

# Uncertainty and Institutional Design

## *Proposals for Tenure Reform in South Africa*

**Ben Cousins**

IDS Bulletin Vol 32 No 4 2001

### **1 Introduction**

This article examines recent proposals for tenure reform in the former 'homelands' of South Africa in the light of the mixed experience of tenure reform in other African countries, in both the colonial and the postcolonial periods. In particular, it explores the issue of whether or not it is possible to legislate land rights and design administrative systems which take into account the realities of African landholding systems as 'complex, variable and fluid' (Shipton and Goheen 1992: 318), as 'social process' (Berry 1993), and thus as inherently negotiable.

The most innovative elements of the South African proposals are those which provide for the creation of a range of arenas and institutional settings, supported by state personnel and funding, which would enable and facilitate processes of claiming, negotiating and reaching agreement on the content of rights, the boundaries of jurisdictional areas, authority in land management systems and the distribution of benefits from land-based development schemes. Certainty of a kind is achieved through mediated social and political processes at the local level, but is acknowledged as incomplete and always subject to renegotiation; uncertainty is thus embraced in institutional design.

### **2 Tenure Reform in Africa, Past and Present**

In Africa statutory forms of land tenure (i.e. land rights that are legally defined and recognised by the state) were derived originally from the imposition of territorial control over the colonised area. They were based on European legal principles of suzerainty and eminent domain, whereby all land rights are vested ultimately in the state and laws apply throughout the national territory (IIED 1999: 8). In some key respects 'customary' tenure was also a creation of colonial rule. In Anglophone territories the policy of indirect rule led the state to preserve the political authority of chiefs, and saw colonial officials, in collaboration with those senior male African leaders holding political office at the time, attribute 'ownership' of land to these political units. They attempted to encode stereotyped versions of 'communal tenure', described as resting on tradition and custom, but in their 'rigidity and hierarchical character' (Chanock 1985) contrasting

sharply with what commentators have described as the 'openness and flexibility' of precolonial systems (Bassett 1993: 7), with a 'dynamic, evolutionary nature' (IIED 1999: 8).

Official perspectives began to alter, however, from the 1930s onwards, when a series of shocks (the depression, world war, and decolonisation movements) resulted in attempts to expand and intensify African agriculture as a means to help stabilise these regimes (Bassett 1993: 8). An 'evolutionary model' of tenure change emerged, in which communal tenure, despite its social and political advantages, was now perceived as an obstacle to agricultural progress. One of the major reasons was that it did not allow land to be used as collateral for agricultural credit. A unilinear transition from group to individual rights was seen as an evolutionary trend, and registered freehold title came to be seen as the answer (Platteau 1996). Yet officialdom remained extremely ambivalent about granting freehold titles, for political reasons, and continued state control was seen as necessary to prevent mismanagement and degradation of land by peasant farmers (Bassett 1993: 9).

One of the key legacies of colonial rule was thus the ambiguous coexistence of two main systems of land tenure. Statutory tenure, with private ownership and leasehold as the dominant forms, was found in the urban, industrial and settler-dominated sectors of the economy. In contrast, 'customary tenure', sometimes termed 'indigenous tenure', predominated in rural areas, and was often seen, particularly by the leadership of anti-colonial struggles, as associated with discriminatory policies, agricultural backwardness and environmental degradation. Hence it is not surprising that post-independence governments have often seen tenure reform as the key to addressing low levels of agricultural production (Bassett 1993; Bruce 1993; Okoth-Ogendo 1993). Redistributive reforms have been attempted in a number of countries, notably Kenya, Zimbabwe, Namibia, Mozambique (and now South Africa), where large-scale alienation of lands to settlers had occurred. Tenure relations are a key aspect of land redistribution and resettlement schemes, but also a key dimension of the broader agrarian structure and social relations, and thus a major focus of reform in themselves. Bruce (1993) identifies four main reform models:

collective or cooperative tenures; state ownership/leasehold tenure; private individual ownership; and the renovation of indigenous tenure.

