The Increasing, and Decreasing, Importance of Agnatic Kinship for Access to Land in South Africa

La parenté agnatique dans l'accès à la terre en Afrique du Sud

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Abstract
A focus on institutional norms and rules gives an incomplete picture of rural land tenure; building an account of local practice from specific cases reveals nuances and variations that are otherwise elusive. Following the latter approach, the paper describes so-called “communal” tenure in Hobeni, a community in Xhora District, in the Transkei region of South Africa. A practice-based approach reveals significant variations in tenure practices, related to the kinship composition of local neighbourhoods. In areas where a few families are numerically predominant, agnatic kinship is the primary means for access to land. In areas that are diverse in their kin composition, other ties (for example, friendship, church membership, common employment, etc.) are used as a basis for access to land. The demographic variation underlying these practices appears to be widespread in communities in the Eastern Cape and beyond, suggesting considerable diversity within the workings of “communal” tenure. These variations reinforce the need for tenure reform to be responsive to local conditions, and for any new land tenure institutions to be downwardly accountable to those who inhabit, use, and make decisions regarding access to land.

Keywords: land tenure, practice, kinship, tenure reform

Résumé
Une concentration sur les normes et les règles institutionnelles ne donne qu’un aperçu incomplet du foncier rural. Par contre, construire un récit de la pratique locale à partir des cas spécifiques révèle des nuances et variations qui peuvent autrement évaser l’attention. En suivant cette approche, ce papier décrit le foncier soi-disant “communal” au Hobeni, une communauté qui se trouve dans le
Détartement de Xhora dans la région de Transkei d’Afrique du Sud. Une approche basée sur la pratique révèle des variations considérables dans les pratiques du foncier rurale, liées à la compositions parentale des quartiers locaux. Dans les endroits où un nombre limité de familles sont dominantes, la parenté agnatisue est le premier moyen d’accès à la terre. Dans les endroits où il existe une composition de parenté diversifiée, d’autres liens (comme les liens d’amitié, appartenance à la même église, ou partager le même emploi etc.) sont utilisés comme une base pour avoir accès à la terre. La variation démographique sous-jacente ces pratiques semble être très étendue dans les communautés de Eastern Cape et au delà, suggérant des variations considérables dans le fonctionnement du foncier “communal”. Ces variations renforcent le besoin d’une réforme de foncier sensibles aux conditions locales et de nouvelles institutions responsables vers le bas, c’est à dire envers ceux qui habitent, utilisent et prennent des décisions concernant l’accès à la terre.
INTRODUCTION

South Africa’s Communal Land Rights Act (Act 11 of 2004), like previous policy statements on tenure policy, calls for the creation of new landholding institutions based on a “rights enquiry” and the adoption of “community rules” on regarding land (Cousins and Claasens 2005: 45). The notion that tenure can be described by a set of rules has a long heritage, dating back to colonial efforts to record “customary law.” But critics have argued that rule-focused descriptions are an inadequate guide to tenure: while one cannot ignore rules and norms, framing an account predominantly in these terms gives an incomplete picture of how institutions shape land and natural resource use (Peters, 2002).

This paper describes communal tenure in Hobeni, a community in Xhora District, in the Transkei region of South Africa, showing connections between local social organisation and land tenure that are not evident from a focus on rules. I focus instead on tenure in practice, drawing on an interactional concept of “access,” understood as the “ease or difficulty of acquiring rights in particular areas” (Reyna and Downs, 1988: 12) to illuminate variations that would be hidden in a normative account. Because a particular piece of land is always located in space, actors’ social positions and the spatial locations of the land they seek are significant; access depends on who is looking for land, and where they are looking for land.

Although a few interviews quickly reveal a basic set of rules regarding land tenure, a practice-based approach reveals variations related to the kinship composition of local neighbourhoods. In areas where a few families are numerically predominant, agnatic kin ties (i.e. ties traced through males) are the primary means for access to land. In areas that are diverse in their kin composition, other ties (for example, friendship, church membership, common employment, etc.) may be a basis for access to land. The demographic variation underlying these practices appears widespread in communities in the region, suggesting considerable diversity within the workings of “communal” tenure and allowing the formulation of hypotheses regarding the likelihood that similar variations exist elsewhere.

