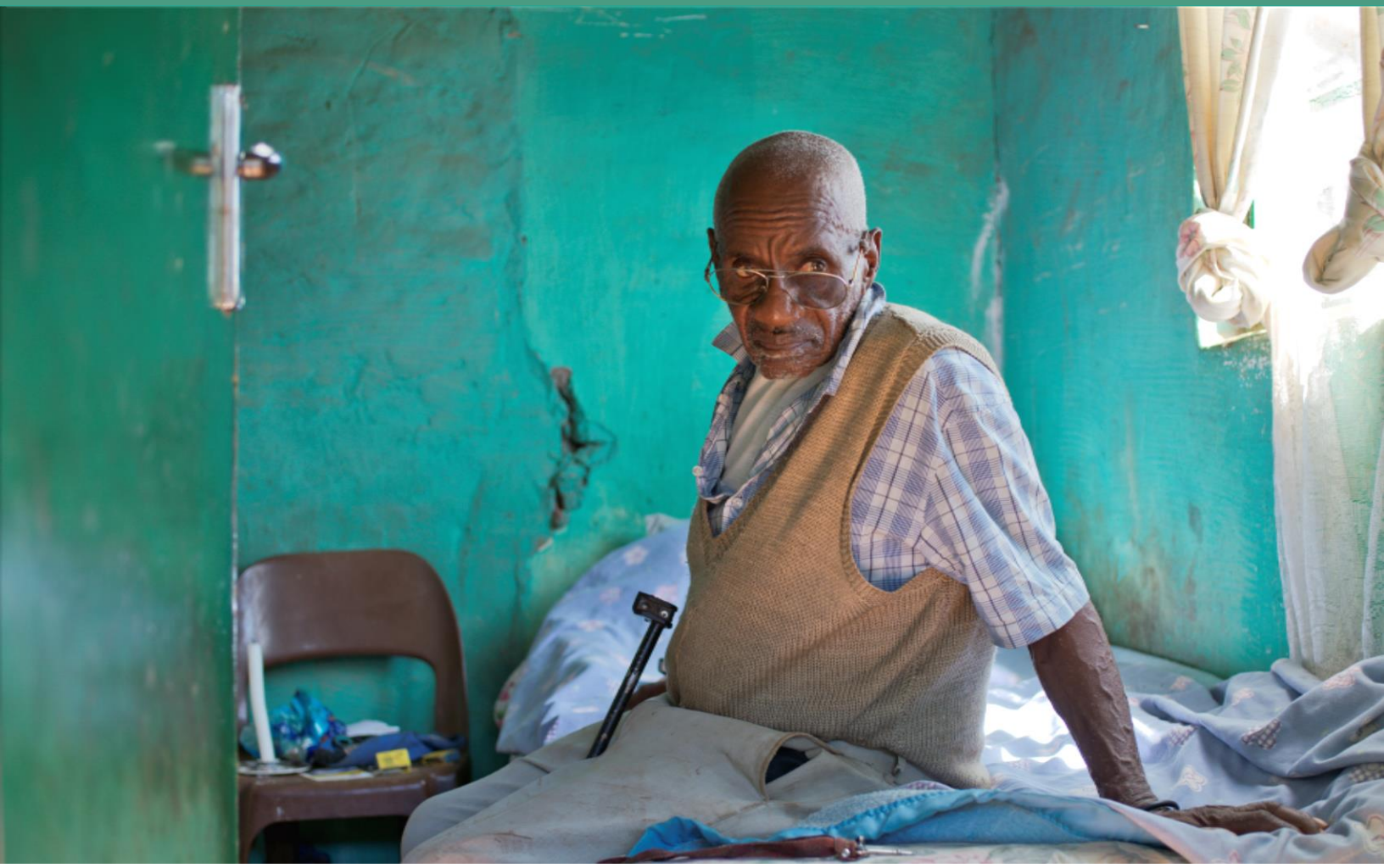
LAND RIGHTS ADJUDICATION:
Developing Principles and Processes for ESTA and Labour Tenant Rights' Holders

June 2017



AFRA | Association For Rural Advancement

Supported by the
European Union

ACKNOWLEDGEMENTS

This report was written by Dr Rosalie Kingwill (independent research consultant) for the Association for Rural Advancement (AFRA). Lauren Royston (lead researcher, AFRA Pathways Project) and Donna Hornby (AFRA senior researcher) provided comments and editorial input. Laurel Oettle (Director of AFRA) contributed to discussions on the topic. AFRA acknowledges the support of the European Union for the Pathways Project without which this report would not have been possible. The contents of this publication are the sole responsibility of the Association For Rural Advancement and can in no way be taken to reflect the views of the European Union.

This report is available on the AFRA website: www.afra.co.za

Cover Photo: Max Bastard (African Eyes Photography) http://www.african-eyes.co.za

Table of Contents

SOUTH AFRICAN LAND LAWS REFERRED TO IN REPORT

- Communal Land Rights Act, No of 2004 (CLARA) - declared invalid by the Constitutional Court
- Communal Property Associations Act, No 28 of 1996 (CPA)
- The Constitution of the Republic of South Africa, Act No. 103 of 1996
- Deeds Registries Act, No 47 of 1937
- Extension of Security of Tenure Act, No 62 of 1997 (ESTA)
- Interim Protection of Informal Land Right Act, No 31 of 1996 (IPILRA)
- Land Reform (Labour Tenants) Act, No 3 of 1996 (LTA)
- Land Titles Adjustment Act, No 111 of 1993
- Prevention of Illegal Eviction from Unlawful Occupation Act, No 19 of 1998 (PIE)
- Spatial Planning and Land Use Management Act, No 16 of 2013 (SPLUMA)
- Transformation of Certain Rural Areas Act, No 4 of 1998 (TRANCRAA)
- Upgrading of Land Tenure Rights, No 112 of 1991 (ULTRA)

ABSTRACT

The report provides a conceptual framework for understanding the application of 'adjudication' to land rights verification as part of a general land administration function that includes off-register rights; and outlines the motivation for developing such as system in South Africa, with some provisional ideas about systematising and institutionalising land rights adjudication to include off-register rights.

The immediate context in which these ideas are being developed is AFRA's Pathways Project which aims to settle the rights of farm dwellers and labour tenants whose rights are defined by the Extension of Security of Tenure Act, No 62 of 1997 (ESTA) and the Land Reform (Labour Tenants) Act, No 3 of 1996 (LTA) with the view to secure tenure and access to services in order to facilitate pathways out of poverty. The project aims to identify and explore a range of legal and official mechanisms to achieve these goals. Tenure security is regarded as key to realising AFRA's longer term developmental goals, given the persistence of endemic uncertainty of tenure rights. This report identifies 'land rights adjudication' as a key potential means by which the land rights of the poor, including those with extremely vulnerable tenure on farms, can be shifted towards greater acknowledgement and certainty.

The approach followed in this report fundamentally challenges the idea that property rights are only to be associated with title deeds registered in the Deeds Office, which apply very strict and exclusionary criteria to render rights registerable. These criteria leave out the majority of rights of poorer South Africans, for whom the land market provides no guarantee of land rights or shelter. Those with rights that are contingent on the rights of others, such as farm dwellers, labour tenants, group rights holders and communal rights holders, should also be recognised as property rights, and should thus be afforded the same levels of administration to acknowledge, record, safeguard and maintain land information and individual records of tenure as the formal Deeds system. There is great potential for the Deeds office to play a role in assisting local, provincial and central government institutions responsible for land rights to develop a differentiated, yet integrated system of rights recordal and records maintenance. The proposal is thus not for a separate land administration system, but a system that allows for a diversity of legally recognised rights that are afforded full state protection in the form of records repositories that are held, maintained and updated, such as title deeds are. The design should allow for sub-systems to articulate with one another in an integrated land administration system for the country.

This report addresses the first stages of development of a land administration system by examining how adjudication of farm dweller and labour tenant rights can contribute to the recognition, recordal, state protection and maintenance of their rights.

PART ONE: CONCEPTUAL FRAMEWORK

1. Context, definition and motivation

AFRA's Pathways Project aims to settle the rights of farm dwellers and labour tenants whose rights are defined by the Extension of Security of Tenure Act, No 62 of 1997 (ESTA) and the Land Reform (Labour Tenants) Act, No 3 of 1996 (LTA) with the view to secure tenure and access to services in order to facilitate pathways out of poverty. The project aims to identify and explore a range of legal and official mechanisms to achieve these goals[1]. Tenure security is regarded as key to realising AFRA's longer term developmental goals, given the persistence of endemic uncertainty of tenure rights.

The goal of tenure security is not easily realised in the short term, not least because the legal property system in South Africa is weighted in favour of registered ownership, and discriminates against occupational rights. The structure of property law thus does little to ameliorate the complex relationships on farms between farm owners/employers on the one hand, and farm dwellers, farmworkers and labour tenants on the other. In addition, the social relationships within and between families of farm dwellers and labour tenants are themselves socially complex, and these internal dynamics also affect the manner in which rights are to be recognised and legalised.[2]

Existing land administration institutions do not provide legal or practical solutions to the difficulties presented by differentiated rights in a manner that is consistent with the Constitutional injunction to equity and secure tenure. In order to overcome the current gaps in the administration of rights in these uncertain contexts, it is being argued that it is necessary to build up a system of rights adjudication and administration. AFRA has thus commissioned this initial study into the meaning and potential implications of adjudication for farm dwellers and labour tenants. In the longer run the proposed approach is expected to apply to other so-called 'informal' rights that are off the formal register, referred to in this document as 'off-register rights'.

The commissioned research on adjudication supplements the development of a reference document of existing laws affecting farm occupants undertaken by Michael Clark. This report is different in that it begins to outline a *new* legal framework as opposed to finding the gaps and spaces for securing tenure and improving access to services within existing laws and policies. The purpose of this report is to set out some of the vital steps we need to embark on to conceptualise and then develop an adjudication system for off-register rights.

[1] The AFRA-EU project is part of a larger body of work in a number of contexts across the country around non-registered land rights, including rights holders protected by: the Interim Protection of Informal Land Right Act, No 31 of 1996 (IPILRA) in communal areas; the Transformation of Certain Rural Areas Act, No 4 of 1998 (TRANCRAA) in former coloured reserves in the Cape; Communal Property Associations Act, No 28 of 1996 (CPA) on land reform farms; and the Prevention of Illegal Eviction from Unlawful Occupation Act, No 19 of 1998 (PIE) in informal settlements on the edges of towns and cities and inner-city buildings abandoned by their owners. This work is the focus of the Land Governance Transformation Network (LGTN).

