Development Southern Africa Vol. 22, No. 3, September 2005

Contested land tenure reform in South Africa: experiences from Namaqualand

Poul Wisborg[1] & Rick Rohde[2]

In South Africa the distribution of land rights remains a major manifestation and cause of injustice, only slowly affected by the constitutionally mandated programme of land restitution, redistribution and tenure reform. The Transformation of Certain Rural Areas Act 94, 1998 (Trancraa) is the first post-apartheid legislation to reform 'communal' land tenure. It applies to 23 former 'coloured rural areas' and was introduced in six areas in Namaqualand in the Northern Cape Province during 2001–2. In a different, contested process a Communal Land Rights Bill for the former 'homelands' was published in August 2002, adopted by Cabinet in 2003 and signed into law in July 2004. While the Communal Land Rights Act relies on 'traditional councils' with a majority of non-elected members, Trancraa was enacted in the context of the 1997 White Paper of South African Land Policy and focused on community choice and the role of municipalities. The consultative process in Namaqualand was driven by civil society organisations and community actors, but did not include the training, finance and development support needed to transform rural relations among people affected by unemployment, land scarcity and weak local organisations. To promote procedural and substantive justice, tenure reform must honour the human rights of equality, redress and land development support articulated in land policy and the Constitution.

1. INTRODUCTION: TOWARDS LAND TENURE REFORM IN SOUTH AFRICA

Following three-and-a-half centuries of colonial and apartheid rule and exploitation, South Africa's 'negotiated revolution' brought the first democratically elected government to power in 1994, and with it expectations and promises about bringing an end to inequality. The 1996 Constitution holds that 'South Africa belongs to all who live in it, united in our diversity' and resolves to 'heal the divisions of the past and establish a society based on democratic values, social justice and fundamental human rights' (preamble). The Bill of Rights commits the government to ensuring equitable access to land, to providing tenure security or comparable redress, and restoring land to people who have been dispossessed owing to racial discrimination after 1913. The White Paper on South African Land Policy 1997 recognises that land rights are vested in people, rather than institutions such as tribal or other local authorities, and insists that individual rights of members must be respected through democratic decision making and non-discrimination (DLA, 1997: xii and section 3.20.2).

Land reform has progressed with a range of legislation, activities and achievements, but also with increasing frustration at the lack of political priority, slow pace and disappointing socio-economic impacts (Lahiff, 2001). Some 60,000 commercial farmers own 82 million ha (67 per cent of total area) and only about 3 per cent of commercial farmland

[1]Poul Wisborg is a visiting research fellow at Programme for Land and Agrarian Studies (PLAAS), University of Western Cape (2001–2002) and PhD research fellow at Noragric, Department of International Environment and Development Studies, Norwegian University of Life Sciences, PO Box 5003, N-1432 Aas, Norway (e-mail: poul.wisborg@umb.no). [2]Rick Rohde is a senior researcher at Programme for Land and Agrarian Studies (PLAAS), University of Western Cape and Research fellow at the Centre of African Studies, University of Edinburgh, 21 George Square, Edinburgh EH8 9LD, Scotland, UK (email: rick.rohde@ed.ac.uk).

ISSN 0376-835X print/ISSN 1470-3637 online/05/030409-19 © 2005 Development Bank of Southern Africa
DOI: 10.1080/03768350500253260

was redistributed between 1994 and 2004 (Kepe & Cousins, 2002; Hall et al., 2003; Hall & Lahiff, 2004). The government has allocated R1 billion per year (about 0.35 per cent of public spending) to land reform (Mingo, 2002), which was nominally increased to R1.6 billion in the 2003/4 budget (Hall & Lahiff, 2004) (1US$ = R6.9 and 1 EUR = R8.4. March 2004). The deadline for reaching the official target of redistributing 30 per cent of commercial farmland has been extended from 1999 to 2015.

An estimated 16 million people (35 per cent of the population) live in the former 'homelands' (about 14 per cent of the total area). In both former 'coloured reserves' and 'homelands' insecure tenure is an aspect of the persistent apartheid of space, assets and opportunities, hindering economic development and leaving people vulnerable to exploitation (Ntsebeza, 1999; Kepe, 2001). Confronting deep inequalities of gender, class and race, communal land tenure reform is the most protracted part of South Africa's land reform programme (Claassens, 2000; Cousins, 2002b). The 1999 draft *Land Rights Bill* was shelved after the change of Minister that year. A new draft bill was discussed at the November 2001 National Land Tenure Conference in Durban (RSA, 2001), and in August 2002 the government published a 'Communal Land Rights Bill' (CLRB) for public review (RSA, 2002). In October 2003 the cabinet adopted a dramatically changed version of the Communal Land Rights Bill (Oxfam, 2003; RSA, 2003a). It placed the responsibility for land administration with 'traditional local councils' provided for in the Traditional Leadership and Governance Framework Act (RSA, 2003b). The Land Rights Bill was debated in highly critical submissions and hearings in November 2003. Legal opinions for the Commission on Gender Equality, the Human Rights Commission and the Legal Resources Centre viewed the Communal Land Rights Bill as possibly inconsistent with the Constitution (Commission on Gender Equality, 2003; de Waal, 2003; PLAAS/NLC, 2003; RSA, 2003a). Nevertheless, an amended version was approved by Parliament and signed into law (RSA, 2004).

We suggest that a useful model of land tenure reform legislation has already been enacted and implemented, although little reference has been made to this in the debates surrounding the CLRB, perhaps because its emphasis on 'traditional councils' with a majority of non-elected members departs from the 1997 Land Policy. The *Transformation of Certain Rural Areas Act 94 of 1998* (Trancraa or Act 94) was drafted through a consultative process in the mid-1990s and is the first comprehensive communal tenure reform to be implemented. It provides for transferring land ownership to residents or accountable local institutions in 23 'rural areas' currently held in trustee ownership by the state under Rural Areas Act 9 of 1987 (hence 'Act 9 areas'), covering 1.8 million ha and having about 70,000 inhabitants in four provinces (Catling, 1996). This corresponds to about 10.5 per cent of the area and less than 0.5 per cent of the population in the former 'homelands'.

2. NAMAQUALAND

Namaqualand is an arid to semi-arid area bordering on the Atlantic and Namibia. The major part falls in the 'Succulent Karoo' plant geographical region, a desert shrub land, with foggy, mainly winter rainfall of 200–400 mm and a high diversity of plant life with about 3,000 species, one-third of which are succulents (Cowling et al., 1999). Namaqualand is named after the 'Nama', one of several 'Khoe-speaking' peoples who together with the 'San' are the indigenous inhabitants of the area. Against San and Nama resistance, settlers penetrated Namaqualand from the 1730s and it was annexed

to the Cape Colony in two moves of the northern boundary, in 1798 and 1847. Colonial expansion gradually undermined Nama society through superior weapons, diseases and economic exploitation (Boonzaier et al., 1996). By the beginning of the 19th century the Nama were largely a landless proletariat and mission stations became their only places of refuge. The Namaqualand 'communal areas' were based on 'Tickets of Occupation' granted to mission stations and resident populations of indigenous or mixed descent trying to protect themselves against dispossession and exploitation. As labour pools and places for 'surplus people' to survive, the 'reserves' remained useful as cheap labour pools for Namaqualand's cyclical mining and farming economy.