Finally, I discuss the implications of these variations for land tenure reform. The variations I describe exist precisely because local residents control access to land in their neighbourhoods. This diversity highlights the need for tenure reform to be responsive to local conditions, and for any new land tenure institutions to be downwardly accountable to those who inhabit, use, and make decisions regarding access to land.

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THE SETTING

Hobeni is one of seven communities involved in the land claim on the Dwesa-Cwebe Nature Reserves. This paper focuses on land tenure in the areas outside the reserve, which were not part of the land claim. The land claim process, however, has affected the situation described here, as it led to the selection of Dwesa-Cwebe as a pilot area for land tenure reform. In 1996, prior to the July 2001 resolution of the land claim, the Department of Land Affairs and the Village Planner (a non-governmental organisation), held workshops that led to the creation of Communal Property Associations (CPAs) in the seven claimant communities. The registration of the CPAs did not take place until 2005, however, largely because of disputes over the applicability of the CPA legislation versus the Communal Land Rights Act (Robin Palmer, pers. comm.; André Terblanche, pers. comm.). As late as October 2005 the CPA had not asserted any role in land management. The CPA committee had grown out of a committee that had been elected with a mandate to execute the land claim, not to get involved in village land management, and its members were following this closely.

The local district government likewise had no role in land tenure. Land administration was a longstanding weakness of the district administration, and the state’s involvement in land administration effectively collapsed after the military coup in the Transkei in 1987 (Fay, Palmer and Timmermans, 2002b; Fay 2003). While some people in Hobeni had state-issued landholding certificates, these dated from the early 1980s or before, and were incomplete and unreflective of current landholding.

In the absence of official intervention in tenure, this is an area where agricultural use of communal land is exceptionally strong (contrast the literature reviewed in McAllister, 2001: 66-69). Local residents cultivate gardens adjoining their homesteads and—unlike many residents of the former South African “homelands”—they have not abandoned cultivation in distant fields. They also use land for residential homestead sites and grazing.

DIVERGENT LAND TENURE PRACTICES AND NEIGHBOURHOOD COMPOSITION

Despite a shared set of rules concerning access to land, there are two distinct patterns of access in southern Hobeni. In some neighbourhoods, outsiders have generally been successful in requesting new residential and garden sites, relying on a range of social ties. In others, land is almost exclusively available to the kin of existing residents.

These patterns correspond with variations in the kinship composition of local neighbourhoods. While three (of six) neighbourhoods are characterised by diverse groups of agnatic kin (that is, neighbourhoods where few families have links to common male ancestors), three consist primarily of one

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2 By “neighbourhoods,” I refer to the clusters of approximately 20 to 40 homesteads under a subheadman.
or two agnatic groups. These demographic variations have contributed to the emergence of different tenure practices: residents of diverse areas tend to be more accepting of outside applicants for land, while residents of “agnatically dense” areas tend to reserve land for their kin. In diverse areas, people seeking land mobilise ties other than agnatic kinship (for example, affinal and cognatic kin ties, church membership, employment, patron-client relationships, and healer-initiate/client relationships). In these areas, local residents often allow outsiders without agnatic ties to settle. In agnatically dense areas, however, kin ties are a virtual necessity for access to land; most land is occupied by, and allocated to, members of a few long-established local families.

The ethnographic literature on Cape Nguni peoples depicts neighbourhoods as typically diverse in their kin composition (Hammond-Tooke 1985), but Hobeni and nearby areas contrast with this characterisation. In southern Hobeni, three neighbourhoods (Mhlanganisweni, Velelo and MaVundleni) are diverse, with no agnatic group in a clear majority. However, the other three (MaBambeni, KwaDingata, and KuBhula) have a more dense concentration of a few agnatic groups: more than two-thirds of the homesteads can trace their origins to one or two ancestors.