However, by the end of the 1980s none of these active reforms had successfully transformed the colonial legacy of a dual tenure system characterised by ambiguity and inconsistency. 'Customary' (or 'communal') tenure has survived as a construct, with or without some degree of legal recognition, and with traditional authorities and dispute resolution procedures still playing a significant role in many contexts. In most countries title to the bulk of rural land is still vested in the state, another colonial legacy, which means that security of tenure against the state (ie. land rights with a degree of protection from the decisions and actions of government) remains an unresolved issue.

The 1990s has seen a new wave of tenure reforms and initiatives in Africa (Palmer 2000). Many have focused on reconfiguring the relationship between customary and statutory tenure in law, and attempting to define a new legal status for indigenous tenure systems.

### 3 Emerging Perspectives on Tenure Reform

Recognising the complexities involved in African tenure reform, many advocates now propose pragmatic 'adaptation' models rather than the radical replacement of 'customary' regimes. Bruce sums up the core elements of the new thinking:

... explicit recognition of indigenous tenure rules, legal protection for land held under them, strengthening of local institutions that administer those rules, and recognition or provision of mechanisms for resolving disputes. (Bruce 1998: 46)

This perspective acknowledges that freehold title does not necessarily bring security of tenure, and that 'unsuccessful attempts to substitute state titles for customary entitlements may reduce security by creating normative confusion, of which the powerful may take advantage' (Bruce *et al.* 1994: 260). The emphasis in this 'new paradigm' is on achieving clarity and certainty of rights, but

through giving stronger legal recognition to 'indigenous' rules, procedures and institutions. But while generalised prescriptions are clear enough, giving practical effect to them has proved more problematic. Three main models have emerged thus far:

- Codification, which attempts to integrate local systems and rules into law by systematising them and giving them legal definition, as in the Rural Code of Niger. However, this has confronted the diversity, variability, imprecision and flexibility of local rules (Lund 1998).
- Registration of local rights, as in Cote d'Ivoire's Rural Land Plan, which seeks to register all land rights and land uses, identify plot boundaries on maps and prepare for eventual legal recognition. Village committees are required to register rights, keep records and mediate disputes (IIED 1999: 35). However, there is a lack of clarity over the legal categories to be created (Lavigne-Delville 1999: 10) and the process has run into problems in recording overlapping, interlocking and secondary rights, as well as producing a 'most unwieldy system' which loses the flexibility of procedurally based local systems (Lavigne-Delville 1999: 13).
- Reforming rules and procedures for land rights management, including arbitration, rather than formalising land rights themselves. This seeks to 'reduce ambiguity about which norms are legitimate' by stakeholders adopting a 'system of shared rules', but within a hierarchy of arbitration bodies, thus creating a 'hybrid form of land administration' (Lavigne-Delville 1999: 17–18), combining customary authority and formal law. Experimentation with this approach has begun in Madagascar, but it is not clear what progress has been made.

Creating greater certainty in African land tenure systems is thus proving problematic. Lund (1998: 222) notes that in Niger the implementation of the Rural Code, although designed to enhance clarity, certainty and institutional order, has in fact had the opposite effect: increased unpredictability, increased institutional incoherence and a greater state presence but with ever-decreasing legitimacy. At one level these problems relate to difficulties in

Africa in determining the social boundaries of the group in which rights should be vested, establishing unambiguous territorial boundaries and ensuring state commitment and capacity for real devolution of authority over land. At another level, they reflect deeper uncertainties inherent in African tenure systems

### 3.1 The fluidity and negotiability of land rights in Africa

For Berry (1993: 101–134) access to land in rural Africa has remained contested and negotiable despite numerous attempts by the state to regulate processes of allocation, inheritance and transfer. Access has continued to hinge on social identity and status, and hence on membership of groups and networks; land continues to be subject to 'a dynamic of litigation and struggle which both fosters investment in social relations and helps to keep them fluid and negotiable' (Berry 1993: 133). This has had the effect of making it difficult to enforce legislation on tenure rights or to institutionalise exclusive control of land by either individuals or corporate groups. 'Security of tenure' is in practice secured not through law and administration, but maintained through open-ended, on-going processes of negotiation, adjudication and political manoeuvre (Berry 1994: 35).

