

A HISTORY OF LAND TENURE IN THE HERSCHEL DISTRICT, TRANSKEI

A thesis submitted in partial fulfilment of the
requirement for the degree of

MASTER OF ART
(RURAL DEVELOPMENT)

RHODES UNIVERSITY
GRAHAMSTOWN

The financial assistance of National Research Foundation (NRF) towards this research is hereby acknowledged. Opinions expressed and conclusions arrived at, are those of the author and are not necessarily to be attributed to the National Research Foundation.

By

BRONWEN ELIZABETH VIEDGE

January 2001

ABSTRACT

A historical review of land tenure systems implemented in the Herschel district, Eastern Cape, South Africa and an analysis of the strengths and weaknesses of each system in conjunction with international experience of land tenure provide guidelines as to what elements could be incorporated in the formulation of a new integrated land tenure system. These guidelines together with the information obtained from a questionnaire survey amongst the Herschel population provide the government of South Africa with a broad outline of an integrated land tenure system that could serve to link the former homelands to the land tenure system that currently operates in the rest of the country thereby removing one of the obstacles to rural development and land redistribution.

ACKNOWLEDGEMENTS

I would like to thank the following people for the help and support that they have provided in the course of this thesis. Professor F.T.Hendricks for obtaining funding and supervising the work, Professor R.B.Mqeke, Guy Toto, Babalwa Sishuta for her work in tracking down relevant research material, Zweli Vena for help in obtaining archival material, EDA (Lady Grey), Aubrey Fincham for arranging meetings and transport, the people of Herschel, the Herschel Farmers Association, the Surveyor-General's office (Cape Town), Piet Jonas, Henk Steyn, Department of Land Affairs and Agriculture (Sterkspruit), Rosalie Kingwell for articles, Dr S.P. Madikizela for advice and my parents for giving me the opportunity to further my studies.

TABLE OF CONTENTS

Abstract

Acknowledgements

Chapter 1 **The History of Herschel.**

1.1. Description of the Study area	6-7
1.2. The history of the Herschel district	7-9
1.2.1. Emigration from Herschel	9
1.2.2. The revival and downfall of the peasantry	9-11

Chapter 2 **The types of land tenure in the Herschel district and their origin.**

2.1. The history of land tenure in Herschel	12-15
2.2. Land tenure types in Herschel and their origins	15
2.2.1. Freehold tenure	15-20
2.2.1.1. The origin of freehold tenure in South Africa	15-18
2.2.1.2. The freehold tenure debate	18-20
2.2.2. Quitrent tenure	20-23
2.2.2.1. The origin of quitrent	20-22
2.2.2.2. The quitrent debate	22-23
2.2.3. Communal tenure	23-32
2.2.3.1. The origin of communal tenure	23-26
2.2.3.2. The current situation and its history	26-28
2.2.3.3. The differences between communal and traditional tenure	28-30
2.2.3.4. The communal tenure debate	30-32
2.2.4. Trading Stations	32

<u>Chapter 3</u>	Methodology and results	
3.1. Research goals		33
3.2. Methodology		34
3.3. Data analysis		34
3.4. Results		35-37
3.4.1. Tenure security		36
3.4.2. Peoples needs		36-37
3.4.3. Cultivation Problems		37-40
<u>Chapter 4</u>	Results	
4.1. The current situation in the homelands		40-42
4.2. Land tenure conditions in the homelands		42-44
<u>Chapter 5</u>	Conclusion	
5.1. Elements to be incorporated in a land tenure system		44-47
5.2. Concluding remarks		47-52
	Bibliography	53-65
Appendix 1	Questionnaire	66

CHAPTER ONE

1.1. DESCRIPTION OF THE STUDY AREA

The Herschel district forms a triangular shape bordered by the Zastron district of the Free State, Lady Grey and the New England district of Barkly East and the Lesotho border. The area is about 195 000 ha with an estimated human population of 250 000 (Nel, 1996:7) and an annual rainfall which varies from 500mm in the drier area near the Orange river in the north west to more than 1000mm in the Witteberg in the south east (Fort Hare, 1971). The veld type consists of a short dense grassveld which varies from sweet grass to a mixture of sweet and sour grasses that grow on a highly erodible black turfy soil derived from Drakensberg basalt which with mismanagement becomes a Karroid False Fynbos (Fort Hare, 1971:7-19). The total amount of available grazing in 1971 was estimated at 181 700 morgan with an estimated total stock carrying capacity of 51 914 (Brown, 1971:175). A 1980 survey estimated an overstocking rate of 28% for the entire Transkei region (Hawkins Associates, 1980) with a herd take-off of 5,4% (Bembridge, 1984:70). This growth in livestock has been blamed by conventional theorists for the severe overgrazing and soil erosion in the region.

Herschel district is mountainous with altitudes varying from 1400m to 3000m. As a result the area suffers from low temperatures in winter and a long frost period (Fort Hare, 1971:44). The only tarred road in the area links the main towns of Herschel and Sterkspruit with Lady Grey and Zastron. Sterkspruit is the economic centre of the region with most of the trading activity taking place in and around it. Its main trading partners are Zastron, Lady Grey and Lesotho. Most of the inhabitants live either in the 76 official rural villages, the 28 sub villages or in individual homesteads dotted around the area (Steyn, 2000). Unlike other former homelands Herschel does not have a strong chieftaincy and contains only 6 chiefs and 23 headmen (Bonase, 2000). There is some controversy about this official figure as some residents claim that there are 14 chiefs and not 6. Infrastructure is almost non-existent in the area, but recent improvements have seen instalment of water systems in 33 of the villages by EDA (Environmental Development Agency), a local NGO (Green, 1997). This neglect has resulted in a poor and deteriorating road system, little or no telecommunications and bad agricultural facilities. Macmillan in 1930 maintained that the lack of infrastructure contributed to the fact that the district was easily distinguishable from its "white neighbours because it had obviously received no tangible or visible benefit from public expenditure on its needs" and "lacked attention to the simplest material wants like bridges, roads and public buildings and that in spite of being relatively well-suited to the production of the two great staples, wheat

and wool Herschel was desperately impoverished". Cosmos Desmond more than thirty years later in 1969 found no improvement in infrastructure and discovered that "all forms of malnutrition are obviously a problem throughout the Reserve,... a lot of the region is mountainous and most of the rest is badly eroded, so there is not much left for cultivation. According to the Tomlinson Report, the Herschel area is one of the most badly eroded in the whole country, yet at the time of its study had a population density as high as a hundred per square mile. The problem of a poor and struggling population persists today as it did in the 1920's when "a very large proportion depicted here exists on the very lowest level of bare subsistence (Macmillan, 1930 quoted in Desmond, 1969)". The over population, poverty, erosion, infrastructure neglect and over grazing described in 1930 and 1969 still continue in the area and ensure that Herschel still remains one of the most extensively eroded and poor districts in South Africa (Nel, 1996:7).

The present government in the form of the Drakensberg Regional Services Council is attempting to rectify the infrastructure neglect of the past with the help of EDA. Their efforts are hampered by the distances between villages, homesteads, mountainous terrain and the delays created by trying to ascertain who owns the land which they are trying to develop (Steyn, 2000). However improvements have been made in agriculture and telecommunications with the planned building of a telecommunications centre in Sterkspruit with internet, fax and phone facilities (Madikizela, 2000) and agricultural information days run by the Department of land affairs and agriculture and EDA.

1.2. THE HISTORY OF THE HERSCHEL DISTRICT

In 1975 the two magisterial districts of Herschel and Glen Grey, previously part of the Ciskei were incorporated into the former homeland of the Transkei (Stultz, 1980:114). This incorporation occurred in spite of Herschel inhabitants rejecting any incorporation into the Transkei in the referendum of 1971 (Southall, 1983:53). In protest, to this action about 65 000 people left Herschel and moved to Whittlesea or Thornhill near Queenstown which were still part of the Ciskei homeland (Platzky and Walker, 1985:186). This emigration was one of the last big emigrations which occurred in the area as the Homeland government of the Transkei in conjunction with the former South African government pursued policies to ensure that residents could not settle elsewhere.

The first known inhabitants of the present day Herschel district entered the area in the 1830's and 40's and were refugee groups of Hlubi, Tlokoa and Sotho from the Free State (Bundy, 1979). They were later joined by members of the Thembu tribe in 1852 who crossed the Kei river and settled in the Queenstown district but

were later forced to move into the interior as a result of conflict between them and other tribes, who were fleeing attacks from neighbouring chiefs disturbed by Shaka (Wilson, 1959:176). This continual conflict resulted in the Thembu eventually settling in the present day Herschel district.

From 1835 as a result of the peace treaty signed between the Xhosa and British after the war of 1834-35, the land between the Kei and Keiskamma rivers was annexed by the Cape Province and proclaimed the Queen Adelaide Province which included the area north of the Sneeuberg Mountains as far as the Kraai River. Thus the people of this area including Herschel residents became British subjects subject to colonial law and authority but retaining their lands (Jones, 1964:3).

Sir Harry Smith later divided the area into African reserves, mixed locations, mixed military settlement, European farms and white controlled towns (Fort Hare, 1971:80-7). As a result of this policy the district of Herschel's boundaries were set and the area proclaimed the Wittenbergen Native Reserve in July 1850. The area covered about 150 miles and was set aside for the habitation of "aboriginals". The demarcation of the reserve's boundaries were mostly due to the strenuous efforts of the Reverend William Shaw of the Wittenbergen Mission Station (Bundy, 1979).

More land was added during the 1850's as the population increased, creating an area of approximately 684 square miles which in 1870 was renamed the magisterial district of Herschel in honour of the famous astronomer. The area formed part of the political constituency of Aliwal North and was one of the few districts in which African voters had almost enough political power to return their own member of parliament (Bundy, 1979:146-9).

The original inhabitants of the area were followed by the Mfengu, the "bruin menschen" and other smaller groups who were attracted to the area in part because of the limited number and power of tribal authorities (Beinart, 1987:227). The first European settlers were the missionaries of the Wesleyan Missionary Society who entered the area in the late 1840's once Mosheshwe had given them permission to set up stations on both sides of the Orange River (Bundy, 1979:148-9). Over time more missionary societies entered the area and played a prominent role in the education of the local inhabitants with schools such as Bensonvale being established (Pim, 1933). The Wittenbergen Mission station later gained fame as the birth place of Olive Schreiner, author of "The story of an African Farm".

In the late 1860's the total population was estimated to be between 17 000 and 20 000 of which the largest group were the Mfengu. By 1878 the population had grown to about 24 500 of which 12 500 were Fingoes. The lack of a strong chieftaincy continued with a report from Sir Bartle Frere citing the lack of a principle chief. However he did report that about 60 headmen were in government pay. The growth in population from the 1860's was in part due to the lack of traditional authorities which attracted people who wished to accumulate wealth without tribal authorities claiming the fruits of their labour under customary law (Bundy, 1979:148-9).

1.2.1. EMIGRATION FROM HERSCHEL

This population growth encouraged emigration as people could either not survive due to increased competition for agricultural resources and needed to seek wage labour to supplement their livelihoods or they did not wish to participate in agriculture or any of its related activities such as wool washing. The first group of emigrants were 2 500 in number, who in 1875 were granted permission to work elsewhere. The second mass group of emigrants were permanent emigrants who left the district in an effort to find grazing for their large herds. This was due to the increase in cultivated land that encroached upon grazing commonage as other residents increased their crop production to meet the demands created by the discovery of gold and diamonds in the interior. This conflict between the pastoralists and cultivators increased particularly from the 1870's until 1910 when the pastoralists left the area and settled in the so called Nomansland i.e. East Griqualand (Bundy, 1979:153).

The bad seasons of 1878 and the following droughts increased poverty in Herschel, leading to the issuing of more passes in 1883 with emigrants leaving to either seek wage employment as they could no longer make a living from agriculture or leaving the district permanently to move to East Griqualand or to the Transkei in an effort to secure more land for cultivation (Bundy, 1979:153).

1.2.2 THE REVIVAL AND DOWNFALL OF THE PEASANTRY

Due to these mass emigrations, more land became available for cultivation which in conjunction with good rainfalls led to a growth in the peasantry. By 1880 considerable crop diversification was taking place with maize and sorghum as principal crops. Brigg described the diversification of the Mfengu, Sotho and Hottentot peasants into transport riding. "They own wagons and spans of oxen, with which they convey merchandise between the various towns of the colony. By these earnings they gradually rise to a condition of considerable

respectability. A good wagon, such as some possess, is worth 100 pounds upwards, and a full span of oxen not less than 70 pounds (Bundy, 1979:150-1)".

The revival of the peasantry was fuelled by transport riding and the decline of Lesotho's export of wheat to the Free State after 1866 which opened up a new market for Herschel peasants. This together with the demand for food created by the diamond and gold fields led to an expansion of the peasants market. This growth continued unabated during the first half of the 1870's even though not all members of the community benefited equally. Herschel's population became stratified with a class of wealthy peasants and a poor peasant class. Poor peasants were forced into wage labour and other occupations such as waiters and thatchers (Bundy, 1979:152).

The wealthy peasantry grew to the extent that in 1883 they were reported as trying to hire Tambookies from Lesotho as servants. Poorer peasant's livelihoods were affected by droughts, locust plagues and rinderpest which occurred between 1895 and 1899 and left many poverty stricken and either having to survive on edible weeds or leaving the district in search of employment. Luckily conditions improved during the late 1890's and early 1900's with a few good seasons, abundant harvest and the proximity of troops during the South African War who paid high wages for military labour, crops and animals (Bundy, 1979).

The gap between the rich and poor peasants grew even larger in the 1900's with many having too little land or no land. As a result of this landlessness, crops could not be cultivated for subsistence and for the first time in history large quantities of grain and sorghum were imported into Herschel in 1909 from the Free State (Bundy, 1979:157). By 1925 conditions had deteriorated to the effect that they affected both the fortunes of poor and rich peasants with the population being unable to produce enough food to feed itself in a good year. The sale of wool and grain had fallen and the cash generated by these sales did not cover the cost of food, tax and other commodities. As a result people were plunged into debt. Overpopulation was reaching crisis point and the resultant impact on the environment led to the depletion of natural resources and the spread of soil erosion. Land, which was held under communal tenure, was in short supply with some families not having access to arable plots. This led to an increase in disputes over land allotment (Macmillan, 1930).