The state took administrative control of the areas through the Mission Stations and Communal Reserves Act 29 of 1909 and more than twenty other acts and amendments following it (Hendricks, 1995; Pienaar, 2000). Successive apartheid reforms included an attempt to force individualisation of community lands in the 'economic units' programme (Archer et al., 1989). Top-down tenure policies created lasting suspicions of tenure reform, which forced inappropriate institutions on communities and neglected the problem of resource distribution, as elsewhere in South Africa (Letsoalo, 1987). Women resisted the General Law Amendment Act 108 of 1993, which aimed to convert occupation rights to family lands to ownership and was seen to threaten women's interest because in most cases men were the registered occupiers (Archer & Meer, 1997).

People in the Namaqualand areas feel strongly about the loss of ancestral lands to the state, white farmers and mining companies within a legal system that did not recognise their land rights as semi-nomadic pastoralists but the official view has been that Namaqualand land claims cannot be addressed through the restitution process because of the Constitutional 1913 cut-off date (DLA, 2001a). However, recent judgements by the Supreme Court of Appeal (March 2003) and the Constitutional Court of South Africa (October 2003) have challenged this view by ruling that the Richtersveld community are entitled to restitution of land. (Supreme Court of Appeal of South Africa, 2003; Constitutional Court of South Africa, 2003).

Today, Namaqualand comprises about 48 000 km^2 and a population of about 70 000 in four municipalities (Kamiesberg, Nama-Khoi, Richtersveld and Khâi-Ma). Some 30 000 people have their homes in six 'Act 9 areas' (NDMT, 2000). About one-third of some 6 000 households in the 'communal areas' are estimated to be engaged in farming, mainly with small stock, supplementing wage incomes and state pensions (DOA, 2001). Post-apartheid land redistribution has increased the land available to the Act 9 areas by 21 per cent (Table 1) and the share from 25 per cent to 30 per cent of total area. Farms were bought from farmers and mining companies and are now vested in municipalities. Namaqualand accounts for 23 per cent of the total land area (1.35 million ha) redistributed in South Africa from 1994 to 2002 and about 3 per cent of household beneficiaries (Anderson & Pienaar, 2003). In addition, state farms (372 888 ha) have been approved provisionally for allocation to Act 9 area communities. If completed this transfer will increase their share to 38 per cent of total area. Approximately 670 farm properties, held under individual title by people of European descent, cover 25,000 km^2 or 52 per cent of Namaqualand, averaging 3,700 ha each. The number of farm owners is lower as multiple farm ownership is common. According to a commercial farmer's rule of thumb one needs 5,000 ha for a 'viable' farm. Despite land redistribution, privately owned farms are more than six times the area of the land available to a livestock-owning family in one of the Act 9 areas (around 650 ha). In spite of the

Table 1: 'Certain rural areas' or 'Act 9 Areas' in Namaqualand

	Old commonage[1] (ha)	Share %	New commonage[2] (ha)	Increase %	Total[3] (ha)	Share %	People	Ha per capita
Leliefontein	159,182	13	32,627	20	191,809	13	4,825	40
Concordia	75,693	6	40,760	54	116,453	8	4,564	26
Pella	48,276	4	34,912	72	83,188	6	4,092	20
Komaggas	62,600	5	27,228	43	89,828	6	4,927	18
Steinkopf	329,000	28	110,023	33	439,023	31	7,822	56
Richtersveld	513,919	43	0	0	513,919	36	3,643	141
Total	1,188,670	100	245,550	21	1,434,220	100	29,873	48

Source: SPP 2003a, 4.

1: Act 9 trust land vesting in the state.

2: Redistribution farms or 'new farms'.

3: Not included are state farms provisionally allocated to the Act 9 area communities (372,888 ha).

gross disparity in access to and ownership of land, residents of the rural areas express a sense of belonging: '*Is ons grond!*' ('It's our land!').

Between 1995 and 2000 the six Act 9 areas had their own *Transitional Local Councils* but from January 2001 new municipalities incorporated the Act 9 areas with surrounding private commercial farms and nearby towns. For example, the Nama-Khoi Municipality (with headquarters in Springbok) includes the rural areas Komaggas, Steinkopf and Concordia, with about 17,000 people and 6,500 km^2 of land (SPP, 2003a). Municipalities are required to prepare Integrated Development Plans (IDPs) that address land management and introduce user fees to cover maintenance and infrastructure costs (Anderson & Pienaar, 2003).

3. TRANCRAA

3.1 The Act

Trancraa (or Act 94) is a remarkably short document of about five pages. It sets out a flexible framework to be followed during a 'transitional period', during which municipalities must examine tenure and report to the Minister of Agriculture and Land Affairs making recommendations as to which entity should get ownership rights. At the time of writing the Minister has yet to make the final decision about the transfer of land, and as at April 2005 no transfer of land has taken place.

Trancraa was enacted in the context of the 1997 White Paper on South African Land Policy (DLA, 1997) with its emphasis on individual rights and community choice about land ownership. The Act emphasised the role of municipalities both in the implementation of tenure reform and envisaged future governance. Replacing authoritarian, permit-based control, Trancraa honours the rights of residents by requiring that people must be consulted about land ownership, that their user rights will be respected and that future land governance will be democratic and non-discriminatory. The main stated aim is to provide for 'the transfer of certain land' to (1) a municipality; (2) a communal property association (CPA, Act No. 28 of 1996); or (3) another body or person approved by the Minister. The transfer of land applies to the 'Act 9 area'

held in trust by the State, but not to township areas, which will continue to be vested in government (except residential plots, to which people may register private title). Trancraa recognises and provides resources to survey and map family and individual use rights and resolve conflicts surrounding these (3.8.16). It bans discrimination against any resident, but does not refer to distinct rights of men and women. Section 4 of the Act defines the accountability of a municipality to the right-holders, should it become the owner of the land. These principles include fair opportunity to participate in the decision making, non-discrimination and a ban on alienation of land without the consent of residents. Otherwise the Act does not refer to the transformation vision of the Constitution or land policy.