Echoing this view is Okoth-Ogendo's suggestion that secure rights in land range along a continuum from the most temporary to the most permanent, and can swing backwards and forwards along this continuum. The critical factor is the ability of people to engage in 'tenure building', by which he means 'the expansion and continuous vindication of particular allocations of power in specific production contexts' – a political process based on power relations (Okoth-Ogendo 1989, cited in Bassett 1993: 20).

What are the policy implications of this understanding? One possibility is to switch focus away from legal reforms, which attempt to give greater clarity on the status of indigenous land rights, to the institutional arenas in which negotiations take place and power relations assert themselves.

Rather than rewrite the laws governing property rights – an effort which will serve

mainly to introduce another set of arguments into ongoing debates over access to land – governments should focus on strengthening institutions for the mediation of what, in changing and unstable economies, will continue to be conflicting interests. (Berry 1990, cited in Bruce *et al.* 1994: 262)

In this view secure land rights are the outcome of negotiated processes, mediated by legitimate institutions backed by central government, which provide an enabling framework of law as well as institutional support for local level processes. Moore (1998: 47) points to the importance of ‘practical institutional possibilities’ because ‘rights without remedies are ephemeral’; the need is to ‘create an appropriate space where legitimate claims [can] be acknowledged and acted upon’.

## 4 Land Reform in South Africa

South Africa’s post-apartheid democratic government has embarked on a wide-ranging and ambitious programme of land reform, designed to redress the legacy of centuries of dispossession, racially defined and discriminatory legal frameworks, and deep rural poverty. The three principal components are a market-assisted *redistribution* programme, *restitution* of land to people who were dispossessed by racially discriminatory legislation or practice after 1913, and a *tenure reform* programme aimed at creating tenure security within a variety of tenure systems (Department of Land Affairs 1997). Both restitution and tenure reform are ‘rights-based’ and are explicitly referred to in the Bill of Rights in the country’s new Constitution. New laws enacted since 1994 create the basis for claims to land and resources, and elements of the grants-based redistribution programme involve new legal regimes, which specify the rights and duties of the beneficiaries of land reform. Laws creating strong land rights are thus a central feature of the policy framework.

The tenure reform programme attempts to address the systemic insecurity of tenure of black South Africans that is the result of the highly discriminatory policies and laws of the recent and not-so-recent past (Claassens 1991; Makopi 2000). The Bill of Rights includes an entitlement to security of tenure, or to ‘comparable redress’, for

those whose tenure is insecure as a result of past discrimination, and requires parliament to enact legislation to provide appropriate measures. To address the tenure insecurity of labour tenants and farm workers, specific legislation has been enacted and is being used to prevent evictions by the owners of the commercial farmland on which these categories of people live.

The impact of these rights-based laws has been limited, partly because capacity constraints in both the state and the NGO sector have affected the degree of support to rights holders. Similar problems have arisen in relation to the formation of legal entities for group land ownership in redistribution and restitution projects (Cousins and Hornby 2000). Here the main instruments are either community land trusts or Communal Property Associations. These experiences have led to a growing recognition that legislation to create or strengthen rights is insufficient. Equal attention must be given to implementation and the real-world context of unequal power relations, which mediate – and create uncertainties in – the impact of new policies and laws (Cousins 1997).

### 4.1 Tenure insecurity in the former ‘homelands’

Historical processes have contributed to a variety of dimensions of tenure insecurity. The fundamental problem is the second-class status of black land rights in law, which provides few protections from arbitrary decisions by those wielding authority over land allocation or land use (government officials or traditional leaders). Underlying historical rights of occupation have never been recognised in law, and are still not acknowledged by official bodies such as provincial government departments. For most rural people, rights still take the form of permits (mostly known as a ‘Permission To Occupy’, or PTO), issued under highly restrictive conditions. Discrimination against women in the allocation of land and the holding of rights is a fundamental feature in most of rural South Africa (Meer 1997).

