that has been a common practice in most land reform projects. It is common knowledge that giving people things for free does not teach them to be responsible and accountable. People have to know that taking out a loan and servicing such a loan has implications for their long term financial well-being. This will encourage them to work harder and maintain the productivity of the land parcels they acquire. The 'free rider' principle needs to be discouraged at all costs.

If the option of group freeholding of land is adhered to, the entire system of policies around Communal Property Institutions as well as its implementation, will need to be reviewed. Land reform beneficiaries cannot be encouraged to register legal entities that leave the Department of Land Affairs with no power to intervene if things go wrong within the institution. The systems need to be structured and maintained in such a way that they make business sense. This will require the Department of Land Affairs to be properly and efficiently staffed with knowledgeable officials who will monitor and evaluate the CPIs accordingly. The Department will have to introduce policies that enable it, legally and constitutionally, to repossess CPI lands that are not being used productively without any compensation to such CPIs. It will, however,

remain a challenge to successfully assess the level of commitment of the people within CPIs before land is bought. Commitment on the part of beneficiaries is critical to the success of land reform projects.

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APPENDICES

Appendix A: Interview Schedules

Interview Schedule For Land Reform Beneficiaries (A1)

A. What are the assumptions underpinning the use of Communal Property Institutions in land reform?

1. What is your understanding of the value of using a CPI for land holding and management purposes?

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2. What is your understanding of the value attached to the provisions of your constitution towards land holding?

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3. What concerns have you got about the use of CPI as a management tool for land holding?

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4. What alternatives or options existed for you in constituting this CPI and why did you choose the one you have?

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B How are the rights of individuals defined within the CPI?

1. What rights and obligations do you have as an individual within the CPI?

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2. How were individual rights allocated to the members of the CPI?

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3. To you as an individual, what would you consider to be the most important issue stipulated in the CPI constitution?

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4. How do individual members of the CPI exercise their rights in relation to use of and access to the land?

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5. What is the most distinguishing feature of your rights as an individual from those of the group?

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C. Do CPIs as presently configured represent appropriate vehicle to achieving sustainable land reform?

1. How confident are you that the CPI as currently constituted provides the most effective instrument to land holding and use?

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2. Are you aware of any support from the Department to the CPI? How can this be improved?

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3. Given a choice, which form of land ownership would you prefer?

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4. What are the challenges faced by the CPI in managing the land?

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INTERVIEW SCHEDULE FOR DLA OFFICIALS (A2)

A. What are the assumptions underpinning the use of Communal Property Institutions in land reform?

1. What may have been the rationale for the use of CPIs for land holding and management?

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2. What is the level of awareness by members of the CPI of the relevant legislative framework governing their legal entity?

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3. How do members of a CPI see their constitution as something they can utilize to promote their interests?

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4. Are there measures in place to monitor compliance of CPIs to the relevant legislation under which they are established, i.e. submission of annual audited financial statements, annual reports, resolution of disputes, etc.?

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B. How are the rights of individuals defined within the CPI?

1. Can you identify the key elements that form the basis for a CPI constitution?

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2. How do members of the CPI exercise their rights?

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3. What is your experience of how CPIs exercise these rights?

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4. Is there a relationship between what the rights are in terms of the constitution and what is practiced?

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5. Is there a balance between individual and group rights?

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C. Do CPIs as presently configured represent appropriate vehicle to achieving sustainable land reform?

1. What are the challenges faced by CPIs in land reform?

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2. Do you view the current CPI framework as an appropriate instrument for achieving sustainable land reform? Elaborate

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3. What is your assessment of the support given to these CPIs before and after their establishment?

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4. What practical redress measures exist to correct dysfunctional CPI?

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5. What in your opinion would be the most appropriate form of land ownership and why?

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4. Any other contribution you may want to add to any of the comments given?

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INTERVIEW SCHEDULE FOR OFFICIALS FROM DEPARTMENT OF AGRICULTURE IN THE NKANGALA DISTRICT (A3)

1. What support is being offered to land reform beneficiaries owning land through a communal property institution, i.e. CPA, CC, Co-op, Trust?

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2. What is your experience in servicing beneficiaries on land owned through a communal property institution?

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3. Is the current communal system of tenure used as a vehicle for land reform delivery affecting the manner in which services are offered to land reform beneficiaries? Elaborate

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4. What alternative would you suggest to improve service delivery to land reform beneficiaries?

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5. Any other contribution you may want to add to any of the comments given?

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INTERVIEW SCHEDULE FOR LAND BANK OFFICIALS (A4)

1. How many land reform projects have been financed by the Land Bank since inception of land reform in 1995?

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2. What is the general performance of these projects, e.g in terms of loan servicing?

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3. What support is being offered by the bank, singly or in conjunction with other arms of government, to land reform clients?

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4. What are the challenges faced by the bank in financing projects on land owned by Communal Property Institutions (CPAs, trusts, cooperatives, etc)?

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5. What are your views with regard to group tenure systems as a tool for land reform delivery?

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6. Any other contribution you may want to add to any of the comments given?

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