[2] Some examples of the inter-community and intra-familial social complexities will emerge over the course of the report, but these may be summarised as disentangling the relative rights between (a) occupier families when some qualify for restitution or labour tenant claims and others do not; (b) members of the same family whose members are socially differentiated on the grounds of gender, generation or length of occupation; and (c) community/family members who have different interests in the outcome of claims to land and services.

Briefly, for the purposes of the introduction, the term 'adjudication' means a mechanism whereby a person or institution is authorised to make a definitive decision where there are contesting parties or claims. In the context of this report, we are referring to landed property. Adjudication of land rights thus refers to a legally authorised process of final and authoritative determination or ratification of the *existing* rights and claims of people to land. Land rights adjudication is conventionally defined as the process through which existing rights in a particular parcel of land are finally and authoritatively ascertained. Adjudication in itself does not create new rights, though the process may be the first step towards altering or creating new rights, e.g. through expropriation, extinguishment, redistribution, restitution, altering boundaries, etc. Adjudication also conventionally refers to a process outside or inside the courts to resolve a doubt or dispute after first registration, or to conclude a land consolidation scheme.

The Deeds registration system in South Africa (and indeed all jurisdictions with land title globally), involves highly precise methods of adjudication of rights before titles are ratified, conveyed and transferred. The standards for these checks are built into the regulatory structure, including the qualifications required of registered land conveyancers, surveyors and other officers who undertake the detailed checks required before any grant, title or transfer is approved by the Deed Registrar.

These rules, procedures and processes are not contained within an adjudication law in South Africa, since adjudication is part and parcel of the system of survey, conveyancing and transfer that renders rights registerable in terms of mainstream property law. The problem is that the system caters only for 'registered ownership' along with derivatives, including sectional title, leasehold, rental, etc. In other words, adjudication is systematically built into how property comes into existence under the current property regime. This report avers that this interpretation discriminates against other forms of customary ownership. Thus, 'adjudication' has mistakenly come to be associated with the adjudication of rights of 'ownership' as reflected in title deeds, and only applies to off-register rights when they are *converted* into freehold rights. Adjudication has thus come to be historically associated with the process of conversion of customary rights into private rights, hence with first registration of registered rights.

The above forms of adjudication have usually been initiated by colonial regimes, but the post-colonial governments have in most cases continued with the process, e.g. in Kenya. Many countries in Africa and other parts of the world, particularly Anglophone countries, have retained some version of adjudication of customary rights to western-law private, registered rights. In these scenarios, there are usually specialised land adjudication laws, either inherited from the colonial period, or new laws.

In other words, the main purport of specific adjudication legislation in the past has been to introduce a cadastre for the first time — where no cadastral boundaries previously existed — to authoratively define land parcels under registered owners.

Adjudication can be applied either:

(a) systematically, by the official institution of a large-scale process that is compulsorily applied to entire jurisdictions; or

(b) sporadically, parcel by parcel, usually triggered by some specific event or change.

An example of systematic adjudication and registration can be found in colonial Kenya where an official process of adjudication with the intention of creating individualised rights in former customary areas began in the fifties in terms of the Swynnerton Plan of 1954, and after independence, in terms of the Land Adjudication Act, Chapter 284 of the Laws of Kenya. This law was first enacted in 1968 and periodically revised since then, the latest as recently as 2016. The concept thus had roots in colonial Kenya but has continued to be a cornerstone of post-colonial land governance in Kenya. During the process of executing this law, customary land rights were adjudicated, and in some cases holdings consolidated, and registers of title drawn up. The results in Kenya have been extremely contentious, and there is a huge literature critiquing the process. Nyadimo (2006) portrays a sympathetic technical view of the process from the point of view of the survey profession, with no serious concern for the existing social relations into which the intervention is made. Mackenzie (1989,1993) and Haugerud (1989) provide more nuanced legal-anthropological perspectives, showing the complexity of the outcomes in reality, particularly how the customary norms continue/d to predominate in spite of the conversion to freehold. In reality, titles were taken over by clanships, frequently controlled by male elders, thus far from creating individualised autonomous rights, the process actually reinforced traditional gendered patterns of authority.

Current land law in Kenya is showing more sensitivity to customary rights within the framework of recordal/registration. A new land law, the Community Land Act, 2016 (which does not repeal or replace the Land Adjudication Act), makes provision for conversion of all categories of land, and does not simply assume a linear progression from customary to private rights in land. For example, it also allows for conversion of public land to customary land and crucially creates registered community title for community owned land. The most important innovations are (a) the clear legal statement of parity between various forms of tenure, where private does not assume a higher legal status than customary land, thus providing ground-breaking recognition that customary land rights have equal recognition with freehold and leasehold rights and may not be discriminated against; (b) the attention to participatory processes of adjudication, with transparency and community involvement clearly invoked, even though an appointed Adjudication Officer is given authority for the final decisions; and (c) the setting up of a state programme and institutions of adjudication[3]. Whether or not these provisions will prove implementable is another question, and the Act cannot come into force without regulations, which means it is difficult to comment on the detail as yet.

An important caveat to the intentions in Kenya is that these laws are tied to a specific 'programme' of adjudication with clear and very tight time frames, which is quite different from what will be proposed in this report. Secondly, the laws provide no guidelines as to the criteria to be used for adjudication, and it is not clear if these will emerge in the regulations.

In other parts of the world, adjudication laws set up a process for resolving unclear rights and claims in land in order to ratify current rights with the view to some form of registration or recordal, e.g. Indonesia and some Caribbean Islands. Titling of unregistered land (and hence adjudication) in post-colonial contexts became a global flashpoint in the nineties when Peruvian

[3] Section 46 (8) states: "The Director of Land Adjudication, an adjudication officer, demarcation officer, survey officer or a recording officer involved in an adjudication programme referred to under subsection (6) shall, for purposes of this section be deemed to be an officer of the national government."

economist, Hernando de Soto, invoked a high-profile, top-down systematic approach to individual titling by survey and registration, publicised in his controversial book, *The Mystery of Capital* (2000), which maintained that investment in land titles are an investment in capital and assets which lift people out of poverty. He advocated his ideas through high-level consultative forums with international governments and NGOs, and for a while his influence world-wide was persuasive. His injunctions were executed in urban Peru, in Lima, and the results, however, proved to be highly equivocal. His ideas have been widely critiqued by land scholars, and following the lacklustre performance in Lima, his influence, although still strong, appears to be waning as questions abound.

In South Africa, a form of systematic titling was advocated in the former, now scrapped, Communal Land Rights Act, No of 2004[4], which made provision for individual parcelling or group titling and/or subdivision, some of which is echoed in Kenya's new land laws.

Sporadic adjudication involves demonstrating that the title is basically sound before it is accepted and entered into the registration system. For example, in South Africa, we have the Land Titles Adjustment Act (no 111 of 1993) to adjudicate titles (mainly in African freehold areas) that have fallen out of currency of registration due to the owners not transferring title to new owners or heirs when land is sold or passes to the next generation. Sporadic adjudication for titling is generally triggered by the sale of the property, or an application for survey and title where there is a need to raise credit on an unsurveyed trading or business site in a communal area. Another example of sporadic adjudication in South Africa is the detailed rights enquiry that researchers and lawyers conduct for a land claim lodged in terms of the Restitution Act, No 22 of 1994. The problem is that each researcher, NGO or lawyer approaches the adjudication differently, since we have no law that clarifies the criteria for adjudication. Although the Act contains rules and principles around succession (kinship relationships) for qualifying claimants, there is no overall systemic legal framework against which to measure the rights. The problem of group or community claims has made the task of adjudication particularly challenging and difficult.

Contrary to the interpretations and definitions of adjudication that imply conversion to freehold, we will be adapting the concept to the context of farm dwellers and labour tenants, not with the intention of adjudicating for parcelling and registration, but to set up a system in terms of which to assess the strength of the rights with the view to creating records and ultimately an institutional home for holding these records. The fact that these rights are subject to the rights of 'owners' of the larger parcel, which under current law are stronger ownership rights, makes this a difficult process but not impossible. The intention is not in the first instance to create individual title on surveyed subdivisions, but rather to investigate the rights with the view to making them clearer and more certain. In the context of off-register rights, then, adjudication refers to 'the application of evidentiary principles to ascertain the veracity of the right/s', rather than to convert customary rights into freehold rights.

[4] The Bill was declared unconstitutional in terms of Tongoane and Others v Minister of Agriculture and Land Affairs and Others (2010). Constitutional Court of South Africa. Case CCT 100/09, 11 May, but on procedural rather than substantive grounds.

2. Why we need adjudication for ESTA and LTA rights holders

It is necessary to develop a holistic legal-institutional[5] framework for ESTA and LTA rights on account of the fact that, although the rights are protected as a category of rights in terms of the two laws, there is no system for measuring, recording, adjudicating and holding these rights on an ongoing basis. As result there tends to be over-reliance on courts to settle individual disputes case-by-case. Thus, while farm occupiers' rights are currently protected against arbitrary or unfair eviction, this is blanket protection, and individuals and individual families do not enjoy sufficient positive recognition of their rights comparable to title.

Existing rights are ill-defined and easily subject to arbitrary actions by more powerful interests, such as the state, community leaders or the private owners of the land, and some members of the farm dweller family/household community may have greater levers to secure rights than others. With poor definition comes weak legal recognition. It is easy for the owners of a parcel, or the state, or local power holders, to disregard the content of the existing rights and give priority to the owners, or would-be owners or developers, alone; or to particular individual farm dwellers who have more ability to negotiate good terms. Individual, family or homestead rights thus remain uncertain and insecure since the relationships between family members, community members and the owners of the larger parcel are simply not brought into the focus of the property rights paradigm, other than through blanket measures in the Constitution and the procedural obligations in the relevant Acts.

The main benefit of the various post-1994 land rights Acts is that they provide pre-emptive protection against unfair eviction by providing, e.g. for procedural justice, alternative accommodation and limited life-time rights of long term occupiers. There is significant case law for the Prevention of Illegal Eviction from and Unlawful Occupation Act (PIE) and the Extension of Security of Land Rights Act (ESTA), which has helped to build up legal precedent to protect individual security of tenure. The jurisprudence for PIE cases is, however, significantly more extensive than for ESTA cases, leaving ESTA rights holders the most vulnerable category of rights holders in the country. Thus while these laws have played a crucial role in raising the legal benchmarks for protection from eviction, they do not sufficiently illuminate the positive content and strength of individual rights. The property relationships among and between the relevant social units in off-register situations remain invisible, since there is virtually no attention in law to the relative strength of individual rights vis-à-vis other family members, community members, the state and other third parties.

This report contends that by identifying the detail of these off-register property relationships, people who remain in presently tenuous relationships with farm owners can begin to develop a property right asset that can be quantified, and the relationships defined more clearly. Thus in the event that people do have to move, they can move with some compensation of lost property rights.