Closely linked is the overcrowding and forced overlapping of rights that derives from a history of forced removals, evictions from farms, and the operation of the pass laws. These led to massive

numbers of people being dumped on the land occupied by others, either in the 'homelands' or in the few remaining areas of group-owned freehold land still found in 'white' South Africa (the so-called 'black spots'). While some accommodation between original residents and the new arrivals often took place, tensions have risen since the demise of apartheid. In many cases the original occupants want their land back, and the unwelcome possibility of tenure reform resulting in a fresh wave of (post-apartheid) forced removals and evictions now confronts policymakers (Makopi 2000).

A consequence of past policies is the partial breakdown of group systems of tenure, which have not received adequate legal recognition or administrative support. One manifestation of the malaise is abuse of authority by chiefs and tribal authorities (Ntsebeza 1999), sometimes challenged by civic organisations, which can lead to a vacuum in legitimate authority. Land administration systems in the former 'homelands' are in disarray. Permission to Occupy permits are no longer issued in some areas; in others procedures are *ad hoc* and registers are not kept up.

Tenure-related problems often receive official recognition only when the underlying lack of clarity in respect of legal status is brought to the surface by development planning on communal land, or within restitution or redistribution projects. It may be the case that the majority of people in 'communal areas' have a degree of *de facto* tenure security, because the existing systems, many of them informal as a result of the breakdown of administrative systems, work reasonably well day-to-day. However, there is also evidence that the existing tenure systems are failing to facilitate efficient use of arable land (e.g. through sharecropping or land rental) and that lack of clarity is undermining effective management of common pool resources (Turner 1999).

Tenure insecurity in the communal areas of South Africa thus takes two forms: (a) a relatively small number of high profile cases where conflicts and contestations over land rights are explicit and obvious, and (b) a larger number of chronic, low profile situations where lack of clarity and certainty are probably constraining land-based livelihoods (Cousins 1999).

## 4.2 Points of departure and the draft Land Rights Bill

Taking its lead from the Bill of Rights, the White Paper on Land Policy of 1997 lists principles to guide the drafting of legislation and the implementation of tenure reform:

- Tenure systems must rest on well-defined rights rather than conditional permits
- Rights-based approaches must assist in 'unpacking' overcrowded situations of overlapping rights, through the provision of more land or other resources
- A unitary and non-discriminatory system of land rights for all must be constructed, supported by effective administrative mechanisms, including registration of rights where appropriate
- Tenure systems must allow people to choose the tenure system they prefer from a variety of options (including different combinations of group and individual rights)
- Tenure systems should be consistent with constitutional principles of democracy, equality and due process
- Tenure policy should bring the law in line with realities on the ground (i.e. recognise *de facto* rights in law).

The new policy framework shares much with emerging perspectives on tenure reform in Africa more generally. Drafting of a Land Rights Bill to fulfil the government's constitutional obligations began in late 1997. Despite the lack of clarity as to the official status of this draft at present,<sup>1</sup> the proposals it contains have elicited much interest elsewhere on the continent (Okoth-Ogendo 2000). At its heart is a distinction between 'ownership' and 'governance', which was blurred in the past in the former homelands where the state was both owner and administrator.

The draft Bill attempts to embody the principles of tenure reform set out in the White Paper, i.e. to give full recognition in law of the underlying land rights of those people who occupy land that is

registered in the central Deeds Registry as 'state land'. Land rights are vested in members of group systems, not in institutions such as legal entities, the chieftaincy or tribal authorities.

From the distinction between ownership and governance flows the result that group members have the right to choose which institution should manage and administer land rights on their behalf. Group systems must provide 'bottom line' protection for their members, consistent with constitutional principles of democracy, equality (including gender equality) and due process. Rights are registerable, but this is not compulsory. Measures to address forced overcrowding and overlapping rights are provided, based on constitutional requirements to provide 'comparable redress' to those whose tenure cannot be secured on the land they currently occupy.

#### **4.2.1 The 'ownership' paradigm and its problems**

Initially policy was based on a paradigm of 'transferring ownership from the state to the rightful owners'. In situations of overlapping and contested rights, transfer would take place only after a rights enquiry, with government providing incentives to local stakeholders to negotiate solutions, mainly in the form of funds for additional land to relieve overcrowding. However, experience in a number of 'test cases' revealed inherent difficulties (Claassens 2000a).