3.2 The implementation process

Trancraa was formulated before all the new local government legislation (Municipal Structures Act 117 of 1998 and Municipal Systems Act 32 of 2000) and administrative structures were in place. Implementation waited for the demarcation of new municipal boundaries, organisational development and the local government elections in December 2000. An 18-month transitional phase (later extended to 24) was implemented from January 2001. The Surplus People Project (SPP, www.spp.org.za) was the official facilitator. The SPP assists rural communities in the Northern and Western Cape and has worked with research, advocacy and land reform in Namaqualand since 1987. Public interest lawyers from the Legal Resources Centre (LRC) provided training and legal advice. The SPP's contract with the Department of Land Affairs (DLA) to facilitate the transitional phase of Trancraa (2001–2) in Namaqualand was worth about R2 million. DLA, local government and LRC costs added an estimated R1 million to the costs. Under the guidance of municipalities and the DLA, the SPP worked closely with locally elected Transformation Committees whose official tasks included communication and liaison; determination of residents as defined in the Act; enquiry about and determination of land rights; conflict resolution; land use planning; meetings to inform residents about the process; and, finally, to arrange a referendum whereby residents will vote on the entities to which the land could be transferred (DLA, 2001b). The SPP and Transformation Committees met almost every month while the DLA, municipalities and the SPP held quarterly Pilot (*Loods*) committee meetings to review progress and make decisions. The SPP, LRC and the Transformation Committees prepared regulations regarding livestock and cropland management that were promulgated by municipalities. They also worked with professional surveyors to record family claims to cropland based on historical use, which proved to be a contested process of negotiating rights and boundaries. In sum, tenure reform under Trancraa turned out to require time, resources and skills beyond the imagination of even experienced facilitators.

3.3 Community referenda

The Act leaves the means of expressing community preferences open but the SPP and the Transformation Committees decided on advisory community referenda, which were held in five of the six areas during November 2002 to January 2003 (owing to conflict Komaggas did not vote). The referenda involved three ownership alternatives: (1) Communal Property Association (CPA), (2) municipality or (3) option of own choice (including individual title). The referenda were exciting events, but uneven participation and a referendum turnout of about 37 per cent of the voters reflected a 'boycott campaign' in at least one area and the fact that many residents are not active land users.

Some residents also pointed out that the government had ignored past consultations about mineral rights and municipal demarcations. The results showed a majority for CPAs in four of the five areas, on average 58 per cent for CPA versus 39 per cent for municipal ownership (Table 2). A majority for the CPA option was pronounced in Richtersveld (94 per cent), where community mobilisation had been more vigorous as a result of land claim court cases and a CPA had already been formed. Less than 1 per cent voted for the 'own choice' option, reflecting a common view among residents that individualisation of commons is impractical and socially irresponsible. Majority support for CPAs may express distrust of municipalities as managers of community land. Municipal councillors played a key role in implementing Trancraa and, although attitudes and involvement varied, the process revealed some distrust between the Act 9 area residents and the new municipalities. From 2002 ANC leaders at local and district level had advocated municipal ownership of land, some of them warning people that CPAs would be treated no differently from the private farm sector and thus be liable to pay a property tax, rather than receive development support. This exacerbated voters' fears of isolation and financial difficulties. Leaders also suggested that only municipal ownership would protect people against losing land through financial mismanagement and ensure access to land for vulnerable groups such as women, the poor and the disabled. Voting for CPA or municipality was to choose between a rock and a hard place: people were aware that CPAs around the country had a reputation for poor performance in land administration and development but they also feared that municipal ownership would merely shift responsibility to a lower and poorer level of the state.

Further tensions between tenure practices, legal reform and emerging local government institutions were brought out in the community experiences described in the following case studies.

4. PARTICIPATION AND RESISTANCE: THREE CASES

4.1 Politics, land and CPA referendum victory – Pella

In Pella on the Gariep (Orange River) in Khâi-Ma Municipality people share a strong sense of ownership of their common land. It includes 'old' Act 9 land (48,000 ha; 51 per cent), 'new farms' (35,000 ha; 37 per cent) and state farms provisionally approved

Table 2: Community referenda on land ownership (December 2002–January 2003)

	Municipal	**CPA**[1]	**Own option**	**Spoilt**	**Votes**	**Voter turnout**[2]
	%	%	**%**	**%**	**Total**	%
Leliefontein	59	37	1	3	889	31
Pella	42	57	0	<1	653	47
Richtersveld	4	94	0	2	1,000	61
Concordia	44	53	0	3	419	14
Steinkopf	45	52	1	2	2,064	42
Overall	39	58	1	2	5,025	37

Source: (SPP, 2003a: 4, 64).

1: Communal Property Association.

2: Voter turnout in percentage of total number of voters in each area.

for transfer (12,000 ha; 12 per cent). Both women and men were active in the Trancraa process, but women's engagement was more pronounced here than in other areas, where men often assume that women do not take an interest in land and may even dispute the competence of women farmers (interview, SPP staff, 2002). Pella experienced tensions between groups linked to the two main political parties (ANC and Democratic Alliance). Several respondents complained that benefits from the municipality such as housing subsidies and temporary employment were used as patronage to ANC supporters, provoking some non-members to complain about the 'new apartheid introduced in 1994': 'Some people think they have more rights than others. Because of the parties or the politicians. If there is work, some people get the work, others do not. You have to belong to a certain party' (Pella resident, October 2001). The polarisation of groups within Pella affected Trancraa after ANC leaders took a public stand in favour of municipal ownership in early 2002, placing shared concerns about land within the political struggle. Trancraa involved a number of 'confrontations' over land rights in tourism and land development and some residents claimed that the municipality was unwilling to let go of land, as demonstrated by a political leader who tried to control a tourism development project on community property. On the other hand, some enterprising farmers who advocated the CPA option tried to secure exclusive rights to future irrigation land, something that was effectively sidelined by the municipality and the SPP.

In the context of political tension concerning resource control and the two main ownership options, 'new farms' and state farms provisionally approved for transfer to Pella became an issue: should they be included in the referendum and transfer of land or not? Residents had been informed through newsletters that all these lands could be transferred to the entity of people's choice in the referendum (SPP/Pella TC, 2002) and a senior provincial DLA official confirmed that this had been the intention (discussion, Dec 2002). However, this required confirmation by the municipalities, and shortly before the referenda in 2002 the municipalities of Khâi-Ma and Nama-Khoi chose not to follow SPP and DLA advice to include the 'new farms'. Apart from ANC leaders, voters in Pella (and Concordia) assumed that the 'new farms' were included in the lands designated within the referendum.

In spite of political tension, the Transformation Committee and the SPP succeeded in running a constructive consultation process culminating in the charged referendum on 7 December 2002. Of the five areas, Pella had the greatest turnout: 1 114 individuals registered to vote (54 per cent were women), almost as many as for the 1999 national election (1 159). An impressive number of residents (653) turned out to vote, close to 60 per cent of registered voters (SPP, 2003a: 64). This testifies to the thoroughness of the information and mobilisation campaign led by the SPP and the Transformation Committee. The Council of Churches monitored the referenda with close attention to correct procedure. Before the result was announced, young female members linked with the ANC had already predicted the outcome and cried because 'a CPA would run the community into debt and the land would be lost'. After careful counting the result was announced (57 per cent for CPA, 42 per cent for municipal ownership). The young vice-chairman of Pella ANC said in his speech that 'the result was surprising, but the people have spoken and the process was free and fair'. Other reactions by ANC leaders indicated that they found it difficult to accept the result. Shortly after the referendum, farmers asking for help with broken water pipes were told by the municipal officer that from now on there would be no support for infrastructure maintenance so that people would have to face up to the consequences of rejecting municipal ownership. The

mayor suggested that new rules would soon be introduced to the 'new farms', which were still municipal property and were being used, among others, by some prominent CPA supporters. It remains to be seen whether the ANC and the municipality choose disengagement, obstruction or constructive involvement in land management in Pella.