The origins of this twofold pattern in the social composition of neighbourhoods appear to lie in economic differentiation dating from the 1880s to the 1930s, when many ancestors of current residents settled in the area. The first decades of the twentieth century in particular were a time of relative prosperity, enabled by the migrant labour, cash cropping, investment in livestock under favourable ecological conditions, and the absence of direct state intervention in agriculture (Beinart, 1982; Fay, Timmermans and Palmer, 2002a: 70-75).

This prosperity was not evenly distributed. Polygyny was common among some local families, but not all, around the end of the nineteenth century. This practice both created and reinforced economic differentiation: polygyny required extensive cattle holdings for bridewealth payments, but it also brought in women’s labour and a claim for additional arable land, enabling increased production.

Nearly all of the residents of the agnatically dense neighbourhoods trace their descent to a few wealthy polygynists whose children were born in these years. These ancestors were able to accumulate enough cattle to marry as many as seven wives. In each case, the polygynous marriages of a few apical ancestors nearly a century ago have led to the numerical dominance of a few extended families within the neighbourhood. In the following generation, few of their sons were able to marry more than one wife; however, localised networks of kin continued to constitute a resource for gaining access to land.

In contrast, in the three neighbourhoods with diverse composition, polygyny was uncommon. None of the remembered ancestors here had more than two wives, and only a handful had two. These

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3 I use this term as a shorthand to refer to areas in which one or two patrilineal extended families are numerically predominant.
families’ histories suggest that they were worse off than the polygynists in neighbouring areas. Many were members of the Gcaleka army, defeated in the 1877-78 frontier war. Many initially settled in Cwebe Forest, but were forcibly removed by the Forest Department between 1893 and 1936 (Fay, Palmer and Timmermans, 2002a). From culturally conservative Gcaleka communities, these men probably did not give up polygyny because of opposition to the practice; rather, it appears that military defeat and forced removals a generation later left them unable to afford large-scale polygyny.

The significance of polygyny and resultant large local kin networks in the late nineteenth century was amplified by changes in later years. Land became scarcer, out-migration became less feasible, and inter-household cooperation became more important. While men occasionally moved far from their natal homesteads in earlier generations (cf. Peires, 1981), by the early twentieth century changes in the political economy made people more likely to seek sites near their natal neighbourhoods. Racial segregation made it impossible for people to seek sites outside the Transkei, while population growth led to increasing perceptions of land scarcity. Homestead sizes declined as young men established their own homesteads at a younger age (Beinart, 1982). This trend, together with increasing poverty, made it harder for homesteads to rely exclusively on their own traction or labour resources; they grew more dependent on inter-household cooperation, particularly neighbourhood work parties and genealogically-organised ploughing companies (McAllister, 2001). This need to collaborate in production undoubtedly also affected decisions about post-marital residence, encouraging people to seek sites in their natal areas in order to be able to work with familiar neighbours and kin.

While direct evidence of past practices is unavailable, it appears that representation of close kin at meetings concerning land allocation became critical for access to sites and fields. Areas which were largely homogeneous in kin composition in the past have tended to remain or become more so, because members of the founding families requested sites there successfully, while outsiders have been reluctant to do so. As one woman said of the agnatically dense areas in 1998, “a person from [another clan] will not try to live there–he will be like a goat that is among sheep.”

ACCESS TO LAND IN SOUTHERN HOBENI

The two patterns of tenure practices that I have described are evident, to varying degrees, in four sets of practices which people in Hobeni use to secure access to land: inheritance, new allocation, subdivision, and relocation.

About one in five homesteads in Hobeni acquired their residential sites, and one in six their fields, through inheritance. Under the old administrative regulations, inheritance was limited to the wife of a deceased male or if she were deceased, the eldest son. Otherwise, land should theoretically revert to the control of the headman for reallocation. In practice, however, a wider variety of primarily agnatic kin
make successful claims to land based on inheritance, in both the agnatically dense and diverse
neighbourhoods. If a couple dies without a son, for example, the husband’s brother’s son may have a
viable claim to inherit. Such claims are generally supported by subheadmen and neighbourhood residents,
who generally consider such claims legitimate. Local practices also accommodate some women’s claims
to land; while local rules would forbid women from inheriting, in practice women occasionally do,
particularly if they have no living brothers.