One major difficulty concerned the 'unit of ownership' in communal areas: should land be transferred to 'tribes', or 'nations', often consisting of hundreds of thousands of people, or to wards, or to villages, or to tribal authority level? Vesting land ownership in the larger group could make it difficult for smaller groups to make meaningful decisions about land within their own localities; conversely, vesting rights at the local level might deny some rights inherent in the larger group.

The form of ownership also proved problematic: would land be transferred only to properly constituted legal entities, or could it be transferred to 'tribes', as some groups demanded? In the latter case, how could the state ensure democratic

decision making, principles of equity and rights of due process?

The test cases provided important lessons in relation to the processes involved in land transfers. Investigation and consultation with the prospective rights holders is necessarily resource intensive, intricate and time-consuming. They can also trigger intractable conflicts: land ownership is a 'high prize', and although 'some of these disputes hardly existed or were latent, ... the irrevocable nature of land transfer is an effective alarm clock for latent social tensions' (Claassens 2000a: 254).

#### **4.2.2 Paradigm shifts: from ownership to protected statutory rights**

As a result of these difficulties, the drafters of the Bill moved away from the notion of 'transfer of ownership' towards a paradigm based on statutory rights, which are secure but do not convey full ownership. The law would create a category of protected rights, with the status of property rights, in that the law would protect their holders from deprivation without their consent or by expropriation. Rights holders would be the key decision makers on matters related to that land, and derive the full benefit from its use or transfer. The Minister of Land Affairs would continue to be the nominal owner of the land, but with strictly delimited powers. These protected rights would be vested in the individuals who use, occupy or have access to land, but in group tenure systems would be subject to those shared with other members and to 'group rules', with group boundaries innovatively defined as flexible according to the decision in question (Claassens 2000a: 255).

Protected rights, defined by statute, would thus confirm in law the rights of the 2.4 million households (the *de facto* rights holders), occupying and using land in the 'communal' areas of South Africa, without having to resolve, in each and every case, disputes over land ownership. Furthermore, the content of these 'protected' rights was to be defined in a way that balance flexibility against certainty. The drafters of the Bill set out to provide mechanisms for confirming rights which are 'positively defined' (Claassens 2000b: 134). Current rights would receive protection in the new law, but to balance individual and group rights, and to

maintain a necessary element of flexibility, a local process of defining or limiting the 'specific detail' of the content of rights would have to take place. For example, localised variations in the rights to transact or mortgage could be decided before the conferral of rights takes place. Claassens (2000b: 141) characterises this as a 'framework approach to securing land rights'.

Nevertheless the draft Bill recognises that there are groups of people for whom the confirmation of their *de facto* rights, but in the form of protected rights and thus less than full ownership, will be seen as insufficient and inadequate: for example, those groups whose forebears purchased land but were prevented in the past from taking ownership. The Bill thus allows for the option of transfer of ownership to well-defined groups where agreement is reached on the unit of land to be transferred, its boundaries, the entity in which land ownership will vest, and a constitution, which provides basic rights consistent with constitutional principles. Here a number of options for the form of group ownership exist (e.g. companies, trusts and communal property associations).

#### **4.2.3 Institutions for managing land rights and resolving conflicts**

The creation of land rights in a piece of legislation is not sufficient on its own. Institutional support is required to enable rights holders to claim and exercise their rights and seek legal redress, and to resolve disputes.

Official systems of land administration are dysfunctional, and attempts to replace them with an extensive system would run into severe funding and capacity constraints (funds for land reform are currently around 0.4 per cent of the national budget). On the other hand, in many areas there are local institutional arrangements dealing with land matters on a day-to-day basis and with a degree of local legitimacy, despite their lack of official status (Lahiff 2000; McIntosh and Vaughan 2000; Turner 1999).

The draft Bill sets out clearly the right of those with protected rights to choose or create their own preferred local institution for the purpose of managing land rights. This means that existing local institutional capacity can form the basic

building block of a structure of land rights management and, to a certain extent, relieve the capacity constraint within government. Where the existing structures are able to meet certain criteria (e.g. can demonstrate majority support), they could be 'accredited' by government.