4.2 Community division and Trancraa – Komaggas

Komaggas has a special history of community conflict (Sharp, 1977, 1994), which deeply affected the Trancraa process. A powerful *Komaggas Inwoners Vereniging* (Residents' Association) opposed Trancraa. The leaders of this group, middle-aged to elderly men, argued that the Act was mistaken in assuming that Komaggas belongs to the State. They held that residents have a private, group title to the land, granted in the mid-19th century by the Governor of the Cape Colony and Queen Victoria. No 'transfer' back to the people was therefore required. Instead, opponents interpreted Trancraa as being linked to a municipal 'takeover' aimed at extracting fees and taxes. The *Inwoners Vereniging* leaders disputed the Act's division of Komaggas into 'land in the remainder' and 'town' area, the latter being excluded from the transfer. They rejected the surveying of residential and farm plots as contradicting the group title and leading inevitably to 'privatisation', and physically chased away surveyors on a couple of occasions. The organisation had prepared a 'Constitution' to be ready to take ownership and govern land under the Communal Property Associations Act of 1996 (KIV, 2002). The *Inwoners Vereniging* had previously launched a claim to the historical Komaggas land extending to the Atlantic Coast and expressed confidence that its diamond wealth and other resources could provide the base for a Komaggas *tuisland* (homeland), independent of the municipality (however, according to the SPP, the claim did not follow formal guidelines and had therefore not been accepted by the Lands Claims Commission). Leaders envisaged that Minister Thoko Didiza was giving Komaggas and its land claim her personal attention:

> We already know the options and we have said we support option 1 [CPA]. Although the Minister is in Pretoria, if she knows that *Inwoners Vereniging* will win, why should she waste thousands on a referendum and all that? The Minister has our land claim with 300 to 400 names as signatories. The opposition did not make a land claim. The Minister might look at the voters roll. Why should she then spend a lot of money on the referendum? If SPP had looked at the options of everybody, and not decided on the municipality, then it would have gone well. The Minister said in 1998: it is your land. We were told to claim land before the cut-off date and we have done so. We have written many letters, but they totally ignored them. (Member (male) of Komaggas Inwoners Vereniging, Executive Committee, April 2002)

Those in favour of Trancraa, mainly supporters of the ANC, believed the Act gave residents an opportunity to strengthen rights to land and to participate in a wider process of transformation:

> I have attended a lot of meetings, and read a little bit of the Transformation [Act], and think it is a good thing. A lot of people did not like [the] Transformation of Certain Rural Areas [Act], but at the end of the day the old act was really an old apartheid act, that just kept us on one side, and there was no economic growth and no economic empowerment to the people of Namaqualand. But most of our people have still got this tunnel vision that

> 'it is our land, so nobody can come and do anything on it'. They even did not want development, because they did not want to be responsible for certain things [...] They feel that the municipality will come and do things and that we will lose everything. It is a fear of payment, a fear of loosing *baasskap* [control, leadership] over something. Unfortunately, we are sitting here and the whole country changes, and we did not want anything to change, but at the end of the day we cannot do anything about the change. (Formerly central participant in land reform in Komaggas (male), November 2001)

SPP and DLA efforts to resolve the conflict proved futile. In August 2002 the Transformation Committee informed the Nama-Khoi Municipality that they had failed to implement Trancraa. The municipality forwarded the case to the Minister of Agriculture and Land Affairs requesting her to make a decision. Some expected her to 'give the land' to the municipality, while many Komaggas residents opposed that option and insisted on their right to express their view in a referendum. During 2003 the *Inwoners Vereniging* apparently shifted strategy and started advocating for a referendum in Komaggas.

While Komaggas has a unique history, the case also reflects a more general insecurity linked with socio-political change as well as confusion about the different 'legs' of the land reform programme. Sadly, the community attachment to its land resources did not strengthen the tenure reform process. Opportunities to clarify and strengthen individual and family rights were missed and the prospects for good community–government relations worsened.

4.3 Contested land management planning – Leliefontein

SPP reported that the transformation process in Leliefontein was the least problematic of the six areas and that the Commonage and Transformation Committees worked well together with the municipality to fulfil the requirements of the Act (personal communication, SPP, December 2002). In line with the guidelines, the process included land use planning and formulation of grazing and cropland regulations. In many respects these replicate regulations that had operated under the apartheid era 'Management Boards' and typically involve headage payments and restrictions on animal numbers. The decision to accept these rules was taken by members of village commonage committees, many of whom were interested in leasing camps within the 'new farms'. Management rules favour wealthier farmers who have access to transport and capital to pay herders: not surprisingly, many camps within the new farms have been allocated to such '*mense dat voor staan*' ('people who stand in front'). Even so, these wealthier farmers complain that the municipality ultimately controls land allocation and maintenance, rather than the community elected commonage committees (Lebert, 2004). The limited capacity of the Kamiesberg Municipality to enforce grazing rules has resulted in the overstocking of the 'new farms'. The idea that the 'new farms' might serve as 'stepping stones' for more progressive farmers to move out of the commons onto their own freehold farms is belied by the fact that none have done so and many move back and forth between the 'old' and 'new' farms (Rohde et al., 2002). Many farmers with small herds say that the new grazing regulations are inappropriate to their situation because they depend on moving according to personal circumstances, season and climatic conditions. Furthermore, many poor farmers are unable to pay a livestock tax and allege that the municipality is unable to maintain vital infrastructure such as wind pumps and fencing, and that grazing fees have been misappropriated.

Regarding croplands and family usufruct rights, SPP and the local committees were faced with many unclear boundaries and cases of overlapping ownership and engaged professional surveyors in a process of surveying and mapping rights. Draft maps showing newly recorded boundaries were posted and discussed at meetings. Fields were typically two to ten hectares but in some instances surveyors were 'persuaded' to mark off up to 500 ha of commonage surrounding these plots, effectively privatising the grazing rights. Surveying and demarcating family plots in the commons remained a problematic part of the Transformation process.

The referendum result in Leliefontein was closely contested, similarly to Pella, Concordia and Steinkopf. Unlike in Pella, the municipality followed the SPP's advice and included the 'new farms' in the lands being voted over. The outcome (59 per cent majority for municipal ownership) reflects closer political allegiances with the municipality. However, problems similar to those experienced by CPAs involving patronage, transparency and capacity also exist under municipal governance. While legal opinion (LRC) tends to favour municipal ownership because national legislation provides for government control of the development process, in practice local government has limited capacity to provide services, enforce grazing regulations and promote the pro-poor policies once associated with the commons but now gradually giving way to user fees and a management system that appears inappropriate to communal farming practice.