While inheritance has contributed to the differentiation between agnatically dense and diverse
neighbourhoods, it is clearly not the only cause. Only 29 per cent of the sites in the areas dominated by
one or two agnatic groups in my survey sample were inherited—a higher proportion than in the sample as a
whole, but not sufficient to explain the existence of two types of neighbourhoods.

The majority of homesteads in southern Hobeni acquired their land through new allocation and/or
subdivision of existing parcels. When asked, people in Hobeni described a simple set of rules for access to
land: the headman administers land, and land is available upon request from the headman. Such
statements, however, summarise a more complicated process and a more subtle view of the headman’s
role. Hobeni residents frequently questioned the right of the headman either to collect fees or to grant
outsiders permission to settle in the area; some refused the headman’s requests for “gifts,” or deferred
their payment to an indefinite future. They pointed out a recent case where they had successfully refused
an applicant who had been offered a site by the headman. Instead, Hobeni residents insist that an applicant
must approach the neighbours in the area where he or she wants land, then approach the subheadman.
Once an applicant made a request for land to the subheadman, the subheadman would organise an open
meeting of all residents of the neighbourhood to reach a consensus on the acceptability of the applicant
and the site.

The most important aspect of “allocation” is thus a local matter. To have any expectation of
receiving a specific site, a prospective applicant for a site or field would need to gain the support of his or
her future neighbours prior to speaking to the subheadman. As one man explained, “the first thing you
must do is to go to the people around the place and ask for their permission–then you need to think about
how to get the sheep and the money for the headman.”

Rules and norms do not determine two key moments in this process. First, an applicant must
decide where to request a site or field. Second, the residents of the neighbourhood and the subheadman
must decide whether the applicant is acceptable. Although there is a commonly accepted set of
procedures for land allocation, these do not specify the outcomes of decisions about requesting or granting
access to land. These meetings allow the social composition of neighbourhoods to come into play.
Whether potential applicants request land, and how they are received depends on whether a
neighbourhood consists of a network of closely related, co-resident agnates, or a group of diverse families,
many of whom are relative newcomers.
A third means of access to land is subdivision of land. Technically forbidden under the administrative regulations that governed tenure in the Transkei, subdivision is nevertheless widespread. People who subdivide their fields or residential sites for family members state that it is not necessary to consult with the headman or subheadman prior to doing so, and assume that traditional authorities will not challenge their claims.

Like allocation, this practice is also shaped by the differences between agnatically-diverse and dense neighbourhoods. Members of the dominant families can gain access to subdivided land that would not be available to outsiders. One resident of KuBhula stated that nobody had received residential sites in the area recently, but then qualified his statement: “there are people who have got sites recently, but they aren’t from outside; they’ve received them from their family’s land.”

As a result, members of these families have a better chance of getting a better piece of land than outsiders or residents in the more diverse areas. While residents of the diverse areas complain about a scarcity of sites, in the agnatically dense areas, people feel confident about prospects: they say that there is no land shortage and that their children could get new residential sites. Roughly one in three homesteads in these areas was recently established, compared to one in eight elsewhere. Moreover, the plots that are available in these areas are often larger; since outsiders have generally not settled in KwaDingata and KuBhula, there is more land available per homestead.

A fourth means by which people have gained access to particular pieces of residential or agricultural land is relocation. Like many areas in the former homelands, the southern Transkei coast was subjected to so-called “betterment” policies, involving forced villagisation and the reorganisation of land use (cf. De Wet 1995, McAllister 1989). In Hobeni, people were being removed into villages by 1983-84. Enforcement was short-lived, though, ending with the 1987 military coup in the Transkei. Many people who had been ordered to move never did. Moreover, the state did not take over allocation of new land or the re-allocation of land from which people were removed.