This continuous increase in population due to people emigrating from Lesotho, forced farm removals in the Southern Free State and North East Cape, urban removals (Nel, 1996:7) and a natural growth in population struck the death knell

for Herschel's prosperous peasantry who found the size of their arable land holdings decreasing as more people were settled on the land. Overcrowding in conjunction with the lack of land created by racial legislation which limited Africans to the reserves led to the destruction of the livelihood of both rich and poor peasants and created the situation whereby the Herschel district which was previously self sufficient is now unable to feed its growing population.

CHAPTER 2

2.1. THE HISTORY OF LAND TENURE IN HERSCHEL

The lowlands are the most densely populated areas as they are nearer the main arterial route, have a higher rainfall and deeper soil thereby making them more suitable for intensive agriculture. In the past most of the progressive farmers were situated near the mission stations i.e. Bensonvale, Wittenbergen and St Michaels (Beinart, 1987:227).

By the late 1890's the problems of land scarcity were becoming apparent with magistrate D.D.Eadie acknowledging that "there are a large number of persons in the district paying precisely the same hut-tax, with only one or two lands, and in some instances no lands at all". H.G.Turner, the inspector of Locations added that "the headman and his particular friends have large lands or none at all" with some people owning herds of over 1000 head of stock in addition to their cattle and horses (Bundy, 1979:156). Complaints became more vocal with a number of families in the Wittenbergen location claiming that they had no land. These complaints coupled with the passing of the Glen Grey Act No.25 of 1894 led to government officials paying close interest to land allocation (Bundy, 1979).

Glen Grey tenure encountered huge opposition throughout the Transkeian areas it was imposed in, which eventually resulted in the abolition of the labour tax and individual tenure aspect of the Act in Herschel and the promotion of the Council system. The government felt that the implementation of the Council system would mean that the burden of governing would be born by the reserve population and not the Colonial government. The council system was not initially promoted in Herschel but as the population increased and attitudes changed, attempts to enforce the council system were started. The people of Herschel soon came to associate any form of state initiative or intervention as a surreptitious means of introducing the Council system. Their fears were intensified by the

passing of the 1920 Native Affairs Act, which made legal provision for the extension of the Council system to all African communities. The government realised that there would be fierce resistance to the implementation of the council system due to past experience and therefore advised Herschel officials to cautiously implement the system (Beinart, 1987:232).

Whilst efforts to entrench the council system were occurring in Herschel, Transkeian Territory officials were attempting to regulate communal tenure after the failure of Glen Grey tenure. Officials in communal tenure areas had no idea of who held plots, their location or the size of their plots in spite of possessing a list of hut-tax payers who were entitled to land. This lack of correlation between official documentation and the situation on the ground created administrative confusion. Magistrates needed government to pass legislation, which would lay down guidelines to rectify the situation. The government responded with a Proclamation in 1919, which laid down regulations for communal tenure in both the Transkei and Ciskei. Government Notice 833 of 1921 built on the Proclamation and promulgated communal tenure areas in the Ciskei, of which Herschel was still part, whilst providing for the investigation of all existing arable and homestead allotments by the Superintendent of the Native Locations. The Superintendent had to pace the measurements of the plots and register them under the name of the occupier thereby removing the confusion and fighting over who owned what land (Beinart, 1987:232).

As a result of their work, Magistrates would be able to have a permanent and complete land register at their disposal wherein all new land would be similarly entered. Certificates would be issued to all registered plot holders as evidence of their rights and all land not registered by a specific date would revert to commonage and be available for reallocation. This legislation enabled officials to gain tighter control over the process of allocation, which was previously the headman's domain. Magistrates also gained the right to inquire into the distribution of land and order its redistribution if its allocation was suspicious. Plots could be concentrated into one holding per family with a specified maximum plot size of 5 morgan for arable plots (Beinart, 1987:232).

This legislation was never fully implemented in Herschel as people assumed land registration was an attempt by government to introduce the council system and therefore resisted land registration. Implementation of the legislation was further hampered by the Department's lack of manpower, skills and administrative capacity to fully implement the system. The government therefore advised the Magistrate of Herschel to proceed slowly and convince people of the advantages of land registration so that potential resistance would be defused in light of the

fact that the district had an estimated 30 000 arable and homestead sites to register. In spite of all attempts to minimise resistance, by early November 1921 the Superintendent reported that attempts to allot lands under the new regulations had failed. Opposition against registration began amongst the Hlubi and spread to the Thembu (Beinart, 1987).

In an effort to quell the resistance, the Secretary of Native Affairs in 1922 gave instructions for general implementation of Government Notice 833 of 1921. Resistance continued, with the Superintendent of Herschel reporting his lack of success at registration and pacing in 1923. The growth of resistance increased with former supporters such as the progressive farmers joining the opposition. In areas where lands were measured and paced out, people refused to take certificates. The Tugela location became the main driving force behind the opposition to land registration (Beinart, 1987:232-40). People continued resisting land registration and the council system as they saw that the entire system of land location would change and that government control over them would increase through land allocation and councils. The lack of control of traditional authorities was one of the key reasons behind people settling in the area and although land allocation was not fair, residents still retained some control over the allocation of land through community structures. The council system and the land registration system would increase the power of traditional authorities and local communities would have little or no control over unfair land distribution (Beinart, 1987:243).

Land registration would change the customs involving land distribution which had evolved over time. Land was a heritable asset which heirs gained, upon the sanction of the men of the location. Orphans were assured of at least one of their father's plots whereas the new regulations impinged upon the patterns of inheritance and removed customary protection for widows and the customary entitlement of three plots for males once they became eligible for land. Residents also feared that the certificate was a "title which would withdraw the land from control of the people and rest it in the individual" which would lead to individuals using the land without any communal constraints and they could even sell the land which would remove it from the use of the community. The people of Herschel felt that loss of customary land allocation procedures, private tenure and state control were more dangerous than any inequality which occurred in land distribution. Any inequality in land distribution could be sorted out by the local community and headman with the state's intervention only necessary in cases where traditional authorities were biased against certain individuals (Beinart, 1987:243).

Due to the resistance from the local population, by the end of 1924 the government ceased to attempt registration of old lands but insisted that all new allotments had to be registered and people who refused to participate in the process would not receive land. This process created new inequalities in land distribution as some people took advantage of other residents' resistance to the process to claim disputed land. Widows were particularly disadvantaged in this regard (Beinart, 1987:243).

The new magistrate, Whitehead, appointed in 1924 was committed to the land registration process and forged ahead regardless of any resistance. As a result he was dismissed in 1925 for increasing resistance to the registration system. Munscheid, his replacement decreased resistance by stopping any allotment of plots by officials without full consultation and maintaining a cautious but steady registration of plots. His efforts bore fruit with opposition waning by 1929 and land registration steadily increasing (Beinart, 1987:26). The government took advantage of this lull in opposition to instil a local council in 1930 in Herschel under the Native Affairs Act of 1920 and filled the seats with members who supported the system (Hirst, 1971:205-7). Therefore by 1930, the implementation of the land registration and council system had occurred in spite of the local opposition.

2.2.LAND TENURE TYPES IN HERSCHEL AND THEIR ORIGINS

2.2.1 FREEHOLD TENURE

Individual holdings were given in the Herschel district from 1877 onwards. These holdings were surveyed and each occupant received an arable allotment and kraalsite (Hendricks, 1990:26). A few allotments still exist today in the towns of Herschel and Sterkspruit (Steyn, 2000) (Bonase, 2000). Herschel residents who hold their land under communal tenure can upgrade to freehold title under the Upgrading of Land Tenure Rights Act 112 of 1991 and the less Formal Townships Establishment Act 133 of 1991 (Jensen, 1998:254).

2.2.1.1. THE ORIGIN OF FREEHOLD TENURE IN SOUTH AFRICA

The first records of freehold title being granted to Africans was in 1855, near the Mission station at Lovedale. Plots were later allocated in 1858 in the Mission Location of Durban and Newtonvale in the Peddie district. Later legislation, such as Section D of Kaffrarian land Regulations of 1858 entitled Africans to buy freehold title under certain conditions. These were that the land could not be

alienated by sale or lease either by the holders, heirs or children without the written consent of the Governor. The only people entitled to live on the land were the holder or direct descendants of the holder. Any other persons required permission in writing from the Civil Commissioner of the division. Breach of the regulations would result in freehold plots with their right of commonage being forfeited (Mills and Wilson, 1952:143-5).

The allocation of freehold plots continued with Fingoes and "Bastards" being awarded plots in the village of Carnarvon in 1863. Most of these plots were later sold to whites, with Africans retaining the grazing rights over the village commonage (Davenport and Hunt, 1974:50). The system of freehold title evolved into plots being bought on a quitrent basis with the buyer paying an annual amount that would vary according to the size of the land being purchased. This quitrent could be redeemed and in 1934 further payments (apart from arrears) were abolished (Mills and Wilson, 1952).

Freehold tenure was introduced by the colonial administration in an attempt to wean Africans away from communal tenure. Only certain lands were to be given under individual title. Sir George Cathcart explained how the system of individual titling would work, "lands held by mission stations should be defined and titles granted as freehold to the mission society to which the incumbent belonged and that the lands occupied by the mission congregations should be granted to and held in trust by certain trustees. As Africans became fit for it, in the case of the mission communities in the three frontier districts, the trustees subdivide the portion available for cultivation and grant as erven on quitrent whilst the mission retains the right of commonage over pasture lands (Davenport and Hunt, 1974:35)".

By 1922, doubts began mounting as to the viability of freehold tenure systems with a government report stating Africans still preferred communal tenure to freehold tenure as freehold tenure tied them to definite and permanent sites for houses or gardens (Davenport and Hunt, 1974:50). The Native Economic Commission of 1930-1932 concurred with this opinion and stated " the opinion of witnesses...is that while the possession of the title gives the native a large measure of personal satisfaction, there is very little difference to be noticed in the way in which the land is worked as between surveyed and unsurveyed districts. The net economic effect up to the present would seem to be that the Natives paid out large sums of money in survey fees, while any increase in production has been negligible, and high values has been created (Davenport and Hunt, 1974:50)." Their conclusion was that the lack of any increase in production was due to individual tenure being confined to small arable allotments, with the usual

size being 3 to 5 morgan and therefore in practise, there was not much difference in production between surveyed and unsurveyed districts, with the added problem that Africans were increasingly reluctant to pay the cost of the survey and title (Mills and Wilson, 1952).

African's reluctance to pay, due to certain factors, has led to few legal transfers amongst freehold owners or sub-division by survey (later abolished in 1927), as the cost was and is too high (Mills and Wilson, 1952). As a result of the above factors sub-division usually occurs informally with the headmen, male family members and villagers coming together and attempting to divide the land equally amongst heirs. Individual ownership has thus changed to become joint ownership which hinders the sale of land and results in land seldom being sold (Mills and Wilson, 1952). Illegal subdivision is still occurring with freehold land being subdivided indefinitely with the result that the plots of land are too small to use for arable means and shack farming is becoming a more viable proposition than arable cultivation. Therefore most freehold villages tend to be poor with high levels of tension between landlord and tenants (Cross, 1990:546).

Due to illegal sub-division and the increasing tendencies of heirs not to register transfer as they feel their land rights are hereditary, administrative chaos has ensued. The current situation is that no one has a clear idea of who owns the land and most freehold titles are not legally registered, making these titles illegal under the legislation governing freehold tenure (Cross, 1990:546).

Sub-division, multiple ownership and lack of legal transfers has led to most freehold land in the former homelands being retained by descendants with sales of land seldom occurring. Land sales generally only occur as a result of foreclosing of bonds registered against the property, which in scheduled and released areas such as Herschel, could only occur with the permission of the administration. Inheritance is, in general the only guaranteed method of receiving freehold land if the heir's parents were married under communion of property as Act 38 of 1927 provided Africans with the right to devolve certain property by will, including freehold property. Africans married under Christian or civil rights were not regarded as being married under communion of property unless the couple requested it under the 1927 Native Administration Act (Mills and Wilson, 1952:46-8).

Government Notice No.1664 of 1929 laid down provision for freehold owners dying intestate. Their property was then devolved according to the principles of common law if the owner was married under communion of property or anti-nuptial contract. If the owner was not married under communion of property, the

property devolved according to Native Law and Custom, which allowed only the eldest son to inherit, under the Tables of Succession with his eldest son inheriting on his death. If there were no direct male heirs, then a male kinsman would inherit the property (Mills and Wilson, 1952:143-5).

Rights of transfer were regulated by Proclamation No.117 of 1931 which made provision for the transfer of fields and building sites and for the surrender of these properties to the Crown. Registered holders of building sites and fields could not alienate, transfer or lease the property without the approval of the Governor-General. In practise only the approval of the Chief Native Commissioner was needed, although this approval was not necessary in the case of transferral of a property from a deceased owner to his heir but this transferral had to be registered (Mills and Wilson, 1952).

Leasing does occur among freeholders but only by landless members of the community. Letting seldom occurs as land holders not cultivating their fields, leave them for family members to use. Widows are generally the only members of the freeholder community to engage in sharecropping as they can not plough their land by themselves (Mills and Wilson, 1952).

2.2.1.2. THE FREEHOLD DEBATE

Cross (1985) outlines the dangers lurking in freehold tenure. Freehold tenure can lead to a loss of rights by women, and the creation of rich elite? s who buy the land of poorer members of the community thereby rendering them landless. Freehold tenure is in its self no guarantee for agricultural success without the necessary social and economic conditions to underpin it. Private land ownership and productivity have always been seen to be directly connected (Bosman, 1994:47) but Tapson (1984) disagrees as does Bruce (1996) who concluded from his work on individual titling in Kenya that individual titling does not by itself stimulate investment or production. This is borne out by the Food and Agricultural Organisation (FAO) research on rural land markets which shows that they are not efficient and are ineffective in distributing landed resources to the most efficient and effective users which goes against the theory that private land ownership and productivity are directly related (Riddell, 2000). This uneven distribution of land could be due to the market being divided into two, with the poor in one section and the elite in the other (Davison, 1987). Registration and surveying are also slow, costly, archaic and only protect a limited number of rights (Riddell, 2000).

The danger of freehold title depriving the poor and most vulnerable members of the community of land is great as Davison (1987:55) points out, because the sale of land and renting in the rural areas creates a situation whereby land becomes unequally distributed and a commodity rather than a necessity. Less progressive farmers either have to sell their land or lease it thereby increasing the potential for distress sales and the loss of livelihoods (Lawry, 1993). The poor are in the most danger as they are generally the first members of the community to sell their land (Tapson, 1984).