---

[5] By legal-instructional framework is meant a set of interrelated functions formulated under guidance of national policy (in this case the Constitution) to frame a national land governance system regulating land rights and land administration. The latter includes spatial delimitation of land through survey or other means, land rights adjudication and recordal mechanisms, public repositories for land rights records and their maintenance, succession law, spatial planning and land use management, land information systems and fiscal systems, to mention the most obvious, all of which should be aligned. Throughout this report the concept of 'institutions' and 'institutional' is used in the broad sense to include established laws, rules, norms and practices that are made operational through organisations, government departments, and other establishments.

The existing property paradigm, with its myopic vision, does not recognise the positive content of off-register rights, and tends to interpret the rights of farm dwellers and labour tenants not only as weak rights, but rights that are a burden on the parcel, especially in the event of a pending land transfer or land development. In other words, the outside world may view these rights in 'negative' terms as negative rights, rather than as positive rights that have a property value with equivalence in law. It is this ratio of power that this project aims to rebalance in favour of more certainty for farm dwellers and labour tenants. The idea behind ESTA was to create long term security by creating rights on or off-farm using the existing cadastral and registration system, but with hindsight the approach is too dependent on voluntary actions by owners and the government. The property system in its current form is not sufficiently adaptable to accommodate that goal without compulsory regulation. For this reason, it will be absolutely necessary to formulate statutory criteria for off-register rights.

For all these reasons, it is important to move beyond the blanket recognition of farm dwellers' rights to the positive recognition of the rights of individual families or members of families. Important as the blanket recognition of rights is for pre-empting eviction, the format means that individual rights are constantly challengeable in courts. In institutional terms, this means that vulnerable rights holders must rely on the judiciary to set standards on a case-by-case basis, and even significant victories for large categories of people cannot be guaranteed to be acted on by the executive branch of government. Neither the legislature nor the executive has shown the drive to enforce the legal provisions referred to in court cases. One of the ways to get around this voluntariness and arbitrariness is to build the necessary regulatory frameworks and institutions to provide the services as a state function.

The entire purpose of this report, then, is to shift the emphasis from over-reliance on the courts, towards enforcement of constitutional principles via the executive wing of government. Furthermore, the report contends that a key element in creating institutional capacity in the executive is by developing adjudicatory principles for off-register and customary rights in order to create the elementary building blocks for generating parity between diverse land tenure rights in the country.

3. Building principles from evidence

In order to work towards the ultimate goal of *legal* definition of tenure relationships and property rights that are not defined by the provisions of title, we need to build up a set of objectively verifiable indicators, based on existing tenure relationships, from which a set of evidentiary principles can be developed. The method put forward in this report is to develop the principles from norms, bottom-up. Applying top-down norms would invariably favour existing property rights holders, since the norms would likely be based on assumptions such as: market forces that determine property values at the expense of rights holders; and western-law succession patterns where transmission of rights to the next generation follows western familial relationships. One of the rationales for developing a methodology to capture the evidence of existing farm dweller/labour tenant relationships is precisely to recognise property relationships defined by local and 'customary' norms that are not currently recognised in mainstream property law. The long-term purpose of this approach is to gain recognition for a diversity of normative orders governing property rights which are honed to be consistent with constitutional principles. The long term goal is to achieve legal parity in South African property law between a range of tenure relationships.

After gathering, examining and assessing what accepted local norms prevail for a given context, the next step would be to extrapolate general principles from these norms. The patterns that are revealed by the empirical evidence should provide a window into locally accepted norms. By examining local norms, it should be possible to assess the relative strength of local rights based on the local indicators. Examples of indicators of local practices are:

- length of occupation;
- nature of occupation;
- frequency of occupation;
- land use rights;
- family relationships regarded relevant for access rights and authority;
- procedures or processes for granting access rights holders to other family members;
- investments in social and ceremonial relationships;
- investments in the physical assets such as the house or gardens or fields;
- practices associated with burial, graves and access to gravesites.

Currently these indicators may be important for sporadic adjudication of disputed rights and for providing evidence in court proceedings, but these are mostly not legally definitive or ranked. Hence the need exists to order these norms according to their relative strength as a step towards greater legal certainty.

The Deeds Registries Act, No 47 of 1937 is replete with examples of legal rules for transferring property, and hence there is already a fully-fledged, formalised system of adjudication. Section 14(1)(b) on "decided cases", for example, states:

> (b) it shall not be lawful to depart from any such sequence in recording in any deeds registry any change in the ownership in such land or of such real right: Provided that - (i) if the property has passed in terms of a will or through intestate succession from a deceased person to his descendants, and one or other of these descendants has died a minor and intestate and no executor has been appointed in his estate, transfer or cession of the property which has vested in that descendant may be passed by the executor in the estate of the deceased person direct to the heirs *ab intestato* of the descendant ...

In the case of ESTA, LTA and IPILRA, however, there are no formalised criteria for ranking rights. These laws create categories of stronger and weaker rights, but they are not categorised across the board. For example, section 8(1)(4) of ESTA provides for stronger tenure security to a category of occupiers who have occupied that land for ten years or more and are either (a) sixty years of age or older or (b) former employees who can no longer provide labour due to ill-health, injury or disability. These people are considered to be long-term occupiers and, failing any breach on their part, are considered to have stronger rights than other ESTA occupiers, and *legally* should not be subject to an eviction order granted against them. This rule is not necessarily abided by in practice. Long term occupiers' rights continue to be precarious, and part of the reason is they tend to depend on personal relationships. These are mirrored in behavioural rather than tenure rules listed in ESTA, so that legally, their rights, and may be terminated if they have:

> (a) intentionally and unlawfully harmed any other person occupying the land;
> (b) intentionally damaged property of the farm;

(c) engaged in behaviour which threatened others who occupy the land;
(d) assisted other unauthorised people to establish new dwellings on the farm;
(e) breached a condition or term of their residence with which they are able to comply, but have failed to do so despite being given one month's notice to comply;
(f) committed such a fundamental breach of the relationship between the parties that restoration is impossible.

The Restitution of Land Rights Act for its part defines a "right in land" as "any right in land whether registered or unregistered, and may include the interest of a labour tenant and sharecropper, a customary law interest, the interest of a beneficiary under a trust arrangement and *beneficial occupation for a continuous period of not less than 10 years prior to the dispossession in question*" (italics added). Beneficial occupation has different meanings in law, but in this context is generally understood to mean the open use of land without the consent of the owner. In the scrapped Land Rights Bill of the nineties, for example, the relevant section is s.5, chapter II, where protected rights defining beneficial occupation were:

> 5(d)... occupation or use of, or access to land for a continuous period of not less than 5 years – (i) openly; (ii) without force or threat of force; and (iii) for any continuous period of 5 years during which no person prejudiced by such occupation, use or access has contested it.

An example of clearer evidentiary rules in the Restitution Act defines the succession line for valid claimants: "If there is more than one direct descendant who have [sic] lodged claims for and are entitled to restitution, the right or equitable redress in question shall be divided not according to the number of individuals but by lines of succession". [S. 2 amended by s. 2 of Act 78/96 and substituted by s. 3 of Act 63/97 and s. 2 of Act 18/99]. However, as indicated in a recent court judgement in the Eastern Cape High Court[6], it is not exactly clear who qualifies as a 'direct descendant' and in particular, whether a wife qualifies.

The Land Reform (Labour Tenants) Act of 1996 states that: "A person who is not a family member of a labour tenant, may only be appointed as the successor to such labour tenant if he or she is acceptable to the owner, who may not unreasonably refuse such appointment." This clause indicates the extreme ambiguity between land and labour law, since 'successor' would imply an alternative person to undertake the labour obligations of the labour tenant, but it is not clear if that successor would gain access to a land right, and whether the original labour tenant would retain their land right. The point is that rights continue to be mediated through personal relationships of employer and employee, rendering rights precarious and contingent.

It can be seen that unlike real rights in land (i.e. land registered under title in the Deeds Registry), the rules and principles governing evidence of rights for those without titles is highly contingent on context, and thus may be different for each category. The indicators, rules and principles are fairly vague and open to interpretation and thus frequent litigation. Real rights, on the other hand, are regulated by greater clarity, certainty and standardisation, albeit the result of historical processes and precedent based on jurisprudence developed over a long period of time. These rules are still subject to ongoing modification through new judicial precedent, which allows a

[6] Bangani v Minister of Rural Development and Land Reform & another (2016) CA25/2016

measure of flexibility to reflect evolving local norms and practices. However, the development of nuances through judicial precedent is extremely slow.

The purpose of this project is to start a process of collecting evidence from the ground up in order to assess the norms with local traction. These need to be tested and possibly adjusted to comply with the Constitution, and the concrete evidence needs to be developed into more abstract rules and principles. As speculated above, the idea is not to create inflexible rules (as occurred with colonially inspired customary law), but principles based on current norms which may continue to evolve in law through judicial precedent, as with common law. However, in order to make this possible, a foundation must be built.

These local tenure norms or indicators would need to be collected by means of rigorous rural research and collection of oral evidence with the view to developing more standardised evidentiary principles where 'like units' can be compared with 'like units' across varied tenure landscapes to allow for local variation and diversity. Hence the importance of developing local institutions. This is what we mean by developing a system of adjudication with clear-cut principles against which to test the legality or veracity of individual ESTA and LTA land rights by authoritative means. Without such a system of adjudicatory principles, land rights have to be negotiated afresh on a case-by-case basis every time there is a legal cause for establishing both their strength and content.

In the context of off-register rights in South Africa, the idea of developing an adjudication system for rights that do not fit into the ownership/cadastral framework is confessedly ambitious politically and legally, but the complexity cannot be avoided. The first step of gathering reliable evidence in a rigorous and consistent manner will be time consuming. It has to be built up incrementally over time to fully institutionalise the process discussed here, and we have little to draw from. I know of no other such attempts in Africa or anywhere else to develop an integrated land administration system where rights registration and recordal systems can be developed into an articulated system. As mentioned, the concept of adjudication is invariably applied to formal registration of western-law title. Facilitators need to carefully and patiently sift through the evidence, and through iterative processes contribute to building a solid foundation for a system of land administration that applies to all citizens. A formula cannot be worked out in advance, since that would defeat the purpose of a bottom-up approach. The legal terrain will ultimately have to be honed with the assistance of sympathetic lawyers (including conveyancers) and land surveyors.

These constraints and limitations should not act as a brake to the proposals. The alternative is to continue with the *status quo* that locks the majority of South Africans out of the institutions that deliver the full set of citizen rights. The goals of the South African constitutional democracy will continue to be unattainable.