5. DISCUSSION AND POLICY LESSONS FOR COMMUNAL LAND TENURE REFORM IN SOUTH AFRICA

Trancraa was not designed as a 'pilot' project for tenure reform but as a process suitable for areas with a different history and legal framework than the former 'homelands', which have ten times as large an area and 200 times as many people. But owing to delays in adopting a Communal Land Rights Act, the Trancraa process in Namaqualand may now offer experiences that are relevant for its implementation; knowledge of these experiences is primarily available from residents, leaders, civil society facilitators, municipal and DLA officials and other policymakers; i.e. the main knowledge-source is now the actors involved. The comprehensive reports by the SPP (2003a, b) may make Trancraa in Namaqualand the best-documented 'communal' tenure reform carried out in South Africa. Nevertheless, one has to consider changes in policy objectives and fundamental principles between the 1997 White Paper on South African Land Policy and the Communal Land Rights Act passed seven years later. With this caution in mind, in this section we reflect on some achievements, constraints and lessons for tenure reform in other areas of South Africa.

5.1 The tenure reform approach – protecting rights, transferring ownership

Trancraa offered an unusual opportunity to change the rights and rules of common property governance through consultative policy making among land users, civil society organisations and local government. It provides a flexible legal framework that can be adapted to the diverse conditions and needs of the 23 'Act 9 Areas'. Its brevity and openness are virtues that commend it in relation to the more proscriptive and detailed approach of the different later versions of the CLRB. Trancraa thus attempted what Cousins (2002b) has called 'legislating for negotiability'.

The 'rights-based' approach of Trancraa is most clearly expressed in its respect for people's use rights and emphasis on achieving a balance of rights (section 3) and on non-discrimination and the accountability of democratic local government to residents (section 4). Trancraa gives effect (if only partially) to the policy that individuals who hold rights to 'communal' land have a right to choose tenure system according to their priorities and circumstances (e.g. DLA, 1997: xii). In spite of social and political tensions, the respect for procedural rights made a consulted process possible in all cases except Komaggas. However, the question about whether recording of family rights was non-discriminatory and promoted the interests of women land users deserves close scrutiny and further follow-up. For example, the SPP (2003a: 38) reports that in Steinkopf only 3 per cent (18 of 488) of family-held cultivated lands became registered in the name of women.

Trancraa was enacted shortly before drafters of the 1999 Land Rights Bill for the former 'homelands' started raising questions about risks involved in the 'transfer model' and therefore began to place more emphasis on giving legal protection to de facto rights, with transfer of ownership as a possible subsequent process (Claassens, 2000). Trancraa and the later Communal Land Rights Bills and Act (2001–4) share a focus on 'transferring land' which, in the Namaqualand case, reflected demands by some groups to end the paternalistic state trustee ownership. However, where Trancraa focuses on 'municipalities and certain other legal entities', the Communal Land Rights Bills and Act 2001 to 2004 represent a shift to communities as juristic personae, traditional authorities and lately the 'traditional councils' and land rights boards.

During the implementation phase of Trancraa, the transfer approach increasingly unleashed fears, particularly as residents realised the uncertainty of future government support. The Komaggas case shows how the prospect of an irreversible transfer of land to a new owner increased community tensions and made it impossible to carry out the required process, including recording and protecting use rights: conflict over the major stake of 'ownership' may cause the rights of individuals and families to suffer. Similar tensions were present in all the areas. It is significant that late in the Trancraa process people increasingly discussed the option of letting the land remain in trust with central government (SPP staff, October 2002, referring to Steinkopf and Concordia). Tenure reform must offer flexible but effective measures to protect rights and steps for transferring 'ownership' when people request this (Cousins, 2002a, b).

5.2 Actors and coordination

Trancraa illustrated how an alliance of government and civil society can engage land users in a consultative tenure reform, linked to South African land reform policy of cooperation between government and non-governmental organisations (DLA, 1997: 104). Civil society organisations were not only active in formulating the Act, but also in defending and extending the application of legal rights during the phase studied. For example, SPP and LRC advocacy persuaded the Transformation Committees to include referenda in the process; the SPP and LRC defended community interests and rights to land in cases where these were threatened; and they largely coordinated and formulated land use regulations promulgated by municipalities. To some extent civil society advocacy compensated for the weaknesses of an Act that, for example, contains no provision for protecting and promoting women's rights and interests. On the whole, Trancraa appeared to be a civil society driven process with the national government

providing inputs in the form of financial resources and a legislative framework. The dynamic and mature relationship between Namaqualand communities, the SPP and the LRC is possibly unique and may be hard to replicate. A lesson is that tenure reform requires a clear identification of the needs that can be addressed by NGOs. The government must develop a strategy for involving NGOs in communication, advocacy etc. without compromising its own primary responsibility for securing tenure and the fundamental rights at stake in land governance.

Quarterly *Loods* or pilot committee meetings ensured a degree of coordination between municipalities, the DLA and the SPP. Trancraa facilitators arranged a series of district-level training workshops, but the district appeared to lack a social movement that could have forged popular links between the different areas and put pressure on government and other outsiders such as commercial farmers, developers, provincial government and facilitators themselves. A broader stakeholder forum involving business, commercial farmers and other government departments could have been useful for creating such pressure and pursuing development opportunities created by tenure reform.

Municipalities had a formal role in implementation, as possible future owners of land and as political actors, which placed them in an invidious position and gave rise to accusations of partisan behaviour. 'The act puts the municipality in a very central position in a process where they are an interested party. This was problematic from the word go, and should be avoided at all costs in any further tenure reform consultation processes' (SPP staff, 2003). On the other hand, the Transformation Committees and facilitators arranged information dissemination, community meetings and finally the referenda that gave the community a chance to hold municipal leaders accountable. In Pella the promoters of both the CPA and municipal options had links to narrow economic interests that threatened to encroach on community land rights: clarifying rights in specific cases of resource contestation (e.g. a tourism and an irrigation project) were significant achievements in a young and fragile local democracy. So was the final expression of the majority view through the referendum. The breakdown in Komaggas shows how important it is that most community members and groups feel that they own the process of tenure reform and have significant incentives to overcome divisions; a function as much of the policy of support as of the legal framework. In spite of an effort by the SPP, LRC, municipalities and Department of Agriculture to link tenure reform with land use planning, the Leliefontein case contains warning signals that it remains difficult for community and local government to prepare and enforce responsive land management plans. Thus, together the three cases demonstrate how tenure reform triggers and reveals fragile, multidimensional relations between individuals, communities and local government, testing how democracy – representative, participatory and economic – is emerging and is contested in rural areas.