Under betterment, two of the six neighbourhoods in southern Hobeni were forcibly moved into a “village,” while people were also moved within a third neighbourhood. The newly created village was comprised of two pre-existing neighbourhoods, creating tensions between newcomers and first comers. The prior residents of the betterment village had lost portions of their residential sites and gardens, which were subdivided to create sites for removed homesteads. They tolerated the presence of removed people out of necessity, but many saw the loss of land to newcomers as an injustice. In two other neighbourhoods (KuBhula and KwaDingata), people were ordered to move but resisted successfully until the administration gave up on enforcement, and never moved.

The distinction between agnatically diverse and dense neighbourhoods corresponds with the pattern of removals and resistance during forced villagisation in the 1980s. The three neighbourhoods from which people were removed (Mhlanganisweni, Velelo and MaVundleni) are diverse in their kin...
composition. In contrast, the two neighbourhoods where people successfully resisted betterment, KuBhula and KwaDingata, are of the “agnatically dense” type. Residents of these areas did not mention kinship with their neighbours as a basis for their refusal to move; most stated simply that they refused to move when told to relocate, or began building at their new sites, to give the appearance of compliance without actually moving.

The kinship composition of the neighbourhoods appears to have influenced the decisions of the few people from KwaDingata and KuBhula who did leave these areas. In most (five of seven) cases of removals from these areas, the homestead heads who moved were not members of the dominant agnatic groups; it appears that their claims to land were more fragile and easily abandoned.

In 1993, people who had been forcibly removed into the betterment village comprised of Mhlanganisweni and MaBambeni began to return to their former residential sites in 1993. Since then, many removed people have been building at and returning to their old sites, without seeking the permission of the headman or subheadmen.

This relocation began when a few relatively well-off homesteads returned voluntarily. Over time, however, removed people have faced pressure from their neighbours. In 1999, a man who had recently returned to his former site explained that the first people to move back ‘went on their own, they left on their own, they weren’t chased.’ He continued, ‘we were staying together well up there. [But] it started getting bad when people said “the Trust is over”; they began to intimidate us. They said they wanted to plough.’

These pressures have been particularly acute in the agnatically dense half of the resettlement area (MaBambeni), where 26 of the 35 removed homesteads which I was able to trace had returned by 1999. In contrast, in the more diverse portion of the resettlement area (Mhlanganisweni), removed families have faced less pressure to move; only four of the 28 homesteads removed into or within the neighbourhood had returned to their original sites in 1998.

Similar patterns appear in the uses of land left behind by people who have returned to their pre-betterment sites. In MaBambeni, where a few agnatic networks make up most of the population, long-term residents have generally successfully reclaimed land from people who have left. In contrast, in the diverse neighbourhood of Mhlanganisweni the subheadman and residents have disputed the rights of former owners to claim land rather than allow it to be reallocated. Although there are only four cases from which to generalise, people here have been more willing to allow land to be reallocated; they

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4 In 1998, homesteads from outside the dominant families made up only about 1/4 of the residents of these areas; they are clearly overrepresented among those who moved.
5 Because the state did not reallocate land after the betterment removals, these families had continued to use their former residential sites as fields.
complain of a shortage of new residential sites and have aimed to accommodate applicants for sites rather than let sites revert to their former owners.

**A Neighbourhood Schism**

On returning to Hobeni in late 2005, it was striking to see that a neighbourhood had split along kinship lines. While amaBamba dominate numerically in MaBambeni, the subheadman was from the amaDingata clan, reflecting the fact that the amaDingata were in the area prior to the arrival of amaBamba in the late 19th century, and the amaBamba requested land from amaDingata. In 2004, however, a group of senior amaBamba men approached the MaBambeni subheadman and requested that they be allowed to elect their own subheadman, effectively splitting MaBambeni into two neighborhoods, one exclusively amaBamba, and another consisting of amaDingata and a few other minority families. Effectively amaBamba had used their numerical advantage to create a *de facto* lineage territory.

**REGIONAL IMPLICATIONS**

In southern Hobeni, there are clearly significant variations in tenure practices, related to the kinship composition of local neighbourhoods. Is this community simply a unique case, or might similar patterns might exist elsewhere in the Eastern Cape and beyond? Are there similar sociodemographic variations in the kin composition of settlements, and do these correspond with land tenure practices?