However, local institutions on their own are not sufficient. They require support from government in order to carry out their functions and in making applications for accreditation. The proposed solution is a Land Rights Officer, who would:

.... help rights holders enforce their rights and assist (and monitor) accredited structures. These officials would also have a key role to play in assisting to resolve disputes about overlapping rights, boundaries, and the delineation of disputed rights. They would have a pivotal role in the process of accrediting local structures, and in the registration of rights. (Claassens 2000a: 259)

The Land Rights Officer would also convene processes of decision making in situations where no local institutional structure exists with sufficient credibility to be accredited, but local decisions (e.g. where external investment on community land is proposed) are required.

The draft Bill also proposed the establishment of Land Rights Boards at District Council level. The Boards' functions would include overseeing the accreditation of local structures, resolving disputes between structures, monitoring and reviewing decisionmaking to ensure that locally agreed rules have been observed, and making recommendations on additional land and resources where rights are overlapping and contested.

#### **4.2.4 Overlapping rights, tenure reform and redistribution**

There is a constitutional imperative for the state to provide tenure security or 'comparable redress' to those whose tenure was made insecure as a result of previous policies. Part of the problem arises from forced overcrowding and the overlapping rights that result. The draft Bill attempts to provide a mechanism for 'unpacking' these situations through recognition of legitimate claims, albeit of

differential strengths, and allowing for 'tenure awards' to protected rights holders who cannot all be accommodated on the same land, commensurate with their rights (Makopi 2000).

Awards are envisaged as involving a combination of the confirmation of the occupation rights of some rights holders together with compensation or additional land for others. The process of making an award would be structured to elicit proposed solutions from the rights holders themselves, with the assistance of government-appointed facilitators. Processes of negotiation over the details of the award are seen as central, with government providing incentives (in the form of additional resources) and an enabling framework of law and support.

## **5 The Uncertain Politics of Tenure Reform**

South Africa's draft Land Rights Bill thus represents an ambitious attempt to confront the realities of African land tenure systems and draw the appropriate lessons from reform experiences elsewhere on the continent. Okoth-Ogendo (2000: 16), reviewing Africa's experience, claims that it is 'the only serious attempt to deal with the issue of comprehensive land rights creation and security'. What are the chances of it becoming law, allowing its innovations to be tested in practice?

On the basis of the inherent fluidity of tenurial systems, Sara Berry has questioned the appropriateness of redefining land rights in Africa (Berry 1990, cited in Bruce 1994). But this is not a feasible option in South Africa. The highly discriminatory property regime inherited from the past requires legal reforms which give a much clearer legal status to land rights in the former 'homelands'. This does not necessarily require the 'upgrading' of 'traditional' or 'communal' tenure systems to private property. The variability, flexibility and nested character of many African tenure systems need to be incorporated into the definition of protected rights, and mechanisms found for balancing group and individual rights against one another.

However, an equal emphasis on institutional frameworks (Berry's alternative route) is also required. These mediate the socially and economically embedded processes of defining and allocating land and resources, which must be understood as fundamentally political in character, and allow policy goals such as gender equity to be pursued. In South Africa, establishing these frameworks will require scarce government funds, and thus political commitment to the task of tenure reform.

Whether or not this exists currently is questionable, and there have been indications since the appointment in 1999 of a new political leadership for land reform that arguments in favour of transfer of state land to 'tribes' (rather than the creation of statutory rights for members of groups and communities) may have gained ground (Cousins 2000). This would allow the government to avoid the costs of establishing and servicing the institutions required to manage land rights. Left implicit is the abandonment of the goal of democratising decision making on land.

A further option, either by design or default, is inaction: allowing the present confusion, administrative decay and tensions over insecure rights in the former 'homelands' to continue, with people 'muddling through' as best they can. Although five years of inaction have not yet provoked a rural revolt, this is probably not feasible in the medium term. Tenure reform legislation that attempts to resolve the more obvious problems must be expected sooner or later, but high levels of uncertainty remain in relation to the political dynamics which underlie policy making in South Africa's land reform, and thus also in relation to the content of new legislation.