5.3 Resources for implementation and tenure redress

Tenure reform is demanding work, particularly if it is to be the instrument of agrarian change envisaged by land policy. The Trancraa consultation process represents a small but significant investment by the government, but the time, funding and institutional support required for an effective reform appeared underestimated. A crude estimate of the financial expenditure by the state is approximately R3 million or about R100 for each of the 30,000 inhabitants of the six Namaqualand rural areas. Neither in word nor in deed did Trancraa give effect to the constitutional right to

'comparable redress' for the consequences of past discrimination and to ensure that no one loses from the tenure reform. This has been addressed in the various versions of the Communal Land Rights Bill, but in vague terms in the one adopted by Cabinet 2003 (Marcus, 2003: 9–10). Tenure reform in the former 'homelands' of South Africa will be hugely more demanding owing to the size and complexity of areas, populations and institutional structures. One may still imagine that there is an 'economy of scale' by working with large areas and groups. If one assumes that efficient DLA–NGO partnerships can do the job at 50 per cent of the per capita cost that was incurred in Namaqualand – which appears very optimistic – the expenditure would still be around R700 million (compared to an annual land reform budget at the time of approximately R1 billion). The question of funding for implementation and institutional support in the Communal Land Rights Bill has remained unclear. At the time when the Bill was adopted by cabinet, the DLA estimated the cost at R68 million per year over an unspecified number of years (DLA, 2003). The DLA has recently estimated that tenure reform in the former homelands will cost in the order of R1 billion per year over five years (Hall & Lahiff, 2004: 3).

After the tenure legislation itself, a detailed budget is probably the clearest expression of government commitment to providing tenure security. Hands-on experience is now available with the implementers of Trancraa in Namaqualand.

5.4 Tenure reform, development support and transformation

Rather than an 'internal' reconfiguration of rights, the Constitution and land policy envisage that tenure reform is part of a transformative process that transcends the legal dualism and physical boundaries of the apartheid landscape, a 'healing the divisions of the past'. Tenure reform is the fundamental and future-orientated leg of land reform because it will give institutional security to (some of the) resources 'transferred' under restitution and redistribution and is central in creating legitimacy for the property order in general: 'Tenure reform is the mother of South Africa's land reform programs' (Sibanda, 2001: 53). In spite of a neo-liberal macroeconomic policy, land reform policy makers maintain that tenure reform is integral to, and depends on state support for, rural development and agrarian change:

> Tenure reform will indeed have a positive impact on the socio-economic development of these areas if it is accompanied by institutional and extension support. Tenure reform is therefore a necessary but not on its own a sufficient condition for socio-economic development. It must thus be accompanied by access to inputs, credit, extension, services, assistance with transport, provision of access to markets and government complementary actions to stimulate the rural economy. Only then can the full benefits of tenure reform be realised in terms of increased production of goods and services, growth and investment. Tenure reform must thus not only be seen as a set of measures aimed at combating rural poverty, it must also be seen as forming a firm basis for rural development and economic prosperity for individual households and communities. (Mayende, 2001: 4; Sibanda, 2001: 3)

Trancraa did not include land development or guarantees of future institutional support. Two former land affairs employees who had worked with tenure reform expressed frustration about the lack of resources for adequate implementation, service provision

and sustainable development after the transfer of land (interviews, April 2002). An LRC lawyer said that, 'Trancraa is a chance for the state to bail out' (meeting, April 2002). Asked about the 'uncertainty of future institutional support', an SPP facilitator responded that, 'That is the only thing that *is* for certain, that there is *not* going to be any support!' (October 2002). A Namaqualand researcher commented that communal land is like exhausted mine land, no longer 'core business' within a corporate model of governance (S Robins, personal communication, December 2002). Reflecting a similar kind of pessimism or realism, local government leaders expressed reluctance to support land management in communities opting for CPAs. Communities affected by Trancraa in Namaqualand mainly live in municipal townships and will therefore continue to receive basic municipal services (not land management support) regardless of land ownership. However, throughout South Africa communities are dispersed across 'communal' areas where transferring title may hinder provision of desperately needed water, electricity, sanitation and other services owing to constraints on developing infrastructure on private land (de Waal, 2003).

To realise wider development objectives and change the skewed distribution of assets and opportunities, one must support people's capacities to influence and derive benefits from new land rights by enhancing livelihood practices and entering new economic sectors. Trancraa became most meaningful when local people started exploring and planning economic ventures that they felt were facilitated by tenure reform. This in turn led them to identify other constraints such as limited support in acquiring the skills, financial resources and appropriate technology that might enable them to make effective use of land rights. Tenure reform in Namaqualand took small and uncertain steps along a path that leads from 'owning land' to 'owning development'. The absence of development support made it impossible to proactively assist and involve vulnerable or marginal groups, such as herders hired from outside the communities and women farmers. Without development support social change may not materialise or may be controlled by external investors, 'traditional leaders' or government officials. Institutional support is not merely a desirable add-on, but is necessary to give meaning to new rights and the demanding exercise of consulting communities about land tenure. In Namaqualand, after long deliberations over what ultimately became reduced to only two legal options for vesting land rights, many participants felt that neither of them would work unless the government supports land administration and agricultural development (McIntosh Xaba, 2003). 'Communal' tenure reform will continue to test the South African democratic and developmental state and its ability to protect and enhance the complex public good of secure tenure for the users of the land.

At the time of writing (now two years after the referenda in Namaqualand), the Minister has yet to make a decision about the transfer of ownership. Transformation Reports, prepared by the LRC, SPP and the municipalities were submitted to the Minister in September 2003 with no clear recommendation that she abide by the referenda outcomes, except in the case of Richtersveld. With regard to other areas the report recommends that if the Minister decides to transfer land to a CPA, the relevant municipality must 'Negotiate an agreement with the CPA whereby the municipality undertakes management and control of the land and administers the user's rights on behalf of the CPA in terms of municipal regulations and the constitutional conditions' (SPP, 2003b). The municipality will make 'necessary amendments on matters of existing grazing rights, cropland regulations, the constitution of the commonage committee and the progress of service delivery agreement' including the fixing of service delivery fees. Where the

Minister decides in favour of municipal ownership, the same principles regarding community rights and interests should be stipulated as required for CPA constitutions. (SPP, 2003b: section 7.6.4). In other words, regardless of whether the ownership passes to a CPA or municipality, the latter will have significant control and responsibility for determining and administering land rights. Even so, if the Minister makes a determination contrary to the will of the residents as expressed in the referenda, she will have made a mockery of the democratic process and called into question either the consultative framework of the Act or the probity of civil society and Transformation Committees in instituting a vote. This dilemma is lodged at the heart of the Communal Land Rights Act which gives the Minister wide-ranging and ultimate decision-making powers in relation to a final determination and transfer of rights (RSA, 2004: section 18).

5.5 Lessons

Strengthened tenure rights appear vulnerable if isolated from training, finance and integrated development initiatives. A neo-liberal assumption that property rights and markets by themselves will transform rural areas where people are in deep crisis owing to unemployment, corruption, food insecurity and HIV/Aids appears ill-founded, because it disregards the many other constraints on equal participation in the economy. To move from tenure reform to transformation requires a holistic focus on the human rights and the tenure rights of land users through law and in practice. Summing up, we suggest some lessons from the Namaqualand experience with land tenure reform in 2001–2.