The proposals may at first glance look unfeasible, but the consequences of not undertaking the arduous process translates into continued uncertainty, plus the colossal costs of ongoing litigation, social instability and loss of access to land and citizenship. The prospect of extra-legal land grabbing would become increasingly attractive. From a governance perspective, the absence of land administration institutions means ongoing inability to provide a basis for municipal service delivery and billing systems. The current levels of 'informal' settlement processes are simply not

sustainable, and titling programmes have been shown to throw up more problems than they solve[7].

4. What adjudication of rights is, and what it is not?

It is critically important to reiterate that land rights adjudication is a process that weighs up existing rights in a particular parcel of land, and is ultimately capable of ascertaining these rights in an authoritative manner. Adjudication is always a process that interrogates and reveals existing relationships, in other words, what rights already exist, by whom they are held and what restrictions or limitations there are on them with the view to making a determination and thus more definitive recording of these rights. The idea of adjudicating is fundamentally about 'weighing up' existing evidence, whether it is for determining land rights or determining a winner in a contest.

We emphasise the word 'existing' rights, since the adjudication process does not in itself alter rights or create new rights, but interrogates what is already there in terms of pre-existing relationships and circumstances. It is a process at the “front end” of a rights enquiry. In the case of formal titling in the Deeds office, it refers to the systematic checks conducted first by private legal conveyancers and then officers employed in the Deeds Registry. In uncertain or contested conditions, adjudication may well precede other sequential stages which result in the altering or creation of rights. The latter, however, should be covered by specific land tenure or distribution regulations/laws.

Land surveyors, conveyancers and officials in the Deeds Registry are empowered to investigate minute details regarding the rights that are being transferred when title is involved. These painstaking checks are undertaken to verify the legality of ownership in compliance with the Deeds Registries Act. We aim to demonstrate that such processes could be applied to off-register tenure regimes in South Africa. This will help to bring about legal parity of rights without conversion to freehold and fulfil Constitutional injunctions for tenure security for all, and recognition of tenure diversity.

It is proposed that scaled-up field research and data capturing is the first step towards developing criteria according to which tenure for farm dwellers, farm workers and labour tenants can be assessed, classified, categorised and standardised to prepare the way for legal recognition of their tenure rights in a positive way. By 'positive' I mean, firstly, verified at individual/family/household level; and secondly, conclusive, unequivocal, clear-cut and incontestable, so that the rights of individuals or families are defined unambiguously through legal means. The idea is that the legal parameters are defined for the purposes of legal recognition of property rights.

Of course, disputes will still emerge and many of these could and will go to litigation, but the emphasis will shift from relying on the courts to set the standards for confirming rights in the first

[7] Evidence of titling programmes that fail, become outdated or run into insurmountable problems is to be found in diverse sources too numerous to enumerate. One significant study on the informal land market in South Africa was conducted by Peter Rutsch and Associates in Kwazulu-Natal (Rutsch Howard Consortium 2004: 1). The City of Cape Town is documenting evidence of the large-scale irregularities that emerge from titling projects, while in Cape Town and Gauteng procedures are being developed to tackle what officials call 'title backlogs', but which actually point to systemic problems that are neither fully understood nor fully solvable by these means in the long term.

instance, to administrative processes to confirm rights based on legal indicators to allow for objective verification. The courts will continue to play a vital role, but can be left to arbitrate legal disputes and set legal precedents arising from complex situations or newly evolving norms. Jurisprudence will thus continue to advance law by developing precedent according to changing societal norms. With a clear set of foundational legal principles for off-register rights (which already exists to adjudicate and arbitrate registered title) there will be clearer standardised criteria to guide all tiers of government, land professionals and the public, in all aspects of land rights administration, including dispute resolution.

The aims of this research report is to suggest how we can begin the process of identifying what individualised rights may look like, and how we can transform them from a descriptive, concrete level to a more abstract, classificatory level. In legal terms one might call it 'systematising' or 'codifying' the criteria. In sociological language, we refer to this shift as a distinction between the 'concrete' and the 'categorical' format.

This report is concerned about how we might embark on the process of standardising the concepts from a myriad concrete descriptor, into abstractable, legally recognisable categories of rights that renders them comparable across a range of tenure regimes. In other words, to move from a pre-emptive blanket protection of jurisdictions of rights, to the recognition of individual/family rights in a way that provides parity in law with existing common law rights derived from title.

This report is therefore advocating that the AFRA should include among its aims the broader aim of influencing legislation and regulation in order to make rights legible, objective and comparable across different tenure regimes. In other words, contribute to the process of developing the abstract realm. Short of achieving this, the stretch of property law will remain limited to those with financial capital, while tenure security will continue to be arbitrated on a case-by-case or 'class' action basis. The following text box elaborates the importance of distinguishing between the 'concrete' and the 'abstract' for purpose of analysis, policy making and institution building.

Text Box 1

CONCRETE vs. ABSTRACT analytical formats

The analytical framework suggested by Von Benda-Beckmann, von Benda-Beckmann and Wiber (2006, 14_25) ... distinguishes between the legal-institutional realm and the realm of lived experience and practice. The former involves socio-legal and institutional abstractions and principles employed in legal discourses, arenas and texts, both in state law and non-state law ("normative orders"). The latter, which involves living practice, concerns the concrete expressions of property relationships in day-to-day social relationships. The authors label these as the "categorical" and "concretised" domains respectively.

The legal-institutional layer is defined as … a legitimising and an organisational blueprint for property relationships, as well as the procedural and substantive repertoire to clarify problematic issues, notably disputes. Legal-institutional categories spell out the rules and procedures for the appropriation and transfer of rights […] and include the normative expression of property rights (von Benda-Beckmann, von Benda-Beckmann, and Wiber, 2006, 16).

The concretised realm, on other hand, is "the layer of actual social relationships … between property-holders with respect to concrete valuables", which are often expressed in relation to wider social networks where "property relations form one important component of multiplex relationships" Property relationships are embedded in broader social relations, and property interactions maintain, change or create new social relationships, which are in turn shaped by the outcomes of wider interactions (2006, 19-20; 25-26).

These two realms are thus integrally related. Though production practices and social relationships are shaped by principles and rules of property law, they are not, however, the same as those principles and rules. There is theoretical utility in differentiating between them, as "they are different social phenomena and constitute different constraining and enabling elements for social interaction" (2006, 25). The two levels thus require distinctive discursive and analytic lenses to avoid conflating one with the other.

Excerpt from: Rosalie Kingwill (1996) 231.

5. Adjudication law

Developing adjudication principles will help to develop an adjudication law that defines and regulates the means by which to rank and order rights. This implies the development of legal standards against which to weigh up the norms that are identified in the field and documentary research. Since there is currently no such law, the starting point is to identify local norms and practices with the view to verifying and validating land rights. We have to be able to extrapolate and interpolate the longer terms trends and patterns from the local norms and devise abstract criteria in order to develop legal benchmarks against which the relative strength and ranking of rights can be assessed.

As already discussed above, this process of legal development is necessary because our property law is limited to criteria that make up legal title. There are, for example, clear-cut rules for determining the processes of transferring title to a buyer or the identifying a successor (heir) to

title. We have no established criteria for assessing the relative strength of rights and claims that are off-register, such as for farm dwellers, labour tenants, informal settlement dwellers and communal occupiers.

AFRA's commitment to incremental tenure suggests that a 'processual' methodology for building tenure security can be developed from the ground up, and that ultimately a classificatory system could emerge from the evidence, and feed into the development of abstract legal principles as a basis for constructing a legally recognised statutory property system for currently off-register rights.

The following progression of stages is suggested by way of illustration:

- collecting evidence
- interrogating the evidence
- weighing up the relative strength of rights at a micro-level of individual families
- classifying rights according to generic criteria
- abstracting these into legal principles that become accepted into law.

The drafting of an Adjudication Law outlining legal principles, jurisdictional matters and institutional requirements should follow legal conceptualisation. Institutionalisation should include the training of accredited adjudicators.

Landowners will almost certainly feel threatened by data gathering aimed at developing standardised records and rights that impact on their sense of their 'exclusive rights'. It will be important from the outset to provide a clear conceptual framework to drive the point home that the intention is to clarify rights, and that this will ultimately benefit all with rights and claims to property. All 'coincidental' rights holders should feel less insecure and threatened as result of greater clarity and certainty, but the process requires a great deal of socio-legal adjustment. At first sight, the process may seem to be diminishing the rights of current owners, but in the long run the process aims to recognise co-incidental, diversified rights, all of which are protected.

Grasping a logical conceptual framework is an important step to guide field workers and project managers in setting up and executing the research process.

6. The significance of out-of-court adjudication

The term 'adjudication' tends to be associated with judges and courts, and its use outside of this context confuses land professionals and particularly lawyers. Indeed, for most people the concept is associated with the judiciary and court judgements. Adjudication, however, occurs in many forums outside of courts, e.g. in contests. By distinguishing between the concept of 'judicial' and 'juridical' it becomes possible to see the subtle difference in emphasis between these two arenas. Colloquially, the two terms are frequently used interchangeably, but it is useful to split hairs and distinguish them for present conceptual purposes. The distinction helps to shed light on the significance of proposing a system of adjudication that is housed outside of the judiciary and in the executive.

The terms for judges and judgments are derived from the Latin word *judex* while the word juridical comes from the Latin word *ius*, which means law, or more precisely, 'to say the law'. These words are thus naturally related but not the same. Interestingly, the registrar of Deeds is an office descended from that of a judge. Therefore, in the past, registrars of Deeds were indeed appointments associated with the judiciary, but nowadays the post is regarded as 'semi-judicial', "because the registrar, in the exercise of his or her duties with regard to the registration of certain transactions must rely heavily on his or her opinion to quickly solving issues that could take officers of the court hours or days to tease out if they were called upon to decide these issues" (Badenhorst, Pienaar and Mostert 2006: 215-6). It is therefore not unprecedented to create institutions that are associated with judicial and juridical functions, but which reside outside the courts.

There is increasing diversification of registration systems worldwide. In South Africa, for example, title to mineral and petroleum resources is registered outside of the Deeds Registry. The Mining Titles Registration Act establishes the office of the Director-General who is an officer of the Department of Minerals and Energy, with duties similar to the Registrar of Deeds. The Director-General is assigned the duty of registering all rights granted in terms of the Mineral and Petroleum Resources Development Act, and "generally all documents evidencing title which by law are proper for registration in the Mineral and Petroleum Titles Registration Office" (*ibid)*. Another example is the office of the registrar in the Department of Rural Development and Land Reform created in terms of the Communal Property Associations Act, no 28 of 1996.