The draft Land Right Bill attempts to create a legal framework for land tenure with elements of both certainty and negotiability. The most innovative aspects are those that allow for flexibility in respect of both the content of land rights and the boundaries of group territories, and those that create a range of negotiating arenas for more specific definition. Whether or not these aspects are incorporated into legislation remains to be seen.



## Note

1. The draft Land Rights Bill was initiated in 1997 by the then Minister of Agriculture and Land Affairs, Derek Hanekom. In June 1999 Hanekom was replaced by the former Deputy Minister of Agriculture, Thoko Didiza, and work on the draft

Bill was stopped. At time of writing the fate of the proposals discussed here is still unclear. For a discussion of the background to these events, see Cousins (2000).

## References

- Bassett, T. J. (1993) 'The land question and agricultural transformation in Sub-Saharan Africa', 'Introduction' in J. T. Bassett and D. E. Crummey (eds) *Land in African Agrarian Systems*, Madison: University of Wisconsin Press.
- Berry, S. (1994) 'Resource access and management as historical processes: Conceptual and methodological issues', report from the Ph.D. seminar on International Development Studies, University of Roskilde, Denmark.
- Berry, S. (1993) *No Condition is Permanent: The Social Dynamics of Agrarian Change in Sub-Saharan Africa*, London: University of Wisconsin Press.
- Berry, S. (1989) 'Social institutions and access to resources', *Africa*, Vol. 59, No.10.
- Bruce, J. W. (1993) 'The variety of reform: A review of the recent experiences with land reform and the reform of tenure, with particular reference to the African experience', in H. Secher Marcussen (ed.) *Institutional Issues in Natural Resource Management*, Denmark: International Development Studies, University of Roskilde.
- Bruce, J. W. and S. Migot-Adholla (eds) (1994) *Searching for Land Tenure Security in Africa*, Washington: International Bank for Reconstruction and Development.
- Chanock, M. (1985) *Law, Custom and Social Order*, Cambridge: Cambridge University Press.
- Claassens, A. (2000a) 'South African proposals for tenure reform: The Draft Land Rights Bill', in C. Toulmin and J. Quan (eds) *Evolving Land Rights, Policy and Tenure in Africa*, London: International Institute for Environment and Development and Natural Resources Institute.
- Claassens, A. (2000b) 'Land rights and local decision-making processes: Proposals for tenure reform', in B. Cousins (ed.) (2000) *At The Crossroads: Land and Agrarian Reform in South Africa into the 21st Century*, Cape Town: Programme for Land and Agrarian Studies, University of the Western Cape and National Land Committee.
- Claassens, A. (1991) 'For whites only – land ownership in South Africa', in M. de Klerk (ed.) *A Harvest of Discontent: The Land Question in South Africa*, Cape Town: Idasa.
- Cousins, B. (2000) 'Does land and agrarian reform have a future, and if so, who will benefit?', in B. Cousins *At The Crossroads: Land and Agrarian Reform in South Africa into the 21st Century*, Cape Town: Programme for Land and Agrarian Studies, University of the Western Cape and National Land Committee.
- Cousins, B. (1999) 'The economic benefits of tenure reform', memorandum for senior management meeting, mimeo, Department of Land Affairs, 11 June, 1999.
- Cousins, B. (1997) 'How do rights become real? Formal and informal institutions in South Africa's land reform', *IDS Bulletin*, Vol. 28, No.4: 59–68.
- Cousins, T. and D. Hornby (2001) 'Leaping the fissures: Bridging the gap between paper and real practice in setting up common property institutions in land reform in South Africa', in L. Thompson, T. A. Benjaminsen and B. Cousins (eds) *Contested Resources: Challenges to Governance of Natural Resources in Southern Africa*, Cape Town: Programme for Land and Agrarian Studies and Centre for Southern African Studies, School of Government, University of the Western Cape.
- Cross, C. (1998) 'Reforming land in South Africa: Who owns the land?', proceedings of the International Conference on Land Tenure in the Developing World, UCT.
- Department of Land Affairs (DLA) (1997) *White Paper on South African Land Policy*, Pretoria: DLA.
- Hargeaves, S. (1997) *Communal Property Associations in the Field*, Johannesburg: The Rural Action Committee.
- IIED, (1999) 'Land tenure and resource access in West Africa: Issues and opportunities for the next twenty-five years', London: International Institute for Environment and Development.