Due to globalisation and the increasing liberalisation of the world's economy, countries are under pressure to open their land market so that market transactions can increase thereby stimulating agricultural production (Riddell, 2000). Freehold tenure makes it easier to ascertain who owns the land in order for buying and selling and therefore might be the only way in which Africans in the homelands can become part of the world economy (Cross, 1988:34). However land markets can only occur if people have security of tenure and their property rights are recognised and protected. Freehold tenure provides all of the above and serves to give people the security to engage in market transactions (Luw, 1985:17). Agriculture would benefit from freehold tenure as land would become financial capital, which can then be used to receive credit leading to the improvement of farming operations and the acquisition of more land. Through

land sales, property could become consolidated into economically viable units, which would lead to productivity per hectare being increased and land degradation decreasing (Tapson, 1984:3).

This perception of freehold tenure decreasing land degradation ignore anthropological research and literature on communal tenure systems which show that in fragile environments common and pooled resource management systems are the most sustainable and failures are generally due to external institutional structures and not to communal tenure systems (Dasgupta, 1993). Land degradation is often incorrectly seen to be a product of communal tenure based on Garret Hardin's thesis "Tragedy of the Commons" (1968) that communal tenure creates land degradation. He concluded that common property resources shared by pastoralists led to overgrazing and environment degradation, as individual herders would maximise their herds without considering the cost to the environment, as they did not pay for the resources. This overstocking and growing populations of both herders and their animals promoted desertification in these areas. His theory built on the Lotka-Volterra model of predator-prey oscillations which emphasises that unnatural increases of the predator population i.e. cattle will ultimately destroy the prey population i.e. forage until starvation reduces the predator population (Little, 1994).

The former South African government based its policies of betterment and rehabilitation on this type of model and blamed land degradation on the inhabitants of the reserves, who were overstocking and over exploiting the environment instead of the real reasons such as overcrowding. By blaming the victims of their land policies for their predicament they were able to implement programmes such as betterment and rehabilitation schemes which whilst supposedly decreasing environmental degradation actually assisted the government in placing more people on the land in the reserves and increasing their control over them.

2.2.2. QUITRENT TENURE

Quitrent plots in Herschel were granted in the 1850's and 1860's but fell into administrative confusion in later years (Bundy, 1979:153) These plots were situated at the Bensonvale and Wittenberg Missions (Bonase, 2000). Records from the Surveyor-General indicate that 139 garden lots and 79 village plots were allocated in 1850. These plots were administered according to regulations set out under Proclamation R.188 of 1969 (Deeds Act, 1977:68). This proclamation repealed the Glen Grey Act and converted Glen Grey surveyed areas to quitrent

(Davenport, 1990:437).



2.2.2.1. THE ORIGINS OF QUITRENT

Quitrent in the Ciskei, of which the Herschel district formed part, began in 1849 under the Smith-Calderwood Location scheme in Victoria East. This scheme was later extended under the Native Locations Act of 1879, which gave the government permission to divide the land into individual lots with title granted upon payment of an annual quitrent tenure, which was set by the Governor. This system was a continuation of the system begun in the 1700's that was initially only applied to the land in the interior. This land was offered, subject to nominal quitrent for periods of 15 years to settlers, who surveyed the land by riding their horses in 4 directions from the epicentre in a straight line for half an hour (Christopher, 1984:9).

Quitrent was promoted under the 1878 Location Act, which provided for the division of land in native locations and the granting of quitrent lots to separate individuals. Building plots were separated from garden lots (Wotshela, 1994:100). Quitrent was promoted by the British in an effort to stop the sale of freehold land, which had resulted in a loss of income for the Crown. Once the property was sold the state could no longer derive any income from it. Quitrent land provided continuous income with its annual payment. The Colonial government thus proposed that a series of Divisional Land Boards be set up which would divide land into reasonable lots or farms. "Lands within the old boundary of the colony, which have been long occupied were to be granted to those squatting upon them at a moderate quit-rent upon payment of inspection and survey fees (Christopher, 1984)".

This system became known as the 1877 Crown Lands Perpetual Quit-Rent Bill, which provided for the auction of perpetual leases upon payment of a perpetual annual quitrent. Leases could be converted to freehold or perpetual quit-rent tenure. Under this legislation from 1882-1887, 3,7 million acres were converted to perpetual quitrent (Christopher, 1984).

In 1927, an attempt was made to alleviate the administrative chaos of quitrent titles due to failure to register transfers of ownership with a Bantu Deeds registry Office opened in King William's Town in 1931 for this purpose. Quitrent land could not be alienated, transferred or leased except with the consent of the State. Allotments were not liable to execution for debt, other than if a debt was secured by a duly registered mortgage bond or a debt was due to the government (Jones, 1964). Land, which was seized for debt or rebellion, could only be sold to another African. The government could not sell the land to recover debt unless the owner was dead, absconded, could not be traced and owed arrears which

amounted to 3 years quitrent. Quitrent owners who owed three years rent but remained in the village, could only have the crops on their land sold and not the land itself (Mills and Wilson, 1952). Allotments could not be subdivided or held in undivided shares except with the consent of the Minister for Bantu Administration and Development. Registered holders were entitled to grazing rights on the commonage and allotments were heritable according to the Tables of Succession and male primogeniture (Jones, 1964:25-6).

Later legislation pertaining to quitrent allotments were Proclamation 196 of 1920 and Chapter 4 of proclamation R188 of 1969 which covered surveyed lands and offered limited rights (Van der Walt, 1991:124-7). Due to the cost of surveying locations, the colonial administration later abandoned the system and consequently quitrent and freehold holders only make up a small portion of the former homeland population who have either managed to inherit these plots or acquire them from the original holders. The underlying ownership of the land is vested in the State under the 1936 Native Trust and Land Act No.18, which has the power to allot permits for sites on the commonage. No new or additional surveys were carried out after the early twentieth century and since then, administration of quitrent plots serves to only regulate existing sites. Administration involves processing applications for the transfer of title to heirs or new owners, the acceptance of quitrent fees, enforcement of regulations for the management of the commonages (McIntosh et al, 1998).

An application for the transfer of a quitrent title has to firstly receive the approval of the Traditional Authority (TA) who then transfer it to the Magistrate for investigation. The Magistrate once ensuring that no dispute exists over land ownership and that the Table of Succession has been followed, makes a recommendation, to which is attached the original recommendation, his recommendation and a affidavit from the eldest son confirming his identity. These papers were then sent to the Department of Internal Affairs and Land tenure (Ciskei) and the Department of Local Government and Land Tenure (Transkei) where officials would check the application and organise the conveyancing with the State Attorney, whereupon it is referred to the Deeds office for transfer and registration (McIntosh et al, 1998:45-6).

Share cropping occurs extensively amongst quitrenters but most people participating in this system are not landless and do it to acquire more fertile land and gain access to more land as their allotment is too small. Leasing is not common as land is usually left to family members to work whilst the owner pays the quitrent. It is illegal to rent without the approval of the Magistrate (Mills and Wilson, 1952:71-86). The right of transfer is used extensively with many sales

and inter vivos donations occurring within the family. Donation of land is popular as it provides land for people considered to be legal heirs but who, under inheritance laws are not entitled to it, i.e. daughters. The sale of land, when it occurs is normally outside the family (Mills and Wilson, 1952).

2.2.2.2. THE QUITRENT DEBATE

Little land is available in quitrent areas due to the tendency of quitrenters to keep control of the land until their heirs are old enough to take possession (BRC, 1996:20-2). Overcrowding is therefore a huge problem with many households only receiving residential sites for arable purposes (BRC, 1996:32). The system of quitrent is very inflexible and does not provide for population growth, which in the past was accommodated by nearby mission stations (Andrew, 1992:1).

The abolishment of all racially based legislation in 1991 has made quitrent titles legally insecure and redundant, which results in many quitrent holders no longer feeling secure in their tenure. They do not know who to pay quitrent too, which makes their plots liable to execution for debt (Andrew, 1992:6). The legality of many quitrent titles has long been questionable due to the unofficial transfers of land. This lack of official transfer is due to either ignorance or the perception that the family already owns the land. This has created overlapping land rights. The Native Trust and Land Act No. 18 of 1936 tried to rectify the situation by making legal provision for Commissioners to investigate titles and update them free of charge in an attempt to normalise titles. However this failed and most quitrent land is still registered in the name of the deceased owner (McIntosh et al, 1998:45-6).

The validity of quitrent titles has also been challenged by female family members who view inheritance under the system of male primogeniture as discriminatory and against the laws of the Constitution of the country (BRC, 1996:20-2).

2.2.3. COMMUNAL TENURE

The majority of the land in the Herschel district is held under communal tenure. Areas are divided into arable and residential plots with communal grazing rights. These plots are issued to holders under Permission to Occupy (PTO) certificates but the state still remains the owner of the land. PTO's in Herschel are issued under Proclamation No.302 of 1928 and Proclamation No.116 of 1949 and apply to land in districts, which have not been surveyed. Communal tenure is regarded as land which "belongs to the tribe, That the chief has the right of giving occupation to it as between the members of the tribe and the headmen again have

the right of subdivision subject to any appeal a man chooses to make to the chief. All cattle graze in common. (1883 Commission, 1883:55-6 quoted in Mqoke, 1997)".

2.2.3.1. THE ORIGIN OF COMMUNAL TENURE

The system of communal tenure in South Africa has evolved from perverted traditional systems of communal tenure and individualised tenure systems such as quitrent tenure and Glen Grey tenure. These individualised systems i.e. Glen Grey were in fact communal and promulgated in an effort to alleviate the conflict between merchants and traders who wanted Africans to have freehold tenure and farmers, politicians and mining magnates who wanted communal tenure. Merchants believed that individual tenure would increase agricultural production amongst the black peasantry unlike traditional communal tenure, which hindered production. The demand for agricultural products and livestock had increased due to population growth and the discovery of gold and diamonds (Hendricks, 1990:26-8).

This was in direct opposition to the interests of the Colonial powers, white commercial farmers and mining magnates who felt threatened by the increasing agricultural production and economic power in African areas which increased employment opportunities in peasant agriculture so that people did not have to enter into wage labour on the mines and farms. Africans gained more political power as they became increasingly able to meet the Cape franchise demands through the acquisition of land (Hendricks, 1990:26-8).

The Native Location, Land and Commonage Act No.40 of 1879 which tried to substitute individual tenure with communal tenure was an attempt to subjugate Africans and lessen the threat they posed. The traditional powers of the chiefs were taken over by Magistrates thereby undermining the political power of chiefs and bringing Africans under more direct colonial rule (Hendricks, 1990:26-8).

The debate between communal and freehold legislation regained momentum with the release of the 1883 Commission of the Cape of Good Hope recommendation of introducing individual tenure in the Transkei so that "at the earliest practical period the Native custom in matters of land tenure shall be superseded by the better system of holding land under individual right and by separate title deed (McLoughlin, 1936:104)". In order to diffuse the situation, Rhodes, the prime minister introduced individual tenure under the Glen Grey Act 25 of 1894, which provided for the survey of plots in Butterworth, Glen Grey, Idutywa, Nqamakwe, Tsomo, Umtata, Xalanga and Engcobo. Surveying eventually proved to be too

costly and with the increasing hostility and opposition in the rural areas, surveying ceased (Southall, 1983:76). The unsurveyed Transkeian districts were converted to communal tenure under PTO certificates (Carstens, 1981:6).

The introduction of the Glen Grey Act of 1894 as an individual tenure system satisfied the traders and liberals in the house as each household head received an individual arable plot of 4 morgan under quitrent title (Lekhela, 1955:33). These allotments could not be subdivided or sublet and were situated in a block so that grazing land could be fenced off (Keegan, 1975:17). The interests of farmers and mining magnates were met under the Act, which created uneconomic plots that forced Africans into wage labour in order to survive. The Act therefore served to "undermine the authority of the chiefs by replacing them with a simple system of local councils to encourage a particular brand of land holding, prevent large scale accumulation by Africans and finally to siphon off the surplus population onto the mines and farms (Hendricks, 1990:28-9)".

Africans were prevented from gaining political power as the land was deemed to be held under communal tenure which made the holders of it ineligible for the Cape franchise. Their demand for land had been curbed as each head of the household supposedly received the right to land (Lacey, 1981:16). The Native's Land Act of 1913 in conjunction with the later distorted system of communal tenure that arose based on the Glen Grey system of 1 man, ensured that the existence of a surplus labour population would continue by prohibiting African and white landholders from entering "into agreement or transaction for the purchase, hire or other acquisition...of any land (in the area allotted to the other) and of any right therein, or servitude there over (Davenport, 1990:433)".

African land ownership was thus restricted to the scheduled areas of about 10,5 million morgan (Carter and Karris, 1997:63). Under the 1913 Natives Land Act, Herschel became a scheduled area as "the whole district of Herschel...excluding Herschel township, Commonage Reserve and Lundean's Neck Police Station" thereby preventing the inhabitants from owning land outside the district (1913 Act).

By 1919 the concept of individual tenure for Africans had been crushed with the passing of a Proclamation to regulate communal tenure in the Transkei with Government Notice 833 promulgating communal tenure in the Ciskei (Beinart and Bundy, 1987:228-31). Later legislation under Government Proclamation No.302 of 1928 regulated the administration of communal villages. Under this legislation, a communal system was created which operated along the lines of the Glen Grey Act, which was supposedly meant to be structured on the traditional

system of land tenure (Mills and Wilson, 1952).

Land became divided into residential plots, arable plots and grazing land. Holders receive PTO's to arable and residential plots that guarantee grazing rights over the commonage. These plots with their differing functions are separated from each other. People seeking land have to firstly approach the Traditional authority (TA) which then gives a recommendation to the Department of Land Affairs and Agriculture that then registers and ratifies the recommendation, providing land is available for allocation and present the successful applicant with a PTO certificate (Bonase, 2000).

Land can be transferred from a holder to another member of the community who is entitled to land. Once the transfer is made the person receiving the land retains it even after the death of the former owner. Land can not be transferred to people who own land (Mills and Wilson, 1952). Land can not be mortgaged, leased, subdivided or sublet without the approval of the Chief Commissioner (Bennet et al, 1988:146). Landholders are thus prevented from becoming landless, homeless or from acquiring more land. In this way land remains available for the government to house more families (Mills and Wilson, 1952:124-32). Rights to land can be forfeited for non beneficial occupation, theft or rebellion. A holder of an allotment who does not cultivate his land for three successive years without a good reason loses the land which reverts to commonage. Allotment holders are therefore prevented from leaving the village indefinitely (Mills and Wilson, 1952:12-8). Arable land can not be leased or sold. Pastoral land may only be used for grazing and not cultivation, in order to prevent accumulation of land holdings (Rutman, 1969:469-70).