Anecdotally, law professionals and activists have criticised these two institutions for lack of efficient functioning. However, in terms of a 2016 amendment bill, section 2D of the proposed CPA Amendment Act, provision has been made for upgrading the status of 'registration officer' to the status of 'registrar', with the possibility of a 'deputy registrar'. These officers have powers of registration of CPAs, though not of the land parcels. As is currently the case, CPA registration officers/registrars cannot register title to land, but have powers to register the constitutions of the CPAs. The proposed registrar will have increased powers to actively assist CPAs develop capacity to govern and to comply with legal requirements. This is an example of lateral thinking, showing that there can be an overlap between the duties of the Registrar of Deeds and the duties of registrars of new forms of property. Giving CPA registrars greater powers, will, however, be of little assistance if the normative logic informing day-to-day customary tenure practices diverge substantially from the normative logic governing title deeds.

There are many other examples in various spheres of governance where adjudication not undertaken in courts by judicial officers. Hence, 'juridical' functions need not necessarily be directly associated with the judiciary, but is a broader term pertaining to the *administration of justice.* The administration of justice does not only rely on a court or judge to make decisions, but also relates to the *execution* of law.

There are thus precedents for arguing that functions of registration, and by extension, recordal of rights, can be located outside the courts, situated in the executive branch of government as a function of the administration of property law. Adjudicators in the executive should be legally trained people acting as commissioners, but the determinations they make are made out of court.

An important consideration in discussing the role of the registrar of Deeds in South Africa relates to the limitations of the Deeds Registry as repositories of registerable rights only. Could the Deeds

Registry overcome the legacy of highly unequal rights between whites and black historically? Based on the past twenty years' experience, there is a mountain of evidence to show that the present Deeds registration system cannot cater for the new forms of rights that have been recognised by the Constitution and in the first policy paper viz., the White Paper on South African Land Policy (1997). The diversity of tenure rights that need to be recognised can therefore not be demonstrated due to the rigorous restrictions on what immovable property is considered to be 'registerable'.

In the latest edition of the eminent property law text book, *Silberberg and Schoeman's the Law of Property* (Badenhorst, Pienaar and Mostert 2006, 239), the authors raise serious doubts:

> The imminent question is whether the current registration system can cater effectively for the variety of needs addressed in the emerging framework of land law, by dealing with the proliferation of registration activities expediently, without sacrificing its characteristic accuracy and meticulousness. Continued reliance on registration in a new land regime is one possible way to ensure security of title in protecting rights, generating wealth and supporting development. This may mean an expansion of the existing system of deeds registry, as it is the intention behind arrangements for securing communal land holding. However, it may also mean that the limitation of the land register must be acknowledged and alternative means to register property be explored, as is done for example with the reinvention of a specialised office for the registration of mineral and petroleum rights. Yet another possibility is the extensive legislative regulation of new rights, coupled with the creation of structures outside the registration system, ensuring sufficient publicity.

In South Africa the Deeds Registry, which is renowned for its efficiency historically (bearing in mind it was mainly geared for limited 'white titles') is highly centralised. The pending digitisation of all historic records, however, means that deeds records will become increasingly accessible and thus the question of where they are housed becomes less and less critical. Title deeds showing current information are already available electronically. The question of expanding or decentralising the functions of the Deeds Registry is a vexing and challenging question. There are examples of decentralised local deeds registries in other parts of the world, e.g. India[8]. There are also examples of attempts in South Africa (see Rubin and Royston forthcoming 2017) to develop local land records for urban townships, but these remain off-register.

The jurisdictional location of local land administration records systems in South Africa is influenced by capacity issues, and not only by legal-institutional considerations. Municipalities would be the obvious institutions to provide repositories for holding and maintaining local records, since they have the most to gain by having accurate land records. Many of these institutions have, however, struggled to deliver the services they are constitutionally empowered to do. There are anecdotal accounts that land surveyors argued in the late 1990s that the private sector could be the repositories for land rights information, and would sell it to developers to recoup costs. The case for local registration/records in South Africa has not gained much traction in South Africa, and is generally frowned upon by Deeds Registry officers and land professionals.

Namibia opted for a parallel interchangeable property registration system for urban areas, wherein the initial secure right is simple and affordable but may be upgraded according to

[8] Acknowledgements to Lauren Royston for drawing attention to this.

changing needs and affordability. The new legal framework is called the Flexible Land Tenure System and the new law the “Flexible Urban Land Tenure Act”, 4 of 2012. The Act is designed "to create new forms of title to immovable property; to create a register for these forms of title and registrars to register these forms of title; to provide for the nature of the rights conferred by these forms of title ...". The system is expected to operate *parallel* to the existing registration system, establishing novel forms of title called **starter title** and **land hold title,** see text box below.

Text Box 2

Namibia's novel flexible land tenure system

Starter title is an inexpensive and simple form of land registration which provides a degree of security of tenure to existing urban dwellers in the context of an upgrading project or to new occupants of a “green fields” development. It is also intended as a tool for land management at the local government level. It is a recordal system which will supply a record of families and individuals occupying land in a defined area and will underpin a system of “fair taxation”. It is also to establish a rational basis for planning the layout of the area, installing engineering services and further upgrading of tenure over time. Starter title is an *individual* type of tenure in that one person, as a custodian for a family or a household, is allocated a right to an **unspecified site**. It is, however, *group based* in that each household within a block erf must abide by the rules of a community association. The block erf may be held in ownership by a local, central or regional government body, or a private sector developer or a community organisation. Registration provides the right to occupy in perpetuity a site within the boundary of the block erf (or another) – it does not specify a delineated parcel, but could do so with further upgrading. It is capable of being sold, donated and inherited, subject to restrictions that may be imposed by a constitution drawn up by the group or other rights recognised by the group. It would however, be impossible to be encumbered by mortgage, lease, or servitudes since the site has not yet been defined.

Land hold Title is a statutory form of tenure without the full range of transactions associated with freehold ownership. Land hold title, like starter title, would be registered in a computer based registry, which would exist **parallel** to the central deeds registry. The underlying parcel of land would remain registered in the Deeds Registry, but endorsed to the effect that it is subject to the registration of land hold title recorded in the land hold title register. Transactions would be processed by the land registration officer or a conveyancer in accordance with standardised computer based forms. Land hold title should be capable of being sold, donated and inherited; and mortgaged. By limiting the range of transactions, the land registration officer can be trained to recognise and record transactions without extensive legal training. The cadastral map, which is an integrated part of the cadastral information system showing land hold title sites, should be capable of amendment for subdivisions and consolidations. The land measurer would be legally permitted to undertake the adjudication, land survey and mapping of the plots.

Local land rights offices (“property shops”) would house the registers, staffed with a land rights registrar linked to a land registration officer and land measurers (para-professionals). The latter would work with professionals such as planners and engineers in upgrading projects and link the project to the city-wide land management system.

Excerpt from Rosalie Kingwill 2005, 25, based on Christensen 2004 when the legislation was in Bill form.

PART TWO: GOVERNANCE

1. Developing a legal-administrative framework for rights adjudication, recordal and custody

The process outlined above is aimed at filling a crucial legal-administrative gap in South African property law. The property system is incapable of fully recognising rights that do not fit into the conventional cadastral system as property rights even though the rights may be protected. We thus need a refurbished legislative and regulatory framework. Since currently only registerable rights are considered worthy of adjudication, legal professionals and officials have not considered the possibility of developing a system that adjudicates according to different sets of criteria to include customary normative orders. One of the objectives of this study is thus to put the idea on the table in order to argue for the inclusion of off-register rights in processes of adjudication in the absence of surveyed land parcels.

It also follows that along with the development of adjudication law, it will be necessary to develop administrative infrastructure, regulations and procedures for recording and holding off-register rights. The process of adjudication is thus the precursor to developing a land administration system for the majority of South Africans who do not have title, even though rights are protected.

This report outlines the broad suggestions as to the key components needed to develop a framework of administration of positive versions of ESTA and LTA rights set within a framework of land management and governance systems. Some of the details will become clearer during the processes of executing AFRA's Pathways Project. However, certain broad principles and governance frameworks help to define the policy and methodological parameters to set up an administrative system for off-register land rights (in this particular case, rights defined in terms of the Extension of Security of Tenure Act and the Land Reform (Labour Tenants) Act).

The guidelines proposed by international agencies, such as the Voluntary Guidelines for Responsible Governance of Tenure (VGGT) developed by the FAO[9] provide a useful aid to AFRA's advocacy. These guidelines and principles (see below) should be used in all AFRA's engagements with stakeholders including government, land professionals and farm owners. The VGGTs are nevertheless not set in stone, and AFRA should engage with them in an iterative process, since there appear to be missing components, such as the practices and laws that regulate 'transmission' or transfer of rights to buyers or heirs. In this respect, AFRA could contribute to international indicators.

Due to the legal and practical difficulties in realising these challenges through the stroke of a pen, AFRA has adopted the approach of 'incrementally' securing tenure in a developmental, iterative and step-by-step way, moving ultimately towards a system that is capable of recording and quantifying the rights at a micro-level, evolving towards meso (municipal/provincial) and macro (national) level institutional development. Thus a crucially important component of this report is to emphasise the importance of institution building.

[9] http://www.fao.org/3/a-i3920e/i3920e11.pdf

2. Developing legal principles through jurisprudence (case law) vs. developing legal principles through policy, legislation and administrative competency

There is much debate about the role of the judiciary in developing law, particularly in South Africa where the courts have played a disproportionately significant role in upholding the constitution when the executive has failed to do so. A study by SERI entitled 'Evictions and Alternative Accommodation in South Africa 2000-2016: An analysis of the jurisprudence and implications for local government' (SERI 2016) sets out the development of progressive jurisprudence for enforcing housing rights. Housing rights are closely linked to immovable property rights, and the SERI report shows how accumulated jurisprudence on housing has redefined property relationships in South Africa, indicating that the rights of property 'owners' can no longer be viewed as sacrosanct. The SERI report provides a summary of procedural and substantive obligations that government, particularly local government, must follow in order to enforce housing rights as a result of a series of judgments that show the important role performed by the judiciary in developing law.

The relationship between the judiciary and the two other arms of government in developing and enforcing law is obviously subtle and interactive, involving role-balancing, and requiring some flexibility. This report attempts to put the emphasis more heavily on the legislature and executive for developing legal and administrative competence to recognise, adjudicate, record and hold evidence of rights that are not secured through title, and in this way develop the capacity of government to recognise a layer of rights that do not comply with the requirements of the Deeds Office. As such, the approach is to develop an *explicit* onus on government to recognise currently off-register rights as property rights, which requires new legislative measures for their recordal and custody. The ultimate aim of new legal measures would be to 'flatten' the hierarchy of rights that currently exists in our property law, so that the position of 'ownership' is explicitly balanced against rights of occupation and possession (see van der Walt 1999). This will require changes to the system of registration to allow for rights recordal in a land administration system that allows for close articulation between a proposed local registration system and the Deeds Registry. In this way, cadastral components will match up, but allow for diversity of evidence.