The existing literature provides numerous examples of agnatic concentration, and hence the potential for informal influence over access to land. This is underemphasized in the existing literature. According to Hammond-Tooke, a typical Cape Nguni neighbourhood contained a diverse mix of “agnatic clusters,” with none holding a clear majority: “80 per cent of such agnatic clusters are made up of six homesteads or less. A cluster of twenty agnatic relatives is decidedly exceptional” (Hammond-Tooke, 1985: 315).

In a longer work, I analysed the neighbourhood composition described in a number of ethnographic sources on the Eastern Cape from the 1920s to the 1980s, to see whether the pattern of agnatic concentration found in Hobeni had parallels elsewhere (Fay, 2003). These sources included information on seventeen neighbourhoods, and revealed some pockets of concentrated kin: five had a single clan comprising more than half of their homesteads and nine had a single clan comprising more than 20 per cent of their homesteads.

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6 Hammond-Tooke uses the term “agnatic clusters” to describe co-resident groups of agnatically related kin in preference to “lineage,” in order “to get away entirely from the terms derived from descent group theory, with their structural implications” (1984: 84).

7 People sharing a clan name (*isiduko*) are not necessarily from the same extended family; some of these sources indicate that homesteads are part of the same agnatic group, while others only indicate clan name or are ambiguous.
Similar neighbourhoods to the “agnatically dense” homesteads described in the case study of southern Hobeni above are found in the northern part of Hobeni and in neighboring Cwebe. The land registers of Hobeni and Cwebe compiled by the Village Planner for the Department of Land Affairs in 1997 cover nineteen neighbourhoods in the two areas; they reveal that 85 per cent of local clan groups have six or fewer homesteads, comparable to Hammond-Tooke’s 80 per cent. However, in four of the nineteen cases a single clan made up the majority of homesteads in a neighbourhood (compared to five of seventeen in the literature reviewed above). In fifteen of the nineteen cases, a single clan made up more than 20 per cent of the homesteads (compared to nine of seventeen above).

This review of the regional literature, along with the cases of Hobeni and Cwebe, suggest that one can identify two different types of neighbourhoods, representing endpoints on a continuum. The more common is the agnatically diverse type in which no agnatic network has a clear majority. The less common type, found in roughly one in four neighbourhoods, is one where the majority of homesteads belong to only one or two clans, and in which large agnatic networks predominate.

The presence of neighbourhoods dominated by one or two agnatic networks throughout the region implies the potential for patterns of de facto control of land allocation by kin. As Shipton argued in a review of the African literature, “lineage principles, particularly patriliny, often become more important, not less, in local land matters as densities rise or as governments attempt to transform tenure” (Shipton, 1989: 10; cf. Platteau, 1996).

In South Africa, similar cases appear in the literature on the Eastern Cape and KwaZulu-Natal. In the years before betterment in Keiskammahoek, de facto family control over land was evident. The tenure volume of the 1952 Keiskammahoek Rural Survey describes growing agnatic influence over freehold and quitrent land (Mills and Wilson, 1952). Preston-Whyte and Sibisi (1975) described de facto control of land by localised agnatic groups in KwaZulu-Natal’s Valley of a Thousand Hills, providing evidence for similar practices from the 1930s and 1960s. More recently, Hornby has described similar practices in Ekhuthuleni, where families reallocate and subdivide land, bringing in traditional authorities to approve the allocation once the details have been agreed upon locally (2000: 314).

These cases suggest that situations where groups of kin have de facto control of land within communal tenure systems may be widespread. The topic has been underresearched, as research on tenure in South Africa has seldom focussed on the details of local practices, and networks of kin do not have a formal institutional structure, making them elusive to many research approaches.

Several other conditions besides co-resident agnatic networks appear necessary for these networks to be significant in land allocation. First, agnatic influence could only come into play where

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8 André Terblanche kindly provided me with an electronic copy of the land register, with the permission of the Hobeni and Cwebe CPA leadership.
administrative intervention and forced removals have not removed control over land from local people. In many rural areas, the state successfully took control of land administration and eliminated the role of neighbourhood meetings in the allocation of land (e.g. Speigel, 1988; De Wet, 1995). Where locally-based decision-making about land allocation no longer exists, the influence of kinship seems less likely.