All married adult males without land are entitled to ask for an allotment. People may not create their own allotments as any unregistered field are illegal and people caught ploughing these lands can be prosecuted for ploughing commonage. In an effort to prevent people using the commonage for cultivation, theoretically holders could abandon eroded or exhausted fields by informing the TA, who inform the government officials and thereby cancel the certificate which leaves the holder eligible to apply for another plot. In practise this seldom happens as land is scarce and the threat of dispossession is great (Mills and Wilson, 1952:124-32).

Share cropping has become well-established under communal tenure as it provides land for those without, in return for either labour or seed. This system benefits allotment holders who are unable to plough all the land themselves, absent allotment holders who are working elsewhere i.e. migrants, the landless,

those wishing to increase the amount of land they have under cultivation and those wanting to plough a more fertile piece of land. However if allotment holders want others to plough their field and are absent for less than a year they have to notify the Magistrate to prevent their lands being forfeited. Allotments can also be forfeited through non-payment of local tax for more than two years (Mills and Wilson, 1952).

Sharecropping is seen as a legitimate practise but renting is illegal, even though it does occur. It does tend to be restricted to family members as the fear of losing land due to insecure tenure is strong (Lyne et al, 1996). Long-term hire is not popular, with land only being lent for short periods to obtain money. Loaning (ukubuleka) is common but only generally to relatives in trouble (Mills and Wilson, 1952:27-44).

2.2.3.2. THE CURRENT SITUATION AND ITS HISTORY

The reserves and now former homelands have always being regarded in a negative light as shown by The Native Economic Commission 1930-32 report which concluded that as a result of the practises pursued in the reserves, "a Native area can be distinguished at sight by its bareness. Overstocking is so general as to have become an evil of the first magnitude (Tatz, 1962:116-7)". Reserves are renowned for extremely low yields, declining productivity, and bad environmental management which has resulted in "denudation, donga erosion, destruction of woods, drying up of springs, robbing the soil of its reproductive properties, in short the creation of desert conditions (Tatz, 1962:116-7)". As a result most of the farmers in the reserve have to supplement their livelihood through migrant labour outside of agriculture and the reserves (Tatz, 1962).

The modern day situation in the reserves is characterised by a large landless class with endless disputes over land and complaints of unfair land distribution. In the Herschel district these complaints received media attention with newspapers reporting in 1898 that headmen were allocating big pieces of land to themselves and friends (Bundy, 1979:155). Desmond (1969:197-8) reported that some many villages in Herschel had no arable land with newly married men only receiving residential sites whilst headmen had large portions of ground.

Fields are too small to support families due to population growth and apartheid policies thereby forcing people to rely on other means of income (Butler et al, 1978). A study done in 1968 showed that 95% of the families surveyed in the homelands had land of less than 5 arable hectares (Stultz, 1980:33). A more recent study indicates that the average size of land in the homelands is 2 ha

whilst the average farm size in the rest of the country is over 1000 hectares (Jensen, 1998:256) (Nattrass and Nattrass, 1990).

These small plots are due to the division of the land into ever decreasing allotments, which enabled the government to increase the amount of people that could be crowded into the reserves (Hendricks, 1992:76-7). The limits of reserve land were set out under the 1913 Native Land Act which prohibited Africans from acquiring white owned land or managing and operating any white estates, thereby effectively boxing them in (Denoon, 1972:132). The Native Trust and Land Act of 1936 was the final piece of legislation which empowered the government to restrict Africans to 13% of the land and enforced the "planning of settlements in trust owned land which involved new demarcation of arable and grazing land, the culling of livestock and the destruction of established communities (Murray, 1984:32)?:. This land restriction in conjunction with communal land tenure "served to rivet the African people's consciousness to the reserves" by tying them to the land both emotionally and physically (Hendricks, 1992:76-7).

The Tomlinson Commission of 1955 in trying to find a solution to the increasing problem of insufficient farming land was to recommend that the reserves be divided into economic farm units (averaging about 52 morgan) and that a class of full time farmers be created. The excess population would be moved off the land into rural villages, which in the Transkei would have involved the removal of half of the population into rural villages. The government dismissed the system as being unworkable due to the increased resistance it would have created (Southall, 1983:224). Instead they implemented the betterment schemes which had been suggested by the Commission which commenced in the Herschel district in 1976 (Extension Act, 1976).

Betterment schemes involved mass removals of the rural homeland population into small villages that were surrounded by clearly defined grazing and arable lands. Two programmes were enforced under betterment, i.e. the reclamation of natural resources that had been destroyed and rehabilitation whereby western economic values and beliefs were introduced to the reserve populations (O'Connel, 1981:48)?:. The ultimate outcome of these schemes was that the vast majority of Africans lost significant access to land or the right to keep livestock in their new homes. Yawich's work (1981) highlighted the manner in which the youth and elderly were frozen out of new land allocations, with the elderly pushed to accept meagre pensions in lieu of land, in Lebowa. Community members with large herds, rarely retained access to land for cultivation. Betterment changed the livelihood of most of the population and changed the

nature of the landscape due to the majority of the population becoming effectively urban (Freund, 1976:58).

The mass overcrowding which increased under the apartheid government due to urban removals and evictions has led to an ever-increasing population and what land resources there are dwindling. A survey done in 1980 discovered a population density of 55 per square kilometre in the Transkei (Wilson and Ramphele, 1989:36). Disputes over land rights have increased due to overlapping claims as a result of people being forced to accommodate evicted Africans from outside the reserve borders (McIntosh et al, 1998).

2.2.3.3. THE DIFFERENCES BETWEEN COMMUNAL AND TRADITIONAL TENURE

There are significant differences between the communal system implemented in the former homelands and the traditional system of communal tenure. Firstly communal tenure discriminates against women unlike traditional tenure which protects women to an extent and in Keiskammahoek entitled them to field which on their death was inherited by the younger son (Mills and Wilson, 1952:12-18). Women's right to land was abolished under Section 11 (3) (b) of the Black Administration Act of 1927 which regarded women in customary unions as minors. Their husbands as their guardians had legal control of everything their wives owned. African women were prohibited from acquiring land, disposing the right of leasehold, sectional leasehold or ownership under section 11 A of the Act (Centre, 1997:104). Women can not own or inherit land under the Tables of Succession and the law of male primogeniture. The only women who can own land are elderly women or middle-aged widows (Mills and Wilson, 1952:134).

Women are opposing this legislation as their right to land is protected under the Extension of Tenure Act and the white paper of 1997 (Harley and Fotheringham, 1999:158). The 1996 constitution of South Africa prohibits "unfair discrimination" directly or indirectly against anyone on one or more grounds, including race, gender, sex, pregnancy, marital status, ethnic or social origin, colour, sexual orientation, age, disability, religion, conscience, belief, culture, language and birth". This in conjunction with Section 9(1) of the bill of Rights which states that "everyone is equal before the law and has the right to equal protection and benefit of the law" gives women the right to challenge the issue of male primogeniture and unfair land allocation (Jensen, 1998:258). In spite of the legislation women are still being discriminated against and do not enjoy access to land in most former homelands. Indications in the Herschel district are that women are not discriminated against and have in several cases inherited and own

land.

Although both systems appear the same with homesteads being built a distance apart from the arable lands and grazed restricted to the commonage there are many differences. The first is that arable, residential and grazing plots are not uniform under traditional systems nor is land restricted to a particular function i.e. only grazing. Grazing land may convert to arable land and vice versa. People are not prohibited from accumulating land holdings unlike the government communal system, which restricts one man to one plot. Inheritance by male primogeniture does not exist under traditional systems because although the eldest son receives the land, he is one of many who have land rights and his function is therefore to hold the land as a type of trustee rather than as an owner (Fazan, 1944:56-61).

Land allocation and control by salaried chiefs and headmen who acted as administrators on behalf of the state (Innes and O'Meara, 1976:71) under the 1927 Native Administration Act (Lacey, 1981:111) is foreign under traditional systems. The Black Administration Act empowered the State President to become the supreme chief of the Africans in the homelands who could recognise and appoint anyone as a chief or headman with authority over a tribe or location irrespective of who was entitled to rule under African law and custom (Hirst, 1971:207-15). The state president could also alter the boundaries of tribal lands, divide or amalgamate tribes (Davenport, 1990:436).

This assimilation of chiefs into the governing system was as a result of colonial administrations realising how tribal authorities could be used to control rural populations once they were incorporated into the bureaucracy. Chiefs were given the power to define customary law which, in an effort to regain their lost power, they started claiming as customary every law which would enhance their right of movement or settlement. Customary law was therefore twisted and used to enhance the non-customary powers of chiefs (Mandami, 1996:140-1).

Under traditional systems chiefs are seen as trustees of the land, rather than rulers and allocators. They hold the land in trust for the community to use and occupy (Kerr, 1976:30). Tribal members have equal rights to the community's land and receive their land upon marriage (Rutman, 1969:468). Colonialists failed to grasp this concept of stewardship and assumed that chiefs were rulers who controlled land allocation. This was due to their assumption that all societies operated like European societies where land was used as an incentive to inspire loyalty with rulers owning the land. Under colonial legislation Chiefs became rulers and allocators of land (Mandami, 1996:140-1).

Europeans could not understand how individual land right could become communal land rights and exist in harmony with each other (Mandami, 1996:140-1). They could not comprehend the African idea of land which saw land in the same way that "Europeans think of sunshine and air - equally necessary and equally to be shared by all members of the community according to their needs. Land had no price and was not for sale (T.R.Batten quoted in Rutman, 1969:468)". Their attempt at trying to comprehend the concept of traditional tenure led to the assumption if land was not held by an individual then all of the individuals using the land must have communal rights to the land with all land rights being equal and shared. Europeans could not understand that private ownership was not a universal concept. This gave rise to the concept of a community owning a particular piece of land and people belonging to a particular tribe. A community right to the land was created which was both exclusive and proprietary (Mandami, 1996:140-1).

By identifying the community with a tribe, the Colonialists created a situation whereby those not belonging to the community were regarded as strangers with no hereditary right to land. Yet previously strangers were welcomed as they enhanced the prestige and often the labour force of the head of the household or community (Mandami, 1996:140-1).

2.2.3.4.THE COMMUNAL TENURE DEBATE

Communal tenure has always been seen as a constraint to modernisation and good environmental management (Dasgupta, 1993). It is seen to hinder agricultural development as farmers are unwilling to invest their labour and capital in a system of tenure which produces low returns on their investment (Rutman, 1969). Investment in agriculture is not encouraged under communal tenure as for example "planting the pasture with a highly productive species is lowered by his neighbours herds being able to share equally all parts of the range under the communal grazing arrangement". No efforts are therefore made to protect the environment from soil erosion and overgrazing or to develop better livestock breeds as a farmer's neighbour gains the same amount from his efforts without necessarily the same amount of effort. Any expenditure to improve the land is not economically rational, as any investment can not be recouped through the sale of the land as farmers under the communal system are prohibited from selling the land (Rutman, 1969:470).

Land tends to remain under utilised, as it has no financial value and is not a commodity. People do not pay for the land so therefore no loss is incurred if the

land is not used. As a result arable land is frequently left uncultivated due to the shortage of productive labour created by the migrant system and lack of finance. Enterprising farmers are hindered from obtaining more land for cultivation as a) uncultivated land is only removed from the holder after a long period of no usage, b) even when landholders can not cultivate their lands, they refuse to let others use the land for fear of losing usufruct and c) the absence of leasehold or rent agreements or sale prevents an efficient system of land use (Lenta, 1982:326). This absence of renting hinders household's abilities to sustain themselves as borne out by Lawry's research (1993).

The absence of a land market prevents more productive farmers from purchasing the land of less productive farmers and accumulating sufficient land to make farming an attractive and economically viable proposition (Rutman, 1969). Research by the Food and Agricultural Organisation on land markets has discovered that they are not as efficient and effective at distributing land resources as is assumed by Rutman (Riddell, 2000). Communal use of resources does not necessarily lead to environmental degradation as most customary tenure systems are quite specific about who may or may not use resources (IDS, 1988). Boonzaier's (1987) research proved that although grazing was communal in the Namaqualand reserves, individual farmers were restricted to specific areas. Therefore in some areas, particularly arid areas, communal tenure systems tend to function more efficiently than individualised systems, as users are regulated access to water and grazing and mechanisms are in place to conserve resources at certain times of the year to guard against mismanagement (Hogg, 1987).

Communal tenure systems do therefore not necessarily reduce the incentive to invest in agriculture. Mackenzie (1990) using evidence from Kenya's Swynnerton Report which tried to create a class of progressive freehold peasant farmers, discovered that in spite of access to credit and extension services, production did not increase. Evidence from FAO studies collaborated this evidence and indicated that there was a lack of causal relationship between survey and investment in land improvements and productivity (Riddell, 2000). Bruce (1996) therefore concluded that factors other than titling must play a role in investment and increased farm production as titling by itself, obviously does not stimulate investment or production. He supported his claim from work done in conjunction with Migot-Adholla in 1994 which discovered that in areas of Kenya where land had reverted back to some sort of traditional tenure, dense investment of financial and human capital had occurred (Hunt, 1982). Platteau (1996) stresses that although it would seem that registration of title does not on its own stimulate investment, it does not mean that no positive relationship exists between the two. Manona et al (1999:4) research indicates that investment in farm improvements is more likely where individual family property rights are

secure, even if they are not formalised but have been recognised by the individual and backed up by society. Focus should therefore be turned to other factors, which inhibit investment in agriculture. Donaldson (1992) and Heron (1991) believe that the household behaviour of migrant labour opportunities and traditional land and neighbourhood ethics lead to a decrease in agricultural productivity as well as insecure titles, lack of land markets and small land allotments. Other factors include the fact that in the homelands, agricultural production is not the main function of land (Donaldson, 1992:134).

Land provides many other functions in the homelands apart from agriculture such as security for households, physical and emotional security (Margeot, 1987:534) and protection from loss of access to land (Kowet, 1978:73). Land also forms an economic support system which relieves the economy of major costs such as family housing and can act as a political resource to gain political strength through the granting of favours and for the enhancement of income by the issuing of land rights (Tapson, 1988:330).

2.2.4. TRADING STATIONS

Trading stations are held under a PTO certificate. These certificates only apply to the residential site on which the store is and does not cover the allocation of arable land. Traders have to apply for licenses to trade (Bonase, 2000). Under trading station licenses, trading stations have to be a certain distance apart (Pearce, 1988:22-3). Traders do not own the land but only the buildings upon the land, which they can sell.

CHAPTER 3

3.1. RESEARCH GOALS

The main goal of the research is to determine what kind of land tenure system the people of Herschel believe will best fulfil their needs. Their experience of past land tenure systems will have an influence on their envisagement of a new tenure system, which is why it is important to study the history of past land tenure types in the area and analyse their strengths and weaknesses.