- Lahiff, E. (2000) 'The impact of land reform policy in the Northern Province', in B. Cousins, *At the Crossroads: Land and Agrarian Reform in South Africa into the 21st Century*, Cape Town: Programme for Land and Agrarian Studies, University of the Western Cape and National Land Committee.
- Lavigne-Delville, P. (1999) 'Harmonising formal law and customary land rights in French-speaking West Africa', *IIED Issue Paper*, No. 86, June, London: International Institute for Environment and Development.
- Lund, C. (1998) *Law, Power and Politics in Niger: Land Struggles and the Rural Code*, Hamburg: LIT Verlag.
- McIntosh, A. and A. Vaughan (2000) 'Experiences of agrarian reform in South Africa: The limits of intervention', in B. Cousins, *At the Crossroads*.
- Makopi, S. (2000) 'Awards to provide security of tenure and comparable redress', in B. Cousins, *At the Crossroads: Land and Agrarian Reform in South Africa into the 21st Century*, Cape Town: Programme for Land and Agrarian Studies, University of the Western Cape and National Land Committee.
- Meer, S. (1997) (ed.) *Women, Land and Authority: Perspectives from South Africa*, Cape Town: David Philip.
- Moore, S. F. (1998) 'Changing African land tenure: reflections on the incapacities of the state', *European Journal of Development Research*, Vol. 10, No. 2: 33–49.
- Mortimore, M. (1999) 'History and evolution of land tenure and administration in West Africa', *IIED Issue Paper*, No. 71, London: International Institute for Environment and Development.
- Ntsebeza, L. (1999) 'Land tenure reform, traditional authorities and rural local government in post-apartheid South Africa', *Research Report*, No. 3, Cape Town: Programme for Land and Agrarian Studies, University of the Western Cape.
- Okoth-Ogendo, H. W. O. (2000) 'The tragic African commons: A century of expropriation, suppression and subversion', paper delivered at a workshop on Public Interest Law and Community-based Rights, Arusha, Tanzania, 1–4 August.
- Okoth-Ogendo, H. W. O. (1993) 'Agrarian reform in sub-Saharan Africa: An assessment of state responses to the African agrarian crisis and their implications for agricultural development', in T. J. Bassett and D. E. Crummey (eds) *Land in African Agrarian Systems*, Madison: University of Wisconsin Press.
- Okoth-Ogendo, H. W. O. (1989) 'Some issues of theory in the study of tenure relations in African agriculture', *Africa*, Vol. 59, No. 1: 6–17.
- Palmer, R. (2000) 'Land policy in Africa: Lessons from recent policy and implementation processes', in C. Toulmin and J. Quan (eds) *Evolving Land Rights, Policy and Tenure in Africa*, London: International Institute for Environment and Development and Natural Resources Institute.
- Platteau, J. P. (1996) 'The evolutionary theory of land rights as applied to sub-Saharan Africa: A critical assessment', *Development and Change*, No. 27: 29–86.
- Shipton, P. and M. Goheen (1992) 'Understanding African landholding: Power, wealth, and meaning', 'Introduction' in *Africa*, Vol. 62, No. 3.
- Toulmin, C. (2000) 'Decentralisation and land tenure', in C. Toulmin and J. Quan, *Evolving Land Rights, Policy and Tenure in Africa*, London: International Institute for Environment and Development and Natural Resources Institute.
- Toulmin, C. and J. Quan (eds), *Evolving Land Rights, Policy and Tenure in Africa*, London: International Institute for Environment and Development and Natural Resources Institute.
- Turner, S. (1999) 'Land rights and land administration in the Herschel and Maluti Districts, Eastern Cape', *Occasional Paper*, No. 10, Cape Town: Programme for Land and Agrarian Studies, University of the Western Cape.