Second, the significance of kinship depends on the weakness of countervailing justifications for access to land. In some areas, other ideologies have taken the place of descent. Preston-Whyte and Sibisi recount how Christians were chastised for allowing unrelated fellow believers to settle on communal land in favour of their own kin and the kin of local residents (1975: 306-307). More recently, in many areas, civic organisations and other structures linked to political struggles have taken over land administration, often connecting with local inter-generational conflicts (Turner, 1999; Ntsebeza, 2005).

Finally, agnatic influence only seems likely where it is feasible to exclude outsiders and/or to prevent them from subdividing land they have received. At Preston-Whyte and Sibisi’s research site, agnatic control of land was declining in the face of demand for residential land. The area’s proximity to employment centres “[made] it virtually impossible to stem the flood of outsiders who wish[ed] to settle in the area” (Preston-Whyte and Sibisi, 1975: 307). Moreover, outsiders who had received land were subdividing their sites themselves. Under these conditions, they suggested, “established descent groups [might] be overwhelmed by non-agnates and their strength and cohesion...affected” (ibid: 308). Indeed, this seems the case in diverse areas of southern Hobeni, where the first settlers were soon outnumbered, and never developed the influence over land allocation evident in the agnatically dense areas.

LOCAL VARIATIONS AND LAND TENURE REFORM

The legal status of tenure in Hobeni has changed with the registration of the Hobeni Communal Property Association as part of the finalisation of the Dwesa-Cwebe land claim. Many other parts of the former homelands, however, face the possibility of tenure reform under the Communal Land Rights Act (CLRA) of 2004. While the CLRA was signed into law in July 2004, it remains controversial and is likely to face constitutional challenges (Cousins and Claasens, 2005).

The significant variations in neighbourhood land tenure practices that I have described highlight a fundamental ambiguity in the CLRA. As Cousins and Claasens ask, in South African communal tenure systems, different levels of social organisation constitute different “communities,” nested within each other: which of these levels should be considered the “community” in terms of the CLRA? (Cousins and Claasens, 2005). The neighbourhoods of Hobeni, with varying social composition and land tenure practices, are nested within a number of larger structures; neighbourhoods themselves have not been considered as legal “communities” in local tenure reform proposals.

When the CPAs at Dwesa-Cwebe were set up in 1996, through a series of public meetings, local residents defined their “community” at the level of the Administrative Area (that is, the area under a
headman, encompassing multiple neighbourhoods) in Hobeni. Before the registration of the CPAs, Dwesa-Cwebe representatives expressed concerns that the Land Rights Act might supersede these definitions of “community” with ones more remote from local practices, at the administrative level of the apartheid-era Tribal Authorities; they described concerns that “the Mvelini T/A [Tribal Authority] and Guse T/A will become the Land Administration Committee in our area” (Dwesa-Cwebe Community Consultation, 2003: 2).

The CPA model, in contrast, has allowed those who occupy and use land to define the boundaries of community and to determine whether and how traditional leaders may be involved in land allocation and administration. Hobeni residents have included the headman as an ex officio member, but with equal standing to the other members, to ensure accountability and prevent the possibility of autocratic decision-making or abuses. The CPA constitutions—unlike the Land Rights Act—also insists (in boldface) that the future land allocating body (the CPA committee) may not act without a popular mandate. This is significant for the legitimacy of the committee, but it also enables it to accommodate local variations in tenurial practices. In answering to their constituents, the CPA leadership has stated their intentions to work through the subheadmen and neighbourhood structures, following existing tenure practices, and to include the headman as an ex officio member of the CPA committee.

The future of tenure reform under the CLRA may be determined more by national political considerations than local conditions. As I have argued here, however, for tenure reform to accommodate local variations in tenure practices, it must maintain a situation where primary decision-making remains with those who inhabit and use the land – neighbourhood members and subheadmen – and ensure that those who approve their decisions remain downwardly accountable.
References