The land tenure debate in South Africa has tended to be narrowly focused on either the benefits of freehold tenure or communal tenure. The duality of the two systems of land tenure i.e. freehold or communal which exist in South Africa has long hindered rural development and created a division between the former homelands and the rest of the country. It was hoped that the new government would concentrate their efforts on resolving the debate and implementing a new system of land tenure that would serve to unify the homelands and the rest of the country. However progress in this regard has been slow as the government has proved reluctant to implement a new system as to how the land should be administered.

The government does acknowledge that uniformity has to be achieved in land administration and tenure (Minister, 2000:6) but so far has not taken any definite action apart from implementing legislation to ensure that people do not lose their current land rights under The Interim Protection of Informal Land Rights Act of 1996 and the Amendment of the 1991 upgrading of land Tenure Rights Act, 1996. Their unwillingness to face the issue head on has serious implications for the current land reform programme.

Land tenure is one of the three pillars of land reform and is interlinked with land restitution and redistribution. By failing to focus on all three aspects, government is undermining the continued sustainability and viability of the current land reform process. The situation in the former homelands is approaching crisis point with confusion reigning over who administers the land and who has rights to what land and on what basis are they claiming ownership. In spite of not resolving the issues of tenure insecurity and overlapping land rights, the state continues with its programme of state land disposal (Daily Dispatch, 3 August 2000). This disposal of state land has simply added to the confusion around land in the former homelands.

The secondary goal of the research is to highlight the importance of land tenure and the impact it has on the local population and ultimately land reform. The

government should use the guidelines provided by the Herschel population and apply them in formulating a new tenure system, which should serve to unify the country and resolve the issues of land rights and tenure insecurity.

3.2. METHODOLOGY

A literature overview was done concentrating on secondary sources written about the Herschel district, the concept of land tenure, previous and present land tenure legislation and land tenure issues in South Africa and other countries. Interviews were conducted with the Department of Land Affairs and Agriculture officers in Sterkspruit in order to ascertain the past history of land tenure in Herschel and the current system of land administration and tenure since the Abolition of Racially Based Legislation in 1991. The local magistrate in Sterkspruit and officials at the Drakensberg Regional Services Council in Barkly East provided information about current and past land tenure systems and information on current infrastructure in the area. The Surveyor-General's office in Cape Town produced evidence of freehold and quitrent plots registered in Herschel to verify interviewee's responses and secondary sources. Informal discussions with various communities were done in an effort to ascertain what were the important issues for the residents as individual persons were sometimes loath to give answers which might upset the rest of the community.

60 respondents were interviewed using a questionnaire. They were selected from community members attending EDA and Farmers Association meetings. To avoid bias every third person was selected. However due to the fact that most of the meetings were specifically concerned with agricultural issues, the majority of the respondents were from a farming background thereby introducing an element of bias into the sample. 39 of the respondents were male with 16 of the respondents aged between 20 and 40, 12 aged 60 to 80, 10 aged between 40 and 60 and 1 aged between 80 to 100. 21 females took part in the survey with 12 aged between 40 and 60, 5 aged between 20 and 40 and 4 aged between 60 and 80.

3.3. DATA ANALYSIS

Data from the questionnaire was analysed and interpreted using land tenure theory and studies from other countries and South Africa. Through analysis of the literature, certain guidelines emerged which in conjunction with data obtained from Herschel residents from a questionnaire survey provided clues as to what should be incorporated in a new land tenure system in order to best satisfy the requirements of the Herschel population.

3.4. RESULTS

52 of the 60 respondents owned property with 8 of the respondents not owning any property. 7 of the respondents who did not own property were female with 1 of the respondents being a young male. This result indicates that land is plentiful in Herschel, as the majority of the respondents own land. This data conflicts with Desmond's (1969) report that some villages had no land.

This discrepancy can be explained by the fact that most of the respondents are progressive farmers who obviously, in order to reach this position have access to land. A general discussion with the Herschel Farmers Association revealed that Desmond (1969) was partly right in that in certain parts of the district, land had recently been allocated and was plentiful but in other areas land was scarce and no new allocations had occurred in recent times. It is not surprising that of the respondents, who do not own land, 7 were female as females were prohibited from acquiring land under the Tables of Succession inheritance laws. The male who had no land was young and not married and had not received any land, as there was no land available.

The majority of the respondents hold their property under Permission to Occupy certificates (PTO) with 3 respondents holding quitrent titles and 1 with a title deed who lived in the town of Sterkspruit. This result corresponds with data on Herschel's past tenure systems whereby the majority of property in the area is held under PTO certificates and continues to be held under PTO in spite of the fact that the PTO system has ceased to exist (Binswanger et al, 1996:165). Land continues to be issued in the Herschel area under PTO certificates by the Department of Land Affairs and Agriculture (Bonase, 2000). The Abolition of Racially Based Land Measures Act of 1991 and other legislation has cancelled most of the laws governing tenure and land administration in the homelands which means that any PTOs issued since 1991 are illegal as they have no legal basis and are not worth the paper they are written on (Cross, 1995).

Quitrent titles are similarly worthless as the legislation regulating their administration was similarly cancelled by the 1991 Act. This has created great anxiety and insecurity amongst quitrent holders who were told by government officials not to pay rent but these officials failed to address any fears about how the new legislation affected quitrenters land rights. As a result quitrent holders are nervous that their land might be forfeited due to non payment of rent and are continually trying to find an office, which would receive their rent payments. The only respondent with legally secure title to land is the title deed holder, providing of course, that the property has been legally transferred.

3.4.1. TENURE SECURITY

It is therefore not surprising that 48 respondents felt that they were not offered any security of tenure under the current system of tenure. 12 respondents felt that the current system gave them security which was an unexpected result considering that only one of the 12 respondents had a title deed with the other 11 holding PTO's. Of the 11, 4 were women aged between 40-60 and the fifth woman was aged 20. The other 6 were men with 3 aged between 20-40 and 4 ranging in age from 50 to 90. This result is consistent with the conclusion reached by (Cross, 1995) that rural people are dissatisfied with the current system of land tenure and want secure tenure.

50 respondents replied that they were satisfied with the current system of land tenure. This question may seem superfluous after the above question but it does not necessarily follow that people who feel that their tenure is insecure are dissatisfied with the current system of land tenure and vice versa. The differing number of responses to the question bear out this observation. The first, a woman felt that the current system of land tenure gave her security but she was not satisfied with the current land tenure system as she could not sell her land and leave the rural area. The other respondent, a man, felt that the current system did not give security but was satisfied with the current system, as since 1994 he was able to acquire more land from which he was previously prevented. These results echo Tapscott's conclusions that the ownership of land as well as the fear of losing it are two major issues in the former homelands (Beinart, 1992).

3.4.2. PEOPLES NEEDS

Problems experienced with the present system are:

- a) The father owns the land and not them
- b) Can not access bank loans as banks only acknowledge title deeds as collateral for loans
- c) Insecure land tenure
- d) Difficult to manage grazing land
- e) Can not hold land under their own name, as they are female
- f) Land can not be bought or sold
- g) Improvements to property can not be done, as the state is the nominal owner
- h) Livestock can not be improved as animals graze communally
- i) Continuous fighting occurs over land rights
- j) Problems occur with inheritance
- k) One can not do what you wish with the land, as you don't own it

- 1) Even though the land belongs to the family, no family member can own it as the state owns the land.

Manona et al (1999:7) discovered similar responses in research done in urban informal settlements which revealed that people want the assurance that they can use their property as collateral for loans, that they will not be evicted without compensation, that they can improve their home, that their children can inherit their property and that they can sell or transfer their property.

Livestock improvement and range management are important issues for rural people. Livestock play an important role in rural communities as they can be used to supply a range of goods and services such as ploughing, milk and manure as well as providing ready cash through sale in times of need (Cousins et al, 2000:11). Better breeding ensures that the monetary value of the livestock will improve but a respondent from Bensonvale pointed out that under communal grazing systems, livestock owners do not benefit from increased spending on better animals such as bulls because they can not guarantee that the bull is only impregnating their animals. It is therefore important to adopt a land tenure system, which could ensure that landowners regain the costs of their inputs without their neighbours benefiting from their labour and financial inputs.

Management of communal grazing has long been a problem in the district with areas such as Dangershoek clashing with the communities of Upper Tele and Lesotho who tend to graze their livestock in areas that they have left open to encourage grass growth. The Rietfontein community's solution to the problem is to divide their communal grazing area into camps and practise rotational grazing. An added advantage of this system is that stocktheft is limited due to the employment of guards around the camps. It is clear that innovative solutions to the problem can only be generated by communities working together with their neighbours to find ways of managing the rangeland.

3.4.3. CULTIVATION PROBLEMS

More than half of the respondents till their fields with 21 respondents not doing so. This result indicates that the number of people involved in agriculture is larger than appears apparent from casual observation of seemingly high amounts of uncultivated land. This result could be an unfair reflection of the real state of affairs in the former homelands as most of the respondents are progressive farmers. However studies done in rural areas indicate that the majority of rural households engage in some form of arable agriculture. This cultivation can range from gardens to larger areas with the surplus either being sold locally or further

afield (Cousins et al, 2000). The contribution of agriculture, multi-purpose livestock production and communal land, goods and services to rural livelihood systems is often misunderstood and underestimated (Ardington and Lund, 1996). In fact agricultural production tends to provide 10% of the income of rural homeland households (Jensen, 1998).

Inputs in agriculture are generally low except for labour which is often a constraint to cultivation of existing plots (Cousins et al, 2000). The major constraint in Herschel apart from lack of money is a lack of tractors. The Farmers Support Centre in Sterkspruit, which hires out tractors, is often unable to do so, as their tractors are often broken. Draught animals are not numerous in number. Other constraints are lack of land, no money for seed, no money to hire tractors, the lands are too big, it is too much work, stray animals tend to eat the plants, or no interest in cultivation and a lack of a access road.

The lack of infrastructure i.e.lack of access roads to fields which hampers the use of tractors for ploughing in conjunction with the lack of draught animals and the fact that the traditional forms of collaboration in agricultural production i.e. communal hoeing is eroding contributes to the lack of cultivated lands in the former homelands (Donaldson, 1992). Collaboration is necessary for communities to i.e. maintain access roads, build roads to fields or cultivate large fields as individuals can not do this by themselves (Heron, 1991).

The damage caused by stray animals wandering into cultivated field is immense and does not encourage cultivation. The only way these animals can be kept out of the fields is by fencing. However much of the original fencing has been stolen and is expensive to buy and maintain. Lack of money to buy fencing, seed or hire tractors is another severe constraint to cultivation as most of the people in the Herschel area live in extreme poverty. They can not afford to cultivate their lands but are prevented from renting, leasing or selling their lands to people who want to use them which, would provide families with another source of income as Lawry's (1993) research in Lesotho proved. These constraints to diversifying livelihood strategies could be removed under a new tenure system.

An informal discussion with some women from Sunduza indicated that there was little interest in selling, renting or leasing of fields due to lack of money and that people had never even considered it as a means of earning additional income because they had never been approached by people wanting land. The survey did not reveal this as most respondents cultivated their own lands. 2 respondents hired others lands and paid them with a percentage of the crop. 24 respondents said that it was against the law to sell or rent land which is why they did not

engage in these transactions but this could be due to fear that they could be prosecuted if the government discovered their activities. Informal discussions with the Herschel Farmers Association revealed that some renting and sales of land had occurred in the past but it was rare as born out by Turner's (1998) research in the area.

50 of the majority of respondents felt that the current system of individual tenure could not be improved and that it was better to abolish it and replace it with a form of individual tenure under which land could be sold and mortgaged. One respondent felt that individual tenure was necessary because ownership of land gave one a sense of pride, identity and status within the community, which could not be obtained if you did not hold a title deed and could prove to people that this was your land. Respondents see individual tenure as a more viable land tenure system because plots can be held under one's own name with a title deed to prove that the government does not own the land. They felt that individual tenure ensures security of tenure and gives people the opportunity to improve the land, manage grazing areas, receive bank loans and improve stockbreeding. 10 respondents wanted no change in the land tenure system but 3 of them were flexible depending on what the community wanted. One respondent was only interested in acquiring a farm and could not see the benefit of changing the tenure system.

In informal discussions with people from Bensonvale and Sunduza it emerged that people were fearful of the state taking their land away, as they are the nominal owners. They were not afraid of any community members opposing their rights to land but saw the state as a greater threat, which is why they wanted title deeds to guarantee that this could not occur. Evidence from Kenya corroborates this fear as FAO studies discovered that most of the demand for titling did not arise from fear of others gaining the land but rather from a fear of the government reclaiming the land (Riddell, 2000).

The only respondent who could envisage a viable tenure system for Herschel that would fulfil the needs of the Herschel people believed that grazing land should be divided into camps with people paying for the use of grazing. This income would pay for the hire of guards to prevent stock theft with people retaining their original arable and residential plots.

CHAPTER 4

4.1. THE CURRENT SITUATION IN THE HOMELANDS

Food security is not yet a reality in South Africa with approximately 2 million people in the former homelands suffering from malnutrition in 1998. This is as a result of the multiple strategies people have to employ to survive which, does not guarantee a steady income for the production or buying of food. The four most common employed livelihood tactics are employment in the informal or secondary industry, remunerances from migrant labourers, agricultural production and social welfare and pension benefits (Jensen, 1998:256).

The role that natural resources play in rural livelihoods is often ignored due to the perception that communal lands are degraded, unproductive (Dahlberg, 1996) and populated by inhabitants who have little interest in agriculture (Bembrige, 1984:74). These perceptions are often based on individual perceptions of resource decline and the "small amounts of animal and plant products from communal areas, which enter the formal economy". However this is not a true reflection of homeland production as most of the products are consumed at home, or traded within the informal economy and do not therefore appear in regional economic statistics. They do however contribute to the livelihood security of rural inhabitants (Shackleton et al, 1995).

Agricultural production often appears low due to most production in the homelands being dryland and confined to the rainy season. These yields do appear poor in comparison to commercial farmers' yields from irrigated lands. However if the value of the return on the investment relative to the value of the input is considered, productivity in the homelands might exceed that of commercial farmers. Dryland agriculture is therefore a viable and rational approach for poor households that can not afford the high inputs used by commercial agriculture (Cousins et al, 2000:12).