There is always a danger in proposing a parallel system of registration that the formerly 'lesser rights' will degenerate into a 'second class' system of rights. The gist of the proposals in this report is to argue for a *differentiated* system and not a separate, parallel system. The report lays emphasis on the importance of developing legal parity between institutions that protect real rights and institutions that recognise and protect customary and other hybrid off-register rights. This will require advocacy. Advocates should invoke the Constitutional Court judgment in the Richtersveld case (Alexkor Ltd & another v Richtersveld Community & others 2003) which explicitly calls for parity between common law and customary law, and goes into some detail about the legacy of inequality in status between these two law systems, and why it should be permanently restructured.

> While in the past indigenous law was seen through the common law lens, it must now be seen as an integral part of our law. Like all law it depends for its ultimate force and

> validity on the Constitution. Its validity must now be determined by reference not to common-law, but to the Constitution.[10]

Property law in South Africa currently gives pre-eminence to ownership via a rigorous system of registration to publicise transfers. Common law relies on precedent arising from case law to constantly develop law. The development of jurisprudence regarding housing rights and PIE is a good example of this phenomenon. In legal-institutional terms, this body of law is supposed to be executed and acted on by the legislature and executive. In South Africa, these progressive judgments have not, however, translated into concrete steps to give statutory recognition to these changed relationships. Progressive judgments are often not acted on, and are often ignored by lower courts; and in any case very few people have access to the judiciary.

The judiciary has played a disproportionate role in post-1994 South Africa in interpreting, protecting and extending Constitutional rights, with the legislature and the executive tend to react, largely on the defensive, instead of taking their cue from the judiciary to develop institutional systems to give effect to the judgments[11]. The aim of this report is to suggest a process by which to suggest a more assertive role for the legislature and executive in acting on the constitutional injunctions, as well as a large body of case law to give effect to the Constitution to provide tenure security and to elevate customary law. The sluggish responses from the legislative and executive arms of government suggest that civil society should embark on a process to vigorously advocate for balancing the functions of the three arms of government to give effect to the separation of powers. The legislature ought to lead the direction of policy and law to give effect to the Constitution, leaving the judiciary to interpret and develop the law to ensure rights are not abrogated.

This report suggests there is a legal and administrative vacuum with regard to off-register rights as a result of the failure to institutionalise the systems required to give effect to the Constitution. This systems-gap places heavy responsibilities on the judiciary to oversee constitutional rights. Local government is expected to enforce housing and service delivery rights when it lacks the administrative machinery to recognise off-register rights.

One of the long-term goals of this report is therefore to suggest an expansion of the land administration infrastructure so that local government can no longer claim it does not have the capacity to deliver rights to those who do not qualify for housing, who would be homeless if evicted and whose rights are only 'informally' recognised. In the long term the goal is to strive towards universal recognition of diverse legally recognised rights without having to invoke case law on a case-by-case basis.

The FAO's Voluntary Guidelines for Responsible Governance of Tenure (VGGTs) (FAO 2012) provide a foundational and inspirational charter to advocate for the recognition and governance of insecure tenures. Since South Africa is a signatory to the FAO, these principles should provide a useful motivation for AFRA's advocacy, especially in persuading its partners of the universality of the ideas being expressed in terms of human rights.

---

[10] Alexkor Ltd and Another v Richtersveld Community and Others (CCT19/03) [2003] ZACC 18; 2004 (5) SA 460 (CC); 2003 (12) BCLR 1301 (CC) (14 October 2003) at para [51].

[11] Acknowledgement to Donna Hornby for drawing my attention to the comment by an academic surveyor at the University of Kwazulu-Natal explicating how a court decision in he early 1900s declared that "the peg IS the boundary" was the result of a massive court case. But once the courts have ruled, we need the executive and administrative arms to do their jobs.

The FAO's general principles are as follows:

Text Box 3

FAO's Voluntary Guidelines for Responsible Governance of Tenure (VGGTs), 2012

3A General Principles
3.1

1. Recognize and respect all legitimate tenure right holders and their rights. They should take reasonable measures to identify, record and respect legitimate tenure right holders and their rights, whether formally recorded or not; to refrain from infringement of tenure rights of others; and to meet the duties associated with tenure rights.

2. Safeguard legitimate tenure rights against threats and infringements. They should protect tenure right holders against the arbitrary loss of their tenure rights, including forced evictions that are inconsistent with their existing obligations under national and international law.

3. Promote and facilitate the enjoyment of legitimate tenure rights. They should take active measures to promote and facilitate the full realization of tenure rights or the making of transactions with the rights, such as ensuring that services are accessible to all.

4. Provide access to justice to deal with infringements of legitimate tenure rights. They should provide effective and accessible means to everyone, through judicial authorities or other approaches, to resolve disputes over tenure rights; and to provide affordable and prompt enforcement of outcomes. States should provide prompt, just compensation where tenure rights are taken for public purposes.

5. Prevent tenure disputes, violent conflicts and corruption. They should take active measures to prevent tenure disputes from arising and from escalating into violent conflicts. They should endeavour to prevent corruption in all forms, at all levels, and in all settings.

A notable gap in the VGGTs pertains to norms of succession that guide or determine inter-generational transmission of rights. The following sections will pay attention to these issues. Devolution of rights over time from one generation to the next is naturally a daunting challenge in the farm dweller context given the limited rights that they currently have in this regard, and given the implications for the property rights of owners. This issues nevertheless remains crucially important in helping to understand and build a system of recognition and adjudication for all off-register rights, including on farms.

3. Institutionalising off-register rights

An *institutional framework* needs to be developed to systematically administer off-register rights in order to provide transparency and certainty in property relations on farms. The development of a rights adjudication framework based on the development of evidentiary principles for off-register rights is a critical foundation in making it possible to develop a fully-fledged land administration system for administering off-register rights.

As discussed above, the most important outcome of developing an adjudication system is the development of institutions to administer rights that are not registerable in the Deeds Registry. We have already discussed the fact this it is not unprecedented in the South African property system to have registration systems located (a) outside the judiciary, in the executive, as in the Deeds Registry and the Mineral and Petroleum registry and (b) to create these systems to work in tandem with the Deeds Registry, and in parity with the system of land title. The proposal is contrary to the idea that the institutions are being developed in parallel in order to maintain a system of 'second class rights' that are not comparable in gravity with title deeds. The proposal is to accommodate a single system that accommodates a differentiated regulatory environment.

It is also important not to 'burden' property with secondary rights to the extent that the property market becomes frozen and dysfunctional. On the contrary, the idea is to clarify rights so that owners and buyers are not confronted with a maze of unresolved claims and murky rights, and which may over time evolve into extra-legal land grabbing.

The proposal for a set of differentiated institutions is in deference to the evidence that:

> (a) the customary norms that 'informally' govern off-register rights in rural and urban areas militate against the creation of proprietary rights vested in a single registered owner as required of title registered in the Deeds office;
>
> (b) rural rights derived from primary ownership of a parcel, such as farm dwellers and labour tenants whose rights are subject to the ownership of the real right in the parcel, require a different legal-institutional format from that set out in the Deeds Registries Act. The new institutions need to be honed over a long period of time to make them as robust as the Deeds office, bearing in mind the commitment to legal parity in the long run.

Deeds registration already comes complete with a highly developed administration system that has been institutionalised for over a century, and therefore the behind-the-scenes mechanisms tend to be taken for granted, with the background systems and procedures somewhat invisible to the public. There is thus a tendency to take for granted the end result of a title deed, not 'seeing' the intricate regulatory and technical procedures governing surveying and conveyancing of the land parcels to legal persons. Behind every title deed is a painstaking and legally rigorous process of adjudication to check the validity of the ownership against a set of politically and juridically validated criteria which are politically conscious and chosen. Title deeds are thus not 'normal' and 'natural' phenomena, as many landowners regard them, but are embedded in political choices[12] made by both the judiciary and the legislature over a long period of time (Chanock 2001, 376-377; van der Walt & Kleyn 1989, 248-9; van der Walt 1999).

The Deeds system is not geared to interpret, record and protect rights that are not internally governed by the legal criteria that validate rights by means of title deeds. By way of illustration:

[12] Chanock argues that the choice of emphasising absolutist principles of exclusion as reflected in historic jurisprudence should be contextualised in terms of "the intense struggle to establish, hold and exercise rights over land in South Africa […] in the context of racial competition over land" (2001: 376, ff7, 377)

- relationships between farm dwellers and landowners are neither leases nor servitudes which can be parcelled by survey and registration;

- familial relationships, which play an important role in customary tenures, whether on farms, communal areas or informal settlements cannot be interpreted by the laws governing title and succession in South Africa.

Rights holders in these —or similar — contexts are unable, and even reluctant, to enter a property system that cannot interpret the layered and nested rights that define the way people relate to the land, and which does not recognise the kinship-based social relations that define access. In any event, most rights holders are too poor to afford the onerous requirements of registered rights. There is evidence in comparable situations where those with title end up adjusting the concept to fit their social requirements, e.g. they do not register transfers because it is considered risky to the access rights of family members if the property is transferred into the name of a single person or a couple (Kingwill 2014). Kingwill's in-depth research in two Eastern Cape freehold settlements revealed that in the majority of cases individual and families to not transfer title through the formal legal processes (*ibid)*. When title holders do not register transfers their rights are in jeopardy because they no longer meet the legal requirements of the Deeds system, and thus have to constantly be readjusted by lawyers or commissioners[13], another lengthy and time consuming task that ends up as a mere stopgap.

The processes of clarifying rights are therefore the first step towards developing an administrative system that is able to validate claims to rights that are currently 'off-register'. The purpose of this project is to kick-start this process by focusing on farm dwellers and labour tenants. This category includes the most vulnerable tenure in the country. A pilot study could provide a useful illumination on larger processes that could be embarked on to develop systems to record and administer off-register tenures.

The proposed development of juridical and administrative institutions to govern and administer currently off-register rights makes enforcement of rights attainable. While the judiciary has played a critically important role in developing South African property and rights jurisprudence, as already discussed, this process does not, and has not, ensured that the judgments are enforced or even endorsed by lower courts. In many cases the executive is slow to respond to court injunctions in any case. While the general lack of capacity of local government institutions to administer services is legendary, their specific inability to administer off-register rights can be largely attributed to the absence of institutions to govern rights that have so far failed to find an institutional home.