- Tenure reform must be about enhancing systems of governance that incorporate more adaptable and open-ended rights than 'ownership'.
- Local social movements that mobilise and hold leaders accountable are essential for effective tenure reform implementation.
- Civil society organisations made the process happen and defended residents' rights. To use this approach requires careful planning to identify what services are needed, who can provide them and how their accountability to both residents and government is secured.
- Recording and mapping family and individual user rights is essential and requires transparency and community involvement in order to avoid appropriation of common land by powerful individuals. Incapacity to participate in a tenure reform process may translate into a loss of rights for large groups of vulnerable households, including those headed by children and elderly people.
- The protection and promotion of gender equality with respect to tenure rights and participation in governance requires analysis of gendered interests in resources and practices, and firm promotion of land users' individual rights.
- Adequate funding for the implementation and commitments of future institutional support are essential to the tenure reform process. Implementers of Trancraa may be consulted on the preparation of realistic budgets for the consultative part of the tenure reform process.
- The centralised decision-making powers of the Minister can devalue the consultative process and 'democratic' involvement by the affected communities.

Thus, Trancraa was a fairly successful consultative process driven by civil society organisations in occasionally tense interaction with diverse community-level actors. It represented a small but significant investment by the government but appeared isolated

from training, finance and integrated development initiatives. Effective future tenure reforms require stronger commitment to the constitutional value of equality, the rights to 'comparable redress', to land development and future institutional support. It is necessary to create links between the procedural justice inherent in the consultation and the substantive justice of expanded opportunities, which are in turn the basis for lasting tenure security. Judging by the experiences in the contested commons of Namaqualand, most rural South Africans will have to struggle for increased land tenure security for many years to come.

ACKNOWLEDGEMENTS

We are grateful to PLAAS for providing the academic environment for the research and for support through the PLAAS-Noragric programme 'Human rights, governance and land reform in South Africa', which is financed by Norad through the Norwegian Centre for Human Rights, University of Oslo. We also thank the Norwegian Research Council and the European Union for funding. We thank Surplus People Project and Legal Resources Centre Cape Town for generously sharing their knowledge and experience. Thanks to the people and local government officials in Namaqualand, particularly in Pella, Komaggas and Leliefontein. We thank and remember Francios Z. Jansen from Concordia, who contributed greatly as interpreter and whose recent death was such a tragic loss.

REFERENCES

ANDERSON, M & PIENAAR, K, 2003. *Municipal commonage: evaluating land and agrarian reform in South Africa: No 5.* Cape Town: Programme of Land and Agrarian Studies, University of the Western Cape.

ARCHER, F & MEER, S, 1997. Women, tenure and land reform: the case of Namaqualand's reserves. In Meer, S (Ed.), *Women, land and authority: perspectives from South Africa.* Cape Town: David Philip and Oxfam in association with the National Land Committee, 84–94.

ARCHER, F, HOFFMAN, MT & DANCKWERTS, JE, 1989. How economic are the farming units of Leliefontein, Namaqualand? *Journal of Grassland Society of Southern Africa*, 6(4): 211–5.

BOONZAIER, E, MALHERBE, C, SMITH, A & BERENS, P, 1996. *The Cape herders: a history of the Khoikhoi of Southern Africa.* Cape Town: David Philip.

CATLING, D, 1996. *The 'Rural Areas' (landelike gebiede): their current status and development potential.* A socio-economic study prepared on behalf of Independent Development Trust, Cape Town.

CLAASSENS, A, 2000. South African proposals for tenure reform: the Draft Land Rights Bill. In Toulmin, C & Quan, J (Eds), *Evolving land rights, policy and tenure in Africa.* London: DFID/IIED/Natural Resources Institute, 247–66.

COMMISSION ON GENDER EQUALITY, 2003. *Submission to the Portfolio Committee on Agriculture and Land Affairs on the Communal Land Rights Bill [B67-2003], 10 November 2003. With legal opinion by Geoff Budlender.* Cape Town: Parliamentary Monitoring Group. Available at: http://www.pmg.org.za. Accessed 30 January 2004.

CONSTITUTIONAL COURT OF SOUTH AFRICA, 2003. *Alexkor Ltd and the Government of the Republic of South Africa versus the Richtersveld Community and others (CCT 19/03). Judgement 14 October 2003.* Available at: http://www.concourt.gov.za/. Accessed 15 November 2003.

COUSINS, B, 2002a. Draft Land Bill should be rejected. *Mail & Guardian*, September 20–26: 22.
COUSINS, B, 2002b. Legislating negotiability: tenure reform in post-apartheid South Africa. In Juul, K & Lund, C (Eds), *Negotiating property in Africa.* Portsmouth, NH: Heinemann, 67–106.
COWLING, R, PIERCE, S & PATERSON-JONES, C, 1999. *Namaqualand: a succulent desert.* Institute for Plant Conservation, University of Cape Town. Cape Town: Fernwood Press.
DE WAAL, HJ, 2003. *The Communal Land Rights Bill (October 2003 version). Legal opinion for the Legal Resources Centre, 10 November 2003.* Cape Town: Parliamentary Monitoring Group. Available at: http://www.pmg.org.za/. Accessed 30 January 2004.
DEPARTMENT OF AGRICULTURE (DOA), 2001. *Namakwaland: Grondbesit patrone (Unpublished overview of land owners and land redistribution in Namaqualand).* Springbok: DOA.
DEPARTMENT OF LAND AFFAIRS (DLA), 1997. *White Paper on South African Land Policy.* Pretoria: Government of South Africa, DLA. Available at: http://www.info.gov.za/documents/whitepapers/index.htm. Accessed 15 November 2004.
DEPARTMENT OF LAND AFFAIRS (DLA), 2001a. Namaqualand commonage investigation. *Monitoring & Evaluation, Newsletter, Department of Land Affairs No. 3 2001.* Pretoria.
DEPARTMENT OF LAND AFFAIRS (DLA), 2001b. *Public Notice, Government Gazette 6 July 2001. Notice in terms of section 3 (4) (a) notice in terms of the Transformation of Certain Rural Areas Act, 1998 (Act No. 94).* Pretoria: Department of Land Affairs. http://thor.sabinet.co.za. Accessed 13 May 2002.
DEPARTMENT OF LAND AFFAIRS (DLA), 2003. *Memorandum on the objects of the Communal Land Rights Bill, 22 September 2003.* Pretoria: Department of Land Affairs. Available at: http://land.pwv.gov.za/legislation. Accessed 6 January 2004.
HALL, R, & LAHIFF, E, 2004. *Budgeting for land reform. PLAAS Policy Brief No. 13, August 2004.* Cape Town: Programme for Land and Agrarian Studies, University of the Western Cape. Available at: http://www.uwc.ac.za/academic/indexr.htm. Accessed 15 November 2004.
HALL, R, JACOBS, P & LAHIFF, E, 2003. *Evaluating land and agrarian reform in South Africa: No. 10 Final report.* Cape Town: Programme for Land and Agrarian Studies, University of the Western Cape.
HENDRICKS, FT, 1995. Antinomies of access. Social differentiation and communal tenure in a Namaqualand reserve, South Africa. Paper presented at *Reinventing the commons, the fifth annual conference of the International Association for the Study of Common Property*, 24–8 May, 1995, Bodø, Norway.
KEPE, T & COUSINS, B, 2002. *Radical land reform is key to sustainable rural development in South Africa, Policy Brief No. 3. Debating land reform and rural development.* Cape Town: Programme for Land & Agrarian Studies, University of the Western Cape. Available at: http://www.uwc.ac.za/academic/indexr.htm. Accessed February 2003.
KEPE, T, 2001. *Waking up from the dream: the pitfalls of 'fast-track' development on the Wild Coast of South Africa.* Research Report, 8. Cape Town: Programme for Land & Agrarian Reform, University of the Western Cape.
KOMAGGAS INWONERS VERENIGING (KIV), 2002. *Grondwet van die Komaggas Vereniging vir Gemeenskaplike Eiendom/Constitution of the Komaggas Communal Property Association.* unpublished.