Poorer households tend to be more dependent on the land and natural resources than the better off households who have access to either formal wage employment, migrant remittances or welfare claims or a combination of all three. This enables them to pursue a wider variety of options because of their ability to use either cash income for capital injection into a range of informal activities such as agriculture and the establishment of small businesses (Cousins et al, 2000:5). Personal preferences amongst household members and the decisions arrived at as a result of conflict over the use of household resources influence which livelihood strategies are adopted (May, 1996).

The importance of the natural resource base for rural livelihoods is increasing due to the recent commercial and marketing opportunities springing up as a result of ecotourism (Shackleton & Shackleton, 1997). Women are increasingly utilising natural resources such as reeds to make mats, which they then sell in the informal sector or sell agricultural surplus (Bishop & Scoones, 1994). Rural livelihoods are bridging the rural-urban divide with both rural, peri-urban and urban people combining formal and informal earnings from towns and cities with natural resource based activities in rural areas (Cousins, 1999). They provide the link between rural individuals and communities to urban centres and markets (McAllister, 1998). However this linkage is increasing the plundering of natural resources by individuals from outside the community which can only be stopped by land tenure reform which could give stronger and legal rights over local resources to rural communities.

Communal grazing and overstocking are regarded as the main reason for environmental degradation. Rangelands are regarded as stable environments with a stable equilibrium that is destroyed by overstocking and overgrazing (Ellis and Swift, 1998). As a result millions of dollars have been invested on trying to make unpredictable environments more predictable and imposing equilibrium solutions on non-equilibrium environments (Scoones, 1994:5). The reclamation and betterment schemes imposed in the homelands are as a result of this type of conventional thinking.

However this attitude fails to take cognisance of the fact that arid and semi-arid environments are inherently unstable (Behnke, 1994) and this failure to recognise the inherent instability of rangelands due to climatic factors and stresses has resulted in the introduction of controlling mechanisms such as stock carrying rates (Fratkin, 1997:238). These equilibrium solutions generally tend to worsen land degradation unlike traditional pastoral systems. This is not to say that land degradation does not occur under traditional systems (Sandford, 1983). Cousins's (1994:20-2) research indicates planners have underestimated the resilience and livestock carrying capacity of heavily grazed communal land. Fratkin (1997:238) concludes that traditional pastoral practises especially in arid ecosystems are more appropriate for environmental conditions than those based on individualistic or ranch management paradigms.

High stocking rates make economic sense in rural areas due to the economic contribution of livestock to households with the provision of many goods and services such as ready cash through sales and ploughing. Households who do not own sufficient cattle for a ploughing team have to either borrow them from

relatives or hire them from neighbours (Cousins, 1993:33) which in poor areas like Herschel creates opportunities to contribute to the households income.

4.2.LAND TENURE CONDITIONS IN THE HOMELANDS

Overlapping land rights created through overcrowding is increasing tension in rural areas as original inhabitants are finding themselves in danger of losing the land on which they accommodated the refugees who were dumped in the homelands through forced resettlement and evictions from farms (Manona et al, 1999:11).

The tension in rural areas created by the destruction of the communal land tenure system through the repeal of racially based legislation which has left existing land rights with no legal basis or administrative procedure. Officials from Land Affairs and Agriculture (DLA) have to administer these areas without legal or administrative guidelines. Land administrative functions have been split between national, regional and local levels DLA offices. No clarity or guidelines exist to govern relationships between the various offices and no devolution of authority to local government has occurred. As a result provincial offices are administering the areas with land policy directives from provincial governments which are illegal as national DLA is the only department authorised to provide directions, guidelines and legislation on land in South Africa (Jensen, 1998:255).

In the meantime officials have no guidelines on how to administer these areas or the institutional capacity to do so which results in procedures varying from area to area and region to region. No accountability or transparent procedures exist for the administration and allocation of land, which create the potential for corruption (Cross, 1995). As a result of this conflict infrastructural development is not occurring in these regions and people are denied access to the financial gains they would receive from working on these projects. Developers and investors are loath to invest in the former homelands as they have no guarantee that their investment is safe. In the meantime unscrupulous investors are bargaining with tribal authorities to build various illegal developments, as the PTO's given by TA's are no longer valid. Traditional leaders are however the only people who actually hold legal title to the land, due to various legislation. They can therefore claim tribal land as their own and sell it off for their own financial gain. People living on the land have no recourse to the courts and are at risk of losing their land to greedy developers. The government has not taken any steps to rectify and clarify the situation whilst stopping the sale of tribal land. This is due to government ambivalence about how much power and what role traditional leaders should play in our democracy (Cross, 1995). As a result

traditional leaders are pretty much free to do as they see fit.

This situation is compounded by various warlords taking advantage of the situation and moving into certain areas where they guarantee local communities land rights for a price. Rural people are thus in danger of losing what land rights they had and their property to either traditional leaders or warlords. The government's response to the crisis has been to carry on as if the old legislation pertaining to land administration is still in place and issue developers and land holders with PTO's that have no legal basis and can be challenged at any time in the future (Cross, 1995:26).

CHAPTER 5

Land tenure is a "set of relationships that exist between categories of individuals (or groups of individuals) in reference to land and water and other products (Gluckman, 1945:111). Land tenure reform in South Africa is needed to redress the injustices of apartheid and protect the land rights of all people regardless of which tenure system they received those rights under (Cross, 1995). The Freedom Charter of 1995 emphasises this point with the statement that " the people shall share in the country's wealth. The national wealth of our country, the heritage of South Africans, shall be restored to the people. The land shall be shared among those who work it " (Makula, 2000:75). The 1996 Constitution, clause 25 goes even further by emphasising that the "state must take reasonable legislative and other measures, within its available resources, to foster conditions which enable citizens to gain access to land on an equitable basis. A person or community whose tenure of land is legally insecure as a result of past racially discriminatory laws or practises is entitled, to the extent provided by an Act of Parliament, either to tenure which is legally secure or to comparable redress. A person or community dispossessed of property after 19 June 1913 as a result of past racial discriminatory laws or practise is entitled, to the extent provided by an Act of Parliament, either to restitution of that property or to equitable redress. No provision of this action may impede the state from taking legislative or other measures to achieve land, water and related reform, in order to redress the results of past racial discrimination (Constitution, 1996)".

5.1. ELEMENTS TO BE INCORPORATED IN A LAND TENURE SYSTEM

Land tenure in Africa is characterised by customary ownership and a relatively egalitarian distribution of land among rural households (Lastarria-Cornhiel et al, 1999:3). Recent developments have been an increasing privatisation of ownership whereby land has become an asset and a scarce commodity due to the commercialisation of agricultural production and Africa joining the world economy (Lastarria-Cornhiel et al, 1999:4). Results from the Herschel study concur with these observations with people increasingly seeing land as a commodity to be bought and sold and this should be born in mind with the creation of a new land tenure system.

Makula (2000) suggests three possible models of land reform for South Africa. The first model of state ownership and leasehold has proven not to be viable in long term as evidenced by the population in the homelands. Bruce's (1989:23 cited in Makula, 2000) believes that the reason for this failure could be that

farmers who own land are more efficient than farmers who are tenants. The present government has taken this to heart and in the Eastern Cape has approved more than 19000 hectares for transfer to 278 farmers in the former Transkei homeland (Jonker, 2001:1).

The second model is a collective or co-operative system which is only viable in the short term and only to be used where it is necessary to settle communities. Training and production techniques in agriculture can be given whilst the issues of land demarcation and transfer are addressed. Bruce argues that the inherent self-interest of human nature precludes this model from being viable (Makula, 2000:68).

The private ownership model is considered as most durable model but its success is dependent on restrictions being imposed upon the number and size of allotments, individuals or family could own. To curb speculation and exploitation, land and income taxes could be used to encourage holders to use their land in the most productive manner. The people participating in this scheme would have to be carefully screened and selected so that only people with the necessary commitment to and experience of farming would be settled on good agricultural land. The programme must be coupled with "personal value system changes, personal and community development skills and agricultural, financial, technical, marketing and management support services" to ensure success (Makula, 2000:69). The main problem with this theory is that it fails to address the issue of how to select the people that will be involved in the project. The present government is faced with the same dilemma, in that it too has failed to provide any adequate guidelines as to who qualifies as an emerging farmer.

Makhula's (2000) theories are not viable as they do not address the current situation in the former homelands and assume that the state will provide land for settlement in other areas. South Africa needs a land tenure system that will resolve most of the problems experienced under the current land tenure system. Successful land tenure reform can only occur if it is context driven and directed at the specific national or sub-national problems and needs as well as being able to alter the distortions of past systems and enable people to participate in economically sustainable activities (Riddell, 2000).

South Africa needs a land tenure system, which will ensure land rights and guarantee a permanent home base (Giliomee, 1982:7). It has to protect people from eviction and give communities say in any government expropriation of rural land and ensure that fair compensation is paid for this land. Land title deeds should be reviewed and any changes in titling only made after consultation with

the community (Wixley, 1994:11)

Rural communities need secure tenure on their present land and freedom from outside intervention (Cross, 1995:23). They need to retain control over their assets to facilitate better management and prohibit exploitation by outsiders (Lehman, 1990:140). People's access to land and land based livelihoods need to be assured and kept open to ensure survival. Clarification has to be obtained about who has the authority to make decisions about the land and who stands to benefit from investing in the land (Manona et al, 1999:1-8).

The tenure system has to be flexible and take cognisance of the local coping strategies (Manona et al, 1999:4). Lane and Moorehead's (1994) research indicate that land tenure systems vary according to local climatic conditions. In drier regions where environmental variability is high, more flexible forms of tenure exist with few or no property rights in contrast to wetter areas where more exclusive forms of tenure occur such as private property. However in semi-arid regions such as Herschel, tenure systems vary from being exclusive to more communal thereby increasing the potential for friction. The tenure system implemented in South Africa therefore has to recognise the effect of environmental conditions on tenure systems and build in conflict resolution methods to resolve any potential conflict (Scoones, 1994).

Women's right to land should be protected as the Extension of Tenure Act and the White Paper of 1997 have proved unsuccessful with this legislation never being forcefully implemented (Harley and Fotheringham, 1999:158). From the above needs of people it becomes clear that there is an overwhelming economic need to modernise traditional land tenure patterns (Dorner and Karmel, 1971:141) and enable it to deal with modern day social and political issues (El-Ghonemy, 1989:282).

The economic need to modernise traditional land tenure is well documented by the studies of Lyne, Roth and Troutt (1997) which show how land rental markets constrain the utilisation of land and lead to the under usage of large areas of land due to the high rental and transaction cost created by insecure tenure. Rural people need to be allowed to participate in economic activity such as sharecropping without hindrance. Sharecropping fulfils a vital role in the rural economy in that it provides access to land for those with limited access, provides reliable labour for those in need of labour for cash cropping and allows the sharing of machinery (Robertson, 1982).

Tenancy is another method whereby households can share resources, which is vital in resource poor communities and can be an efficient form of agricultural

production if landholders have secure tenure (Lastarria-Cornhiel et al, 1999:7).

The issues of fragmented holdings, settlement of land title and conditions of tenancy have to be addressed as they affect agricultural production (UN, 1951:67). This is not to say that a change in tenure automatically creates an increase in productivity (De Wet, 1985). Consolidation of land holdings can increase production as proved in India but it is a slow and expensive procedure (UN, 1951:67). Land tenure reform has to be underwritten by the state as it is a gradual and costly process because it has to be developed alongside policies, resources and financial incentives to help the building of more sustainable livelihoods, including non land based activities (Adams et al, 1999). Farmers need access to inputs, credit, extension services and markets in order to ensure the success of any land tenure reforms (Bruce, 1993).

5.2. CONCLUDING REMARKS

The results from the Herschel survey show that Herschel residents are dissatisfied with the current system of land tenure and do not believe that they have secure tenure. There is therefore a need for a system that will guarantee present land rights and the future land rights of all residents regardless of what system they received their original holdings under. These rights have to be legally assured and protected. Before this can happen the issue of overlapping land rights has to be addressed either through a process of compensation or by offering the later arrivals alternative land. Conflict resolutions have to be built into the system in order to solve present and future conflicts that might arise.

Women's rights to land should be acknowledged, strengthened and given priority. The current legislation ensuring women's rights has not been enforced ensuring that women's rights are no more secure now than they were under past legislation. The rights of inheritance should be changed so that women and other family members apart from the eldest son may inherit. This should serve to protect widows and elderly women from being evicted and protect spinsters who are forced to rely on their brothers kindness for a piece of land to cultivate and a roof over their head.

39 of the Herschel respondents are involved in agricultural production, which highlights the importance of agriculture in rural areas. This in conjunction with evidence from Jensen's studies (1998) that agriculture is the third most important livelihood in rural areas stresses the importance of protecting the right to land.

A new tenure system should guarantee access to arable land and natural resources

such as wood which, are either used to generate additional income or for personal use. These rights could be protected under an individual ownership tenure system as has happened in the United Kingdom where the right of access to public footpaths is protected even over that of private property.

The right to land does however raise the issue of how to best protect access to and manage natural resources? Who should manage these resources and who should gain access to them? Manona, Adams and Cousins (1999) argue that these rights should be invested in the land users themselves rather than institutions such as tribal authorities and protect these rights by law in order to prevent abuse. In this way communities would manage their own natural resources and prevent outsiders from plundering them.

The land market in Herschel is not active. This is due to many factors such as lack of financial resources but the main factor would appear to be the law that prohibits the sale of land and rental. The removal of these restrictions would encourage the growth of a more vibrant land market and enable unutilised land to be acquired by more productive members of the community. Turner's research (1998) in the district concluded that the right to lease and rent land should be promulgated so that practises such as tenancy and sharecropping can occur which, will allow for the leasing of unused fields and bring more land into production and onto the land market. Lyne, Thomson and Ortmann (1996) believed that the practises of sharecropping, tenancy and rental have been limited in the past due to people's fear of losing land.

Freehold theorists argue that people should have the right to sell land as this would stimulate land markets and allow for the consolidation of fragmented holdings and ensure that the more productive members of society obtain more land for their usage from less productive members. FAO studies on land markets have however shown them to be inefficient at distributing land to the most effective users (Riddell, 2000). Privatisation of property can also increase the capacity for distress sales (Lawry, 1993) which, does not occur under communal tenure (Cross, 1990:547-8).

Is it viable to protect the poor from losing their land? The only way to protect the poor from losing their land is to revert to traditional customary tenure whereby people retain individual rights to their property (Mandami, 1996) but the land can not be alienated from the community (Fazan, 1944). The restrictions on rental, leasing, sharecropping and tenancy could be removed to allow a market in land to occur but in order to protect the poor, the right to sell property, will have to be forfeited. This issue will have to be addressed under a new land tenure system

but it will be hard to find a method whereby people in the former homelands can not sell their property and those outside the homelands can. I do not see how it is possible to prevent people from selling their land without generating conflict.