As the SERI study (SERI 2016) has shown, the jurisprudence that has developed in response to housing rights under the PIE law has shaped a new approach to property law in South Africa, demonstrating the fiction that owners have unassailable rights. There is nevertheless a distinction in what the court judgments have achieved in developing legal principles, and what is being proposed in this report. The judgments have clearly demonstrated the binding nature of, e.g. procedural requirements for an eviction, provision of alternative accommodation and meaningful engagement, among others, which is a significant advance in administrative justice. Nevertheless,

[13] In terms of the Land Titles Adjustment Act, No 111 of 1993.

the proposals in this report go significantly further in advocating the development of administrative institutions specially designed to govern, regulate and administer currently off-register rights. The point of institution-building is to develop the capacity in the executive branch of government to administer the judicial principles established by the courts in a systematic manner.

The proposal here is to locate the institutions of land administration in local and provincial government, whilst retaining the national oversight of land in the national department of Rural Development and Land Reform (DRDLR), in line with current jurisdictional responsibilities. The proposal is for national department responsible for land affairs to delegate powers of administration to the local level. It is important for the future integration of the proposed rights administration, and the Deeds Registry that national government retains overall *responsibility* for the development of policy, law and institutions. The proposal is for a 'deconcentration' of the powers of the national departments to provincial and local levels. Deconcentration is different from decentralisation. The proposal is not to 'decentralise' the functions, which implies that the provincial and/or local government take full responsibility for developing land administration. Deconcentration requires the national department to take responsibility for the development of policy and law, and to fund and build the institutional capacity at more localised levels for the execution of policy and law. This approach, as mentioned, differentiates 'deconcentration' of powers from 'decentralisation' of powers. The proposal is in line with the current constitutional mandate for national government to be responsible for land in keeping with its national importance and historical and political significance. At the same time this proposal acknowledges the lack of fiscal and administrative capacity in provincial and local government to assume these responsibilities without national government providing the capacity, given their current incapacities.

The rights of farm dwellers and labour tenants, as with customary rights in communal areas and informal settlements, are critically linked to local government service delivery and planning responsibilities. In this regard, the Spatial Planning and Land Use Management Act (no 16 of 2013), or SPLUMA, provides an initial legal framework for administering rights through land use planning regulation, while state housing subsidies provide a catalyst for local state intervention with the potential to solidify land rights. Given the current diversity of these rights, the appropriate departmental home for administering these rights will initially be best placed in local government, while provincial government should provide the infrastructure that develops repositories for the custody (holding) of the recorded rights, and which are capable of recording transfers and succession. This proposal is not limited to the administration of farm dweller and labour tenant rights, but also current off-register IPILRA, CPA members' and shack dwellers rights records, in other words a systematic approach to off-register rights administration in general.

In the early stages of development, AFRA would need to work most closely with the relevant local government in shaping the process of rights recognition. AFRA's Pathways Project involves rigorous engagement with farm dwellers and farm owners, which provides a good basis for negotiating 'buy-in' at farm level to develop a local repository of records at municipal scale. The next stage would involve buy-in from the district and local municipalities where the project is being undertaken. AFRA's rigorous process of local facilitation, working with existing local institutions, including organised agriculture and civil and community organisations is a critical component of developing local institutional capacity. The rationale should be seen as the first step in developing institutional capacity for land rights governance, and thus potentially overcoming

the current 'case by case' approach to upholding rights, which we have seen leads to an institutional impasse.

The composite findings from AFRA's farm dweller survey, supplemented with qualitative research, will provide the empirical evidence for options for developing legal principles for securing tenure incrementally. Initially much of the progress will rest on AFRA's practical experiences in the field in achieving negotiated outcomes. It might be prudent for AFRA to engage with DRDLR only once local processes are fairly well established, in order to demonstrate the progress and present the evidence.

In the long term, AFRA should aim to publicise the findings and engage with other civil society organisations in order to find a way of engaging (a) the legislature to bring home the importance of legislating the adjudicatory principles that AFRA develops to confirm the source of rights and (b) the executive to enforce the rights through a highly developed administrative structure that includes adjudication; recording and holding rights; and dispute resolution mechanisms. Naturally these are high-level and politically challenging and charged processes that will (a) be resisted by a number of interests and (b) take a great deal of commitment, advocacy and time. The point here is simply that over the long run, the purpose of the proposed intervention is a step towards holding the legislature and executive to account, rather than the extreme dependence and reliance on the judiciary to lead policy and affirmation of rights as currently is the case.

Among the first steps in institutionalising off-register rights is to (a) enumerate the existing rights holders without adjudicating their status, legitimacy or relational qualities; and (b) develop the means by which to decipher the qualitative and descriptive evidence of tenure and transform them into quantifiable data that can be standardised into legal criteria. Possible staging would be as follows:

- Enumerate the rights holders with simple descriptors without adjudication or content.

- Enumerate the concrete descriptions, such as length of occupation, access to the farm, access to graveyards, cultivation of a garden.

- Interrogate existing practices to identify repetitive patterns and to make comparisons.

- Weigh up and weight the evidence according to the strength of local norms (naturally this will be a contested and difficult process).

- Rank the criteria from the evidence and develop a 'hierarchy of evidence' that provides indicators of the strength of the rights according to agreed principles which must be developed.

The last stages of the process would require the assistance of applied legal and research practitioners, since there is little existing precedent to go by. The aim is to develop the descriptive

evidence into various weighted legal criteria that will ultimately be listed in a law that will recognise these rights norms according to agreed principles, e.g.

- what length of occupation is considered to produce what kind of right;
- whether inter-generational access to residence and/or employment provides a stronger sense of entitlement to a right;
- whether length of occupation trumps a strong employment contract;
- whether access to land uses other than residence, such as graves, gardens, fields, grazing provides a stronger sense of entitlement to a right, etc.

These are longer-term goals that will require sophisticated legal advice, but must be borne in mind when data is being collected on the ground. Naturally it would be important to assess the landowners' view of these 'rights' but their views should not colour the way in which researchers extract and collate farm dwellers' views.

The approach is to elevate farm tenure for those without title to the registered parcel, and to assist in gauging the necessary administrative processes that will be needed to enforce the rights, rather than having to rely on the courts in the first instance. As already discussed, and worthy of reiteration, off-register rights currently exist outside of a systematic framework of land administration despite their protection by specific pre-emptive legislation such as ESTA and the Land Reform (Labour Tenants) Act. The ideas in this report are to advocate for a process of adjudication that contributes to the positive recognition of the rights and makes it possible to develop a comprehensive administrative system to hold, manage and administer the rights without the need for constant referral to the judiciary for verification.

The neglect of a land rights administration system for off-register rights-holders therefore prevents the full recognition of these rights as property rights, and confines them into a category of second-class rights.

It must be mentioned, as NGO workers are well aware, that landowners become extremely nervous and reactive when any potential threat to their exclusive ownership rights are raised. ESTA and LTA rights are often contested and threatened during changes – in ownership, land use and operations. AFRA would need to develop a methodology or approach (not easy, granted) to convince landowners that they will ultimately benefit from clarification of rights, since they will not have to live with ongoing contestation and simmering unease, while land transfers will no longer be burdened with the uncertainty of informal rights and the possibility of litigation. While many landowners are likely to be unconvinced and to strongly contest the goals of the research, AFRA researchers should persist with the argument that clearly defined processes will be a positive development for owners of the land as employers and proprietors, as well as farm dwellers/labour tenants, providing clearer ways of working through crisis periods of transition.

To recapitulate: the conceptual distinctions between institutions of justice and administration of law are critically important. Rights adjudication as proposed in this report is to be understood as a ***juridical*** process, but not a ***judicial*** process, though it is derived from judicial principles. 'Juridical' implies 'the administration of law', rather than the arbitration of law. In other words, the process requires an administrative and institutional framework other than the courts, and should not be

mistaken for conflict or dispute resolution, though these could be (and often are) triggered by adjudication, or require adjudication.

4. The distinction between Adjudication and Dispute resolution

As implied above, the 'juridical' process we regard as necessary to establish rights through adjudication may also reflect or trigger underlying or new disputes, and thus these measures must be accompanied by a framework for dispute resolution. The absence of a systematic framework for administering and managing off-register rights to property means that disputes loom large and are unable to be solved with reference to a standardised set of benchmarks.

From a legal-institutional perspective, it is important to distinguish between adjudication and dispute resolution. Adjudication is the process where rights are verified. Processes of adjudication do not arbitrate disputes but define the rights according to which disputes may be arbitrated or mediated (and thus potentially altered or changed) in separate processes and by different institutions. Dispute resolution mechanisms therefore need the adjudicatory principles to draw from to resolve the disputes, but these processes should be kept conceptually distinct, however intertwined they may become in practice. In the formal system, rights are adjudicated by conveyancers, surveyors and Deeds office officials, who may *identify* conflicting rights but do not themselves resolve them if the dispute is contested and requires arbitration.

In the absence of adjudicatory principles and processes, disputes, rights-violations and rights-determinations are dealt with on a case-by-case basis, with the courts frequently the final adjudicators. While the courts have an important role to play in developing the law, it is **not their function to define the policy parameters** of acceptable evidence of land rights. Nor are courts the right vehicle to administer determinations that they have already made. We argue that the institutional framework for the administration of rights should therefore be developed by the state departments charged with developing policy and law.

The aim of this report is to propose an approach to elevate the rights of farm dwellers and labour tenants (and similarly a process for communal/informal dweller rights) to the level of equal status with formal property rights by arguing in favour of institutions to legally define and administer these rights, which will diminish the scale of conflicts over time. In the meantime, robust conflict resolution institutions that operate side-by-side with adjudicatory institutions will be needed if adjudication is to be effective.

5. The distinction between Adjudication and creating new rights

Rights are those that already exist in law (including the Constitution), such as protection against eviction, burial rights, grazing rights, access to roads and services, rights to housing and housing renovation, right to family life, rights of access by family and friends, etc. Some of these have been established through laws, the Constitution and the courts. Adjudication, on the other hand, draws on *evidentiary principles* that are able to provide the proof that the claims of a rights holder add up to the rights. The claim by the holder of the right needs evidence to prove the validity of the claim. To avoid establishing proof on a case-by-case basis, the idea is to develop criteria for objective adjudication processes to weigh up the evidence. So the questions are: 'what is the evidence, and what evidence is considered acceptable for the claim to be validated?' Examples are:

- the agreed terms of residence;
- length of stay;
- employment contract;
- labour and shelter in lieu of a salary;
- salary;
- temporary access over a period of time;
- burial and access to gravesites;
- familial relationships;
- practices governing succession to rights (i.e. who can succeed to a father's or mother's rights?);
- 'pieces of paper' such as receipts or salary slips;
- investments in time or capital;
- evidence of informal 'sub-letting' arrangements
- tenancies of various kinds.

It is vitally important to understand that adjudication in itself does not *create new rights.* The process of adjudication applies to existing rights (even as they evolve). Adjudication may well (and usually does) result in sequential stages such as mediation, arbitration, expropriation, extermination of rights, redistribution, restitution, formalisation, planning, surveying, etc that result in the creation or alteration of rights, or the termination thereof.