LAHIFF, E, 2001. *Land reform in South Africa: is it meeting the challenge? PLAAS Policy Brief No. 1. Debating land reform and rural development.* Cape Town: Programme for Land & Agrarian Reform, University of the Western Cape. Available at: http://www.uwc.ac.za/academic/indexr.htm. Accessed 15 August 2003.

LEBERT, T, 2004. *A case study of land redistribution through the Municipal Commonage Programme: the new farms of Leliefontein, a communal reserve in Namaqualand, South Africa.* Occasional Paper. Cape Town: Programme for Land & Agrarian Studies, University of the Western Cape.

LETSOALO, E, 1987. *Land reform in South Africa. A black perspective.* Johannesburg: Skotaville.

MARCUS, G, 2003. *The Communal Land Rights Bill. Opinion for the Legal Resources Centre and Human Rights Commission, 20 October 2003.* Cape Town: Parliamentary Monitoring Group. Available at: http://www.pmg.org.za/. Accessed 10 January 2004.

MAYENDE, G, 2001. The challenge of land tenure reform in South Africa. Issues, problems and prospects. Technical Paper by the Director General, Department of Land Affairs, the National Land Tenure Conference, Durban, 26 November 2001 (circulated document). Durban: Department of Land Affairs.

MCINTOSH, XABA & Associates (Pty) Ltd, 2003. *Land issues scoping study: communal land tenure areas. Key issues.* Bishopsgate: Prepared for Department for International Development (DFID) Southern Africa.

MINGO, C, 2002. *The 2002 Land Affairs budget: is land reform on track? Budget Brief No. 89.* IDASA – Budget Information Service. Available at: www.idasa.org.za/biz/. Accessed 15 September 2002.

NAMAQUALAND DISTRICT MANAGEMENT TEAM (NDMT), 2000. *Namaqualand District Situation Analysis. Report prepared by The Initiative for Sub-District Support and the Namaqualand District Management Team.* Springbok.

NTSEBEZA, L, 1999. *Land tenure reform, traditional authorities and rural local government in post-apartheid South Africa. Case studies from the Eastern Cape. Research Report No. 3.* Cape Town: Programme for Land and Agrarian Studies, University of the Western Cape.

OXFAM, 2003. *Secret version of the Communal Land Rights Bill gives extraordinary powers to chiefs, 22 October 2003.* E-mail to subscribers. Oxfam. (WomensLandRights@mail.oxfam.org.uk).

PIENAAR, K, 2000. *Index of acts and amending acts relevant to Namaqualand from 1909–2000.* Cape Town: Legal Resources Centre (unpublished).

PROGRAMME FOR LAND & AGRARIAN STUDIES AND NATIONAL LAND COMMITTEE (PLAAS/NLC), 2003. *Submission to the Portfolio Committee for Land and Agriculture on The Communal Land Rights Bill, 10 November 2003.* Parliamentary Monitoring Group. Available at: http://www.pmg.org.za/. Accessed 20 November 2003.

ROHDE, R, BENJAMINSEN, T & HOFFMAN, T, 2002. Land reform in Namaqualand: poverty alleviation, stepping stones and 'economic units'. In Benjaminsen, T, Cousins, B & Thompson, L (Eds), *Contested resources. Challenges to the governance of natural resources in Southern Africa.* Cape Town: PLAAS, University of the Western Cape, 255–68.

RSA, 2003a. *Communal Land Rights Bill as approved by Cabinet 08.10.2003. Republic of South Africa, Minister of Agriculture and Land Affairs [B 67–2003]. Government Gazette No. 25562 of 17.10.2003.* Pretoria. Available at: http://land.pwv.gov.za/home.htm. Accessed 6 January 2004.

RSA, 2003b. *Traditional Leadership and Governance Framework Bill [B58 2003] as amended by the Portfolio Committee on Provincial and Local Government.* Minister for Provincial & Local Government. Available at South Africa Government online: http://www.gov.za/bills/index.html. Accessed 19 January 2004.
RSA, 2004. *Communal Land Rights Act, Act. No. 11, 2004. Government Gazette No 26590, 20 July 2004.* Cape Town.
RSA, 2001. *Communal Land Rights Bill. Third Draft, 25 October 2001.* Department of Land Affairs, Directorate for Legal Services (unpublished).
RSA, 2002. *Communal Land Rights Bill.* Government Gazette No. 23740, General Notice 1423, 14 August 2002.
SHARP, J, 1977. *Community and boundaries: an enquiry into the institution of citizenship in two Cape Coloured reserves.* PhD thesis, Cambridge, University of Cambridge.
SHARP, J, 1994. Land claims in the Komaggas reserve. *Review of African Political Economy*, 61: 403–13.
SIBANDA, SMD, 2001. *The principles underpinning the Communal Land Rights Bill, 2001. Paper presented at the National Land Tenure Conference, Durban, 26 November 2001 (circulated document).* Department of Land Affairs.
SUPREME COURT OF APPEAL OF SOUTH AFRICA, 2003. *Judgement. The Richtersveld Community and others (Appellants) vs. Alexkor Limited (First Respondent) and the Government of the Republic of South Africa (Second respondent), Case No. 488/2001. 24 February 2003.* Bloemfontein.
SURPLUS PEOPLE PROJECT (SPP), 2003a. *Steinkopf Verslag/Report on Steinkopf.* Cape Town: SPP.
SURPLUS PEOPLE PROJECT (SPP), 2003b. *Verslag aan die Minister van Landbou en Gronsake, Wet op die Transformasie van Sekere Landelike Gebiede, Wet 94 van 1998. September 2003.* Cape Town: SPP.
SURPLUS PEOPLE PROJECT (SPP)/PELLA TC, 2002. *Pella Transformasie Nuus, 2, February 2002* [Transformation Newsletter]. Springbok/Pella: SPP.