The people of Herschel want to hold their land under individual tenure. The two legal recourses open to them are The Provision of certain land for Settlement Act of 1991 whereby the government provides new land for communities to settle on and the Upgrading of Land Tenure Act of 1991 which allows tribal authority areas to upgrade communal tenure to private tenure (Cross, 1995). This preference for individual tenure is due in part to the security of tenure that it provides and also that lending institutions such as banks only consider title deeded property as valid collateral for bank loans. Things are changing with the Land Bank's Step Up Loan scheme, which enables farmers with PTO's to access small loans. However, other lending institutions without state connections will only accept communal land tenure property if the government finds a way of enabling them to attach the property if the loan is defaulted. The other solution could be to provide individual title deeds to arable and residential plots within a communal tenure system.

Herschel residents want land tenure reform to occur that will ensure a secure system of property rights (Deininger et al, 2000:11). The registration and titling of property fulfils an important role in land markets as potential purchasers can verify the ownership status easily thereby reducing the costs associated with transactions. This reduction in transaction costs will stimulate the transfer of more land from unproductive individuals to productive members and lead to a growth in the market of property (Adams et al, 1999). Property institutions need to be established with established ethics that are maintained by all involve (Simpson, 1976). A system of land titling has to be introduced that is simple, cost effective, has a minimum of legislative procedure attached to it and is understandable to all. This could involve pacing out a plot and a rough description entered into a register instead of an official survey that is costly and time consuming. The issue of land allocation does not occur in many former homelands as there is no more land available for allocation but if the restrictions on sale and rental were removed, people could buy land on the market instead of it being allocated by TA's. However provision has to be made to protect the poorer members of the community who can not afford to pay market prices for property. Good governance would ensure that this does not occur and will ensure that the interest of all are protected particularly those of the poor (Commons, 1957).

Property rights have to be sorted out and people given some sort of title as the

current system of communal tenure hampers development as no-one knows who owns the land which stops potential investors and the state from developing the area. People in these areas therefore lose out on the additional income that these developments will create. Secure title to their property will enable people to lease, sell, rent or use their property as security for bank loans to improve their livelihood strategies. They can also improve their property without fear of the government or other residents claiming it. Secure tenure in conjunction with financial incentives and support from land-based livelihoods should result in dramatically increased levels of food crop marketing (Moyo, 1995).

Most of the respondents could not envisage a solution to the tenure problems experienced in Herschel. Only one respondent saw the solution to be a system that would give individual title for residential and arable sites so that people could sell, rent or lease these sites. Communal grazing areas could be divided up into camps and fenced off. This system of fencing was tried under Betterment and failed. However communities such as those in Rietfontein have revived the fencing of grazing into camps and are finding it a success. The failure of this scheme under Betterment was due in part to it being imposed upon the population by the government and that it did not take account of local needs and conditions. It is therefore apparent that the viability of this scheme will depend on community approval over whether or not grazing should be divided into camps and if so where the fences should go. Cousins (1993:33) points out that in areas of high population densities such as Herschel, freehold tenure is not feasible on ecological ground unless the grazing rights of a large percentage of the population are removed. This is obviously not viable as grazing rights are protected as land rights under the Interim Protection of Informal Land Rights Act and the issue would create much conflict.

What is the solution? It is obvious that private grazing rights are not viable in an area like Herschel which, is heavily populated and stocked. There is no way to grant each individual householder grazing land with sufficient grazing and access to water. It would appear that the only viable solution would be to incorporate a flexible element in the tenure system whereby in times of drought and climatic stress, negotiation can occur of access to resources (Scoones, 1994:29).

These grazing camps would facilitate rotation and better rangeland and livestock breeding and management programmes. It would also prevent stray animals from eating crops. These programmes could be paid for by the community instilling a nominal grazing fee for each animal's usage of grazing. This money could also be used to pay for the maintenance of the fences, water facilities and herder guards to ensure that livestock does not get stolen. The community will receive

the right of control over the rotation of this grazing and measures could be taken against those who abuse the system.

In order to address the problems of the more progressive farmers that the value of their investment in buying better breeding animals for example, is lost due to the rest of the community benefiting from it, due to the lack of fencing; the entire community could bear the cost of buying stud animals or better grass species. Systems will have to be put in place so that land right holders can make rules in relation to improved management of common property resources (Manona et al, 1999:18-9).

The status of informal rights have to be legally confirmed and established practises and procedures such as land allocation which are regarded as legitimate by the community have to be recognised and recorded. The role of traditional authorities in land tenure reform has to be stipulated as the persisting ambiguity over their role in our new democracy is hampering development and leading to violent clashes in many rural areas. The government can no longer afford to avoid this issue if it wishes for the new land reform programme to succeed.

The new tenure system that is introduced in Herschel will therefore have to be a combination of communal and individual land tenure as individual land tenure is not as flexible and responsive as communal tenure to change nor does it take cognisance of the social, political and economical framework which protect the poor and vulnerable members of society (Migot-Adholla et al, 1994). Titles to land have to be more individualistic with people receiving title to their arable and residential plots so that they have security of tenure and can use land as collateral to receive bank loans. Grazing rights should be maintained as communal rights as it is not viable to introduce individual grazing rights. All restrictions on the rent and lease of land should be removed so that a land market can develop which will encourage investment and ultimately development. However in order to protect the poorest members of community, restrictions will have to exist on the sale of land. The rights of access to natural resources should be ensured and vested within landholders so that the community as a whole has the right to manage grazing and the natural resource base.

South Africa needs a tenure system that will unify the entire country and rectify the present position. The only way to do this is to take cognisance of the various elements which form a good tenure system and incorporate them together with the various needs and problems of individual area. The system therefore needs to be flexible so that it can be adapted to fit local conditions with mechanisms that will allow for the changing and discarding of certain laws as conditions change.

The most important element of the new system should be a conflict resolution mechanism to solve issues that generate conflict such as overlapping land rights.

The process of implementing a new tenure system will be gradual and costly so the state will have to make a large budget available for transformation. It will also have to provide budgets for other projects to accompany the land tenure reform system such as credit facilities and agricultural training programmes to ensure the success and continued viability of the land tenure programme.

BIBLIOGRAPHY

Adams,M.,Sibanda,S. and Turner,S.(1999)'Land tenure reform and rural livelihoods in Southern Africa' *Natural Resource Perspectives*. **39**. London: Overseas Development Institute.

Andrew,M.(1992) 'Analysis of land and land related issues in Mgwali:1992'. East London: BRC archives.

Ardington,E and Lund,F.(1996)'Questioning rural livelihoods' in: Lipton,M., Ellis,F. and Lipton,M.(Eds). **Land, labour and livelihoods in rural South Africa. Vol.2: Kwazulu-Natal and the Northern Province**. University of Natal Durban: Indicator Press. pp.31-58.

Batten,T.R.(1954) **Problems of African Development**. London: Oxford University Press.

Behnke,R.(1994) 'Natural resources management in pastoral Africa' in: *Development Political Review*. 12:1.pp.5-27.

Beinart,W.(1987) 'Amafelanadawonye (the Die-hards). Popular protest and women's movements in Herschel district in the 1920's' in: Bundy,C. and Beinart, W. **Hidden struggles in Rural South Africa. Politics and popular movements in the Transkei and Eastern Cape 1890-1930**. Johannesburg: Ravan Press. pp.222-270.

Beinart,W. and Bundy,C.(1987) Hidden struggles in Rural South Africa. Politics and popular movements in the Transkei and Eastern Cape 1890-1930. Johannesburg: Ravan Press.

Beinart,W.(1992) 'Transkeian Smallholders and Agrarian Reform' in: *Journal of Contemporary African Studies*.11:2 pp.178-199

Bembridge,T.J.(1984) 'A systems approach study of agricultural development problems in Transkei?'. Thesis. Stellenbosch: University of Stellenbosch.

Bennet,T.W.,Devine,D.J.,Hutchison,D.B.,Leeman,I.and Van Zyl Smit,D.(Eds) (1988) Acta Jurisdicta 1987. Cape Town: Juta.

Binswanger,H.P.,Van Zyl,J. and Kirsten,J.(1996) Agricultural Land reform in South Africa. Cape Town: Oxford University Press

Bishop,J. and Scoones,I.(1994)'Beer and baskets: the economics of women's livelihood in Ngamiland, Botswana'. IIED research series.3:1. London:IIED.

Boonzaier,E.(1987) 'From communal grazing to 'economic' units: changing access to land in a Namaqualand reserve' in: *Development Southern Africa*.4:3 pp.479-91.

Border Rural Committee (BRC)(1996) 'Mgwali notes". East London: BRC archives.

Bosman,M. and Marais,J.L.(July 29 1994) 'An old fashioned system, but it works' in: *Farmers Weekly*.

Brown,D.L.(1971)'Agriculture in the Ciskei. A challenge' in: *The Ciskei-A Bantu Homeland. A general survey*. Fort Hare: Fort Hare University Press.

Bruce,J.(1993) 'The variety of reform: a review of the recent experiences with land reform and the reform of tenure, with particular reference to the Africa experience' in: Marcussen,H.S.(Ed) *Institutional Issues in Natural Resource Management*. Denmark: International Development studies, Roskilde University.

Bruce,J.(1996) 'When should land rights be formalised? Issues in phasing of property system reforms'. Paper. Madison: University of Wisconsin, Land tenure Centre.

Bundy,C.(1979) 'The Herschel Peasantry: A case study' in: **The rise and fall of the South African Peasantry**. Cape Town: David Philip.

Butler,J.,Rotberg,I. and Adams,J.(Eds) (1978) **The Black homelands of South Africa: The political and economic development of Bophututswana and KwaZulu**. Berkley: University of California Press.

Carstens,P.J.A.(1981) 'Administrative implications of land ownership in the Republic of Transkei'. Doctoral thesis. Pretoria: University of Pretoria.

Carter,G.M. and Karris,T.(1997) **From protest to challenge. A documentary history of African politics in South Africa. 1882-1964. Vol.1**. Stanford: Hoover institutional Press.

Carter,M.R.,Weibe,K.D. and Nlarel,B.(1994) 'Tenure security for whom? Differential effects of land policy in Kenya' in: Bruce,J.W. and Migot-Adholla,S.E.(Eds) **Searching for land tenure security in Africa**. Iowa:Kendall/Hunt.

Centre for reproductive law and policy (1997) **Women of the World. Laws and policies affecting their productive lives: Anglophone Africa**. New York: Centre for Reproductive Law and Policy Centre.

Christopher,A.J.(1984) **The Crown lands of British South Africa 1853-1914**. Ontario: Limestone Press.

Cloete,F.(1992) **Comparative lessons for land reform in South Africa**. Johannesburg: Rand Afrikaans University.

Commons,J.R.(1957) **The legal foundations of capitalism**. Madison: University of Wisconsin Press.

Cousins,B.(1993) 'Debating communal tenure in Zimbabwe' in: ***Journal of Contemporary African Studies***.12:1 pp.29-39.

Cousins,B.(1994) "Livestock production and agrarian reform in South Africa".

Johannesburg: Paper presented at the Final workshop of community perspectives on land and agrarian reform project. 11-13 March 1994.

Cousins,B.(1999) 'Invisible capital: the contribution of communal rangelands to rural livelihoods in South Africa' in: *Development Southern Africa*.16:2.

Cousins,B.,Shackleton,S.E. and Shackleton,C.M.(2000)'The economic value of land and natural resources to rural livelihoods. Case studies from South Africa'. Belville: PLAAS, University of the Western Cape.

Cross,C.R.(1985) 'Freehold in the homelands. What are the real constraints?' in: *Reality*.17:2.

Cross,C.(1988) 'Introduction: Land reform and the rural black economy in South Africa' in: Cross,C. and Haines,R.(Eds) **Towards freehold? Options for land and development in South Africa's black rural areas**. Cape Town: Juta. pp.1-36

Cross,C.R.(1990) 'Mythology and mystery tours in land reform: Getting some focus on the South African debate?' in *Development Southern Africa*.7

Cross,C.R.(1995) 'Losing the land. Securing tribal tenure in tribal areas' in: *Indicator SA*12:2. pp.23-28.

Dahlberg,A.C.(1996) '**Interpretations of environmental change and diversity: a study from North -East District, Botswana**'. Phd thesis. Stockholm: Stockholm University.

Daily Dispatch(3 August 2000). Eastern Cape Land Disposal Bill, 1999.

Dasgupta,P.(1993) **An inquiry into well-being and destitution**. Oxford: Clarendon Press.

Davenport,T.R.H.(1990) 'Land legislation determining the present racial allocation of land' in: *Development Southern Africa*.7.

Davenport,T.R.H. and Hunt,K.S.(Eds)(1974) **The right to land**. Cape Town: David Phillip.

Davison,J.(1986) 'Land tenure, agriculture and gender in Guinea-Bissau' in: **Agriculture, women and land. The African experience**. Boulder: Westview

Press.

Deininger,K.,Naidoo,I.,May,J.,Roberts,B. and Van Zyl,J.(2000) 'Implementing 'market-friendly' land redistribution in South Africa: Lessons from the first five years'. Paper. Washington DC: World Bank.

Denoon,D.(1972) **Southern Africa since 1800.** London: Longman.

Desmond,C.(1969) **The discarded people. An account of African resettlement.** Johannesburg: Christian Institute of South Africa.

De Wet,C.J.(1985) 'Land tenure, local government and agricultural development in the Ciskei' in: *Reality*.17:4.

Donaldson,A.(1992) 'Dependent Transkei: The economics of a labour reserve and a caretaker regime' in: *Journal of Contemporary African Studies*.11:2.

Dorner,P.and Karmel,D.(1971) 'The economic case for land reform' in: Cloete,F.(1992) **Comparative lessons for land reform in South Africa.** Johannesburg: Rand Afrikaans University.

El-Ghonemy,M.R.(1990) The political economy of rural poverty: the case of land reform in Cloete,F.(1992) **Comparative lessons for land reform in South Africa.** Johannesburg: Rand Afrikaans University.

Ellis,J. and Swift,D.M.(1988) 'Stability of African pastoral ecosystems' in: *Journal of Range Management*.41.pp.450-459.

Fazan,S.H.(1944) 'Land tenure in the Transkei' in: *African Studies*.3:2.

Fort Hare(1971) **The Ciskei-A bantu homeland. A general survey.** Fort Hare: Fort Hare University Press.