Adjudication in and of itself does not alter existing rights, but interrogates them with the view to making an authoritative ruling on whether or not the right is valid. An example may suffice: adjudication of bids for a tender award decides one way or another based on the existing documentation. Adjudicators are not supposed to meddle with the evidence to change, strengthen or weaken them. If adjudication is contested, such as in the present case with the 'social grants' debacle where the original tender award was declared invalid by the courts, other processes deal with the dispute.

Evidentiary principles are created during the process of abstracting *categories of evidence* from the concrete expressions of rights to form agreed criteria of evidence in particular contexts, e.g.:

- temporal criteria;
- spatial criteria;
- land uses;
- social relations;
- employment criteria.

In this way, objective principles are built from the ground up, by establishing the legal relationship between the concrete and the abstract. Some court judgments already exist in clarifying these relationships, and must be referenced. One is the Msomi judgement on 1 December 2010 (Msomi v Train NO and Others (LCC 95/2009) [2010] ZALCC 32) that defines a labour tenant. That case is a good example of how the Courts used evidence to establish a right by a process of judicial adjudication.

Although the case sets a precedent for all classes affecting the judgment, the argument here is that an administrative system must be established to execute these decisions at scale throughout society. Vital to the process is the establishment of system of adjudication outside of the courts, whereby juridical principles can be applied objectively. Extrapolating from the *Msomi* judgement, for example, the approach in this proposal would be the need to develop the administrative processes and institutions for applying the Msomi judicial adjudication to all labour tenants.

PART THREE: GUIDELINES

1. Stages of development of adjudication

In addition to developing a conceptual framework for adjudication of farm dweller and labour tenant rights, this report has attempted to develop a preliminary set of conceptual guidelines with the aim of assisting AFRA develop mechanisms to design a systematic approach to verifying evidence of land rights for occupiers and labour tenants living on commercial farms.

In order to embark on this ambitious process, we need to begin by identifying the concrete evidence of existing rights in accordance with local norms. These are local markers that indicate who has what kind of access rights ('local indicators') that conform to (a) local rules; and (b) local practices that have developed over time, and which may differ from the rules. Over time the local norms of different localities can be compared to find commonalities and differences. Ultimately these must be tested against the Constitution.

As already outlined above, the process of rights adjudication or verification involves:

- The collection of evidence through quantitative and qualitative research.
- Examining and classifying the concrete evidence.
- Interrogating the evidence to assess how to weight and rank the various concrete indicators informants provide to prove some form of right.
- Developing mechanisms to standardise tenure indicators into a more abstract format.
- Agreeing on legal standards so that farm dwellers' tenure can be verifiable against agreed standard legal principles or what we may call 'evidentiary principles', i.e. principles derived from the evidence on the ground.

In order to make practical headway, AFRA advocates a processual approach, where goals are realised step by step. We need to identify and outline the various stages in the process and tackle them systematically. All stages require the buy-in of relevant government institutions.

2. Methodologies for Collecting evidence

Ideally evidence should be collected using the following techniques: (a) AFRA's survey tool; (b) individual interviewing; (c) focus group meetings; (d) workshops and focus groups and local reference groups made up of farm dweller and land owner representatives.

Developing categories of evidence from the concrete, detailed evidence will begin to filter during these stages of collecting evidence, interviews, analysing the evidence and getting feedback from participants in participatory consultative meetings. Given the highly contingent nature of 'co-incidental' rights (i.e. rights that are dependent on other rights) rights tend to be negotiated farm-by-farm and are often personalised. It will be difficult to develop 'universal' categories during the early stages of the process, but there may nevertheless be highly regionally repetitive patterns that indicate a normative order and over a long period of time, the norms across the country may begin to converge.

The purpose of the survey and interviews is to gain a composite understanding of the local norms that direct current tenure practices and ideas about tenure. The questions should thus include the 'rules' as well as the practices that evade the rules. It is critically important to collect evidence about how rights are transmitted from one generation to the next, since these provide the most cogent insight into how rights are construed, understood and exercised.

3. How are rights transmitted?

It is critically important that AFRA's survey include questions about how rights are transmitted in practice. Transmission practices of how families pass their rights to the next generation (heritability and succession) provide a cogent window into how people understand the content, meaning and strength of their own rights. Transmission practices help researchers to assess:

(a) the normative processes that confirm or deny rights under *current* circumstances;
(b) the potential normative basis for developing an acceptable framework for future succession law.

Examples of what respondents may say:

- When I die, all my children will take over the family home.
- I would like all my children to take over the family home but have no power to decide
- When I die, my son/ daughter/ sister/ brother (etc.) is going to become the custodian of my home.
- When I die, the children will decide how rights will be held or distributed
- I have no control over who will retain rights as the owner will decide.

4. Examining, interrogating and weighing up the evidence

The process of 'examining' the evidence is the first step in developing an understanding of how to weigh up the strength of rights in relation to each other. The evidence itself should provide a window into local norms, which in turn will dictate what criteria to apply in ranking and ordering the evidence, where one builds categorical formulae from the concrete data. The data sets may contribute to categorising the data into various tenure sub-categories.

(a) An example of concrete evidence may be "our family has lived here for generations".
(b) An example of weighing up concrete evidence may be that, according to local norms, the duration of a family's association with a particular farm is regarded as more 'weighty' than a newcomer who has managed to secure grazing rights.
(c) An example of abstracting legal criteria from concrete evidence may be ‘length of occupation.'
(d) An example of a legal article in a statute could be a particular standardised time period/s considered significant for legally securing tenure.

5. Standardising indicators

An important step in the process of developing an adjudication system is rendering the indicators into a common set of concepts so that the raw data can be compared across farms or regions. In particular, temporal (i.e. time-related) indicators respondents use in surveys/interviews are vitally important to assess what time periods are locally consistent with strong rights.

Some examples of standardised variables that come up as indicators of some kind of right or perception of right, and which may be compared are:

- length of access
- length of continuous occupation;
- land uses besides residential, which should to be differentiated;
- the passage of the right to children or others in the family;
- claims to indigenous occupation pre-white ownership [this variable to be discussed in AFRA. It may not belong here, but would be interesting and important to investigate given the surfacing of indigeneity in land claims]

6. Emphasising appropriate social units for holding and transmitting rights

It is important that the legal mechanisms accommodate a range of social units that are culturally appropriate, since families are constituted in different ways across the country, e.g.:

- Patrilineally (where relatives are calculated according to the male line of descent).
- Matrilineally (where relatives are calculated according to the female line of descent).
- Bilaterally (where relatives are calculated from both mother and father)
- Large extended three-generational families; nuclear families, etc.

One of the main reasons identified for the failure of title holders to formally register transfers through either sale or inheritance is that the cultural norms of transmission (see above) of African families differ sometimes quite fundamentally from those that direct the transmission of rights under formal registered title. In the latter, individuals are identified and registered, whereas in African practice, categories of successors generally inherit rights of access, with a particular individual identified as the custodian but not the proprietor or owner (Kingwill, 2014).

Qualitative interviews should attempt to identify in particular how kinship relationships are constructed in relation to holding property and its transmission.

7. Recording rights

Developing a record system is perhaps the most challenging stage of the adjudication process. It is nevertheless the most crucial outcome of developing an adjudication system *de novo*.

The strength and legality of individual tenure rights will become comparable and easily gauged and accessed through digitisation of the records in databases, because the criteria would be standardised across tenure regimes and geographic regions. Investigating and advocating methods of recording rights should therefore be a high priority for AFRA. The question is what is recorded: the concrete or the categorical right? The detail or the generalisation? While it is

possible to record some detail, it would be impossible to record the changes to each detail over time. Maintaining detailed/complex records would be unsustainable, and if not kept up, the records are in danger of becoming worthless.

The recorded right should therefore be a standardised way of recording at least the key rights – residence, burial, grazing, thus translated into categorical rights to make them legible across a range of tenures.

There are various systems that have been developed by international NGOs such as UN-Habitat and the International Federation of Land Surveyors (FIG). The UN-Habitat format is known as the 'Social Tenure Domain Model' (STDM). Prof Michael Barry has developed a different model known as 'Talking Titler'.

In this project, AFRA has opted to use BFAP's electronic system which has been developed at the University of Pretoria.

The STDM and Talking Titler emphasise different elements, and BFAP's system should be assessed for possible adaptation of some of the elements of these, if considered necessary. Talking Titler allows for recording of complex relationships, while STDM records relationships more superficially. The latter makes it easier to standardise and quantify the variables. There is a trade-off between too much detail that is difficult to standardise, and too little detail that allows for standardisation but which may become a blunt instrument.

In the long term, the records need be stored in such a way as to facilitate access and updating. Developing a functional record system will involve major institutional changes following prolonged consultation, drafting, etc.

While AFRA cannot itself bring about the institutionalisation of a land records system as part of developing a land administration system for off-register rights, it is nevertheless important for AFRA's Pathways Project to contribute towards the development of 'organisational principles' to feed into the advocacy and legal development process. AFRA could engage with local government or provincial government (or both) to develop:

1. interim repositories in government institutions
2. local records with detailed information on farms, managed by local committees empowered with local property management responsibilities (comparable to a Body Corporate?)

The following broad examples of organisational principles should guide the longer-term development of a recordal system:

- legality of records to be legally regulated and enforced by the state, and in such a way as to ensure that records reflect and uphold rights that are current and verifiable;
- accessibility of the repository to users (rights holders, government and relevant public);
- accessibility of the individual information sets to users (rights holders, government and relevant public), e.g. by typing in the name of the occupier and/or parcel unit it

should be possible to access details of tenure according to the agreed standards, such as the time period that is considered legally significant;

- manipulability of records by accredited officials to record changes to status or property, e.g. death, birth, relocation, marriage, etc. As mentioned, it will not be feasible to have every change recorded – such as family members making up the family unit and thus only those changes that are considered legally necessary should be compulsorily updated
- in the long term the aim would be to develop a more sensitive tool that can record details, but this will only be possible when institutions are more stable.

8. Developing legal principles

(a) Evidentiary principles

The research and collection of data may ultimately assist with legal definition, which is the ultimate long-term goal. Thus the considerations that will affect legal definition will affect the kinds of evidence that field researchers should be gathering, with recommendations about recourses, methods, storage and digitisation; access; and in particular, recommendations about how the evidence may be categorised with the view to statutory definition. In other words, the process should contribute to the development of evidentiary principles that may be extrapolated from the raw evidence in order to be able to adjudicate rights by authoritatively ascertaining and verifying rights of farm dwellers and labour tenants.

(b) Legal definition

A process of legal definition will be required to direct the interpretation