Fratkin,E.(1997) 'Pastoralism: Governance and development Issues' in: *Annual Review of Anthropology*.26.pp.235-261.

Freund,B.(1976) 'Forced resettlement and the political economy of South Africa' in: *Review of African Political Economy*.7 pp.49-63.

Giliomee,H.(1982) The political implications of rural poverty: Some universal and local trends. Paper. Urban-Rural workshop. Stellenbosch: Unit for Futures

Research.

Gluckman,M.(1945) 'African land tenure. Human problems in British Central Africa' in: *Rhodes Livingstone Journal*.3.

Green,M.(March 21,1997) 'Greening of a homeland' in: *Farmers Weekly*.

Hardin,G.(1968) 'The tragedy of the commons' in: *Science*. 162:pp.1243-48.

Harley,A. and Fotheringham,R.(1999) **AFRA.20 years in the land rights struggle, 1979-1990.** Pietermaritzburg: Association for Rural Advancement.

Hawkins Associates(1980) 'The physical and spatial basis for South Transkei's First Five Year development Plan'. Harare: Zimbabwe.

Hendricks,F.T.(1990) **The pillars of apartheid. Land tenure, rural planning and the chieftaincy.** Sweden: Uppsala.

Hendricks,F.T.(1992) 'Tribalism, Chiefs and Apartheid: the case of Poto's Pondoland' in: in *SA Sociological Revue*.5:1.pp.58-82.

Heron,G.(1991) 'The household, economic differentiation and agricultural production in Shixini, Transkei' in: *Development Southern Africa*.8:1 pp.47-60.

Hirst,C.C.S.(1971) 'Constitutional development in the Ciskei. A Bantu Homeland' in: **The Ciskei-A bantu homeland. A general survey.** Fort Hare: Fort Hare University Press.

Hogg,R.(1987) 'Settlement, pastoralism and the commons' in: Anderson,D. and Grove,R.H.(Eds) **Conservation in Africa: People, policies and practises.** Cambridge: Cambridge University Press.pp.293-306.

Hunt,D.(1992) Land titling, sustainable livelihoods and local linkages. Circulation draft. Rome: FAO.

Institute of Development Studies(IDS)(1988) **Pastoral land tenure in East Africa.** Brighton: IDS.

Innes,D. and O'Meara,D.(1976) 'Class formation and ideology: the Transkei region' in: *African Political Economy*.7.

Jensen,E.(1998) 'South Africa Country Profile' in: Bruce,J.W.(Ed) **Country Profiles of land Tenure: Africa, 1996.** Research Paper.130. Madison: University of Wisconsin, Land Tenure Centre.

Jones,B.M.(1964) '**Land tenure in South Africa- Past, present and future?**'. Thesis. Durban: University of Natal.

Jonker,T.(26 Jan 2001) 'Prime land soon to be transferred to EC farmers?' in: ***Daily Dispatch.***

Keegan,T.J.(1975)' **African responses to the implementation of the Glen Grey Policy?**'. Thesis. Cape Town: University of Cape Town.

Kerr,A.J.(1976) **The customary law of immovable property and of succession.** Grahamstown: Rhodes University.

Kowet,D.K.(1978) **Land, labour migration and politics in Southern Africa: Botswana, Lesotho and Swaziland.** Sweden: Uppsala, Scandinavian Institute of African Studies.

Lacey,M.(1981) **Working for Boroko.** Johannesburg: Ravan Press.

Lane,C. and Moorehead,R.(1994) 'New directions in rangeland and resource tenure and policy' in: Scoones,I.(Ed) **Living with uncertainty.** London: Intermediate Technology Publications.

Lastarria-Cornhiel,S. and Melmed-Sanjak,J.(1999) 'Land tenancy in Asia, Africa, and Latin America: A look at the past and a view to the future?'. Paper. Madison: University of Wisconsin, Land Tenure Centre.

Lawry,S.(1993) 'Transactions in cropland held under customary tenure in Lesotho' in: Basset,T.J. and Crummy,D.E.(Eds) **Land in African Agrarian Systems.** Madison: University of Wisconsin Press.

Lehman,A.D.(1990)'Agrarian reform and agrarian reformism' in: Cloete,F.(1992) **Comparative lessons for land reform in South Africa.** Johannesburg: Rand Afrikaans University.

Lekhela,S.McD.M.(1955) '**A historical survey of Native land settlement in**

South Africa from 1902 to the passing of the Natives' Trust and Land Act?
Thesis. Pretoria: UNISA

Lenta,G.(1982) 'Land, labour and capital in Kwa-Zulu; Some failures in coincidence' in: ***Journal of Contemporary African Studies***.1:2 pp.307-327.

Little,P.D.(1994) 'The social context of land degradation ("desertification") in dry regions' in: Arizpe,L., Stone,M.P. and Major,D.C.(Eds) ***Population and Environment: Rethinking the debate***. Boulder: Westview Press.

Louw,L.(1985) 'Towards resolving the new confusion about land tenure' in: ***Reality***.17:3.

Lyne,M.C. Thomson,D.N. and Ortmann,G.F.(1996) 'Institutional change to promote land rental markets in the developing regions of Southern Africa?' in: ***Agrekon***.35:1.

Lyne,M.C.,Roth,M.J. and Troutt,E.(1997) 'Land rental markets in Sub-Saharan Africa:institutional change in customary tenure' in: Rose,R.,Tanner,C and Bellamy,M.A.(Eds) ***Issues in agricultural competitiveness: markets and policies***. Aldershot: Dartmouth Publishing Company.

Mackenzie,F.(1990) 'Gender and land rights in Murang'a district, Kenya' in: ***Journal of Peasant Studies***.17:4.

Macmillan,W.M.(1930) ***Complex South Africa: an economic foot note to history***. London: Faber and Faber.

Makula,N.A.(2000) ***A quest for Ubulungisa Justice in the distribution of land in South Africa***. Woodstock: Salty Print.

Mandami,M.(1996) ***Citizen and subject. Contemporary Africa and the legacy of late colonialism***. Princeton: Princeton University Press.

Manona,S.,Adams,M. and Cousins,B.(1999) 'Land tenure and economic development in Rural South Africa: constraints and opportunities'. Paper presented at the National Conference on Land and Agrarian Reform in South Africa. 26-28 July 1999.

Margeot, M.Y.G.H.(1987) 'Freehold land tenure: Problems and prospects' in: *Development Southern Africa*.4:3.

May, J.(1996) 'Assets, income and livelihoods in rural Kwa-zulu Natal' in: Lipton, M., Ellis, F. and Lipton, M.(Eds) **Land, labour and livelihoods in rural South Africa. Vol.2: Kwazulu-Natal and the Northern Province.** University of Natal Durban: Indicator Press. pp.1-30.

McAllister, P.(1998) Deagrarianisation project-Shixini study. Second Draft. University of the Western Cape.

McIntosh, A., Atkinson, D. and Kingwell, R.(1998) Land administration in the Ex-homelands: past, recent and current situation. Pretoria: Final Report, Department of Land Affairs and Agriculture.

McLoughlin, A.(1936) **The Transkeian system of Native Administration.** Grahamstown: Cory Library.

Migot-Adholla, S.E., Place, F. and Olusch-Kosura, W.(1994) Security of tenure and land productivity in Kenya' in: Bruce, J. and Migot-Adholla, S.E.(Eds) **Searching for land tenure security in Africa.** Iowa: Kendall/Hunt.

Mills, E.M. and Wilson, M.(1952) **Keiskammahoek rural survey. Vol.IV. Land tenure.** Pietermaritzburg: Shuter and Shooter.

Minister of Agriculture and Land Affairs(2000) Policy statement by the Minister for Agriculture and Land Affairs for Strategic Directions on Land Issues.

Moyo, S.(1995) **The land question in Zimbabwe.** Harare: Sapes Books.

Mqeke, B.R.(1997) **Basic Approaches to problem solving in customary law: a study of conciliation and consensus amongst the Cape Nguni.** Grahamstown: Grocott and Sherry.

Murray, C.(1984) 'Land, power and class in the Thaba 'Nchu District, Orange Free State, 1884-1983' in: *Review of African Political Economy*.29.

Nattrass, N. and Nattrass, J.(1990) 'South Africa, the homelands and rural development' in: *Development Southern Africa*.7.

Nel,C.(February 2,1996) 'Reclamation forestry in action at Herschel' in: *Farmers Weekly*.

O'Connel,M.C.(1981) 'Resettlement and development in Transkei' in: *Africa Insight*.11:1 pp.44-48.

Pearce,F.(1998) 'Some reminiscences of the Transkei' in: *Coelacanth*.36:2 pp.16-24.

Pim,H.(1933) **A Transkei Enquiry**. Lovedale: Lovedale Press.

Platteau,J.P.(1996) 'The evolutionary theory of land rights as applied to Sub-Saharan Africa: A critical assessment' in: *Development and Change*.27.pp.29-86.

Platzky,L. and Walker,C.(1985) **The Surplus People. Forced removals in South Africa.**Johannesburg: Ravan Press.

Riddell,J.(2000) Emerging trends in land tenure reform: progress towards a unified theory. Paper. Rome: Food and Agricultural Organisation.

Robertson,A.F.(1982) 'Abusa: the structural history of an economic contract' in: *Journal of Development Studies*.18:4 p.447-478.

Rutman,G.L. (1969) 'Innovation in the Land tenure system of the Transkei, South Africa' in: *Land Economics*.45:4.pp.467-471.

Sandford,S.(1983) **Management of Pastoral resources in the third world.** Chichester: John Wiley and Sons.

Shackleton,C.M.and Schakleton,S.E.(1997) The use and potential for commercialisation of veld products in the Bushbuckridge area. Unpublished report. DANCED Community Forestry Project. Nelspruit: Department of Water Affairs and Forestry.

Shackleton,S.E.,Stadler,J.J.,Jeenes,K.A.,Pollard,S.R. and Gear,J.S.S.(1995) 'Adaptive strategies of the poor in arid and semi-arid lands: In search of sustainable livelihoods. A case study of the Bushbuckridge District, Eastern Transvaal, South Africa?. Unpublished. Reproduction produced for the IIED, Canada by Wits Rural Facility, Klaserie.

Scoones,I.(1994) New directions in pastoral development in Africa' in: **Living with uncertainty**. London: Intermediate Technology Publications.

Simpson,S.R.(1976) **Land law and registration**. Cambridge: Cambridge University Press.

Southall,R.(1983) **South Africa's Transkei. The political economy of an independent bantustan**. New York: Monthly Review Press.

Stultz,N.M.(1980) **Transkei's Half loaf. Race separation in South Africa**. Cape Town: David Philip.

Tapson,D.R.(1984) 'Freehold title: Blind alley in the homelands' in: **Reality**.16:5.

Tapson,D.R.(1988) 'Freehold versus leasehold in the homelands 'in: Cross,C. and Haines,R.J.(Eds) **Towards freehold? Options and development in South Africa's Black rural areas**. Cape Town: Juta.

Tatz,C.M.(1962) **Shadow and substance in South Africa: a study in land and franchise policies affecting Africans 1910-1960**. Pietermaritzburg: University of Natal Press.

Turner,S.D.(1998) 'Land rights and land administration in the Herschel and Maluti districts, Eastern Cape, 13 October 1998? (unpublished report).

United Nations(1951) **Land reform: Defects in Agrarian Structure as obstacles to economic development**. New York: United Nations Publication.

Van der Walt,A.J.(1991) **Land reform and the future of landownership in South Africa**. Cape Town: Juta.

Wilson,M.(1959) 'The early history of the Transkei and Ciskei' in: **African Studies**.18:4 pp.167-179.

Wilson,M.and Ramphele,M.(1989) **Uprooting poverty: The South African challenge**. Cape Town: David Philip.

Wixley,S.(1994) 'Report from the community land conference -12-13-02.1994, Bloemfontein?. Johannesburg: National Land Committee.

Wotshela,L.(1984) ?Transformation in late Colonial Angina society: a political and social history of African communities in the district of Stutterheim (Eastern Cape) c.1870-1910?. Thesis. Grahamstown: Rhodes University.

Yawitch,J.(1981) Betterment: The myth of homeland agriculture. Johannesburg: The South African Institute of Race Relations.

Interviews

Mr. E.Bonase Department of Agriculture and Land Affairs Official.
Sterkspruit. Personal interview. 2000

Dr.S.P.Madikizela Consultant at V3. Personal interview. Grahamstown.
2000

Mr.H.Steyn Administration officer at Drakensberg Regional
Services. Personal interview. Barkly East. 2000

Legislation and Commissions

Abolition of Racially based Legislation 1991

Abolition of Racially Based Land Measures act 1991

Act 38 of 1927

Amendment of the 1991 upgrading of Land Tenure Rights Act 1990

Amendment of the 1991 Upgrading of Land Tenure Rights Act, 1996

Commission on Native Law and Customs 1883. Cape Colony.

Native Economic Commission 1930-1932

The Constitution of the Republic of South Africa 1996

1877 Crown Lands Perpetual Quit?Rent Bill

The Deeds Registry Act 1977 (Transkei)

Extension of the application of Transkeian Laws Act 1976

Glen Grey Act No.24 of 1894

Government Notice 833 of 1921

Government Notice No.1664 of 1929

Interim Protection of Informal Land Rights Act, 1996

Interim Protection of Land Rights Act of 1996

Kaffrarian Land Regulations of 1858

Less formal Townships Establishment Act 133 of 1991

1878 Locations Act

Native Location, land and Commonage Act No.40 of 1879
1913 Natives Land Act No.27
1920 Native Affairs Act
1927 Native Administration Act
1936 Natives? Trust and Land Act No.18
Proclamation 196 of 1920
Proclamation No.302 of 1928
Proclamation No.1117 of 1931
Proclamation No.116 of 1949
Proclamation R188 of 1969
Provision of certain land for Settlement Act of 1991
Upgrading of Land Tenure Act of 1991
Upgrading of Land Tenure Rights Act 112 of 1991

APPENDIX 1

QUESTIONNAIRE

1. Male
Female
2. Age
0-20
20-40
40-60
60-80
80-100
3. Do you own property?
4. Under what type of land tenure do you own property?
5. Does the present type of land tenure give you security?
6. Are you satisfied with the current system of land tenure under which you hold your land?
7. If not, what are the problems you have experienced?
8. Do you till the fields allocated to you under the present system of land tenure?
9. Do you rent, sell, lease or undertake share cropping on your fields? If so, which and if not, why not?
10. How can the current system of land tenure be improved?
11. What type of land tenure system would you like to see introduced and why?
12. Do you think that your system would be viable and what would be needed to ensure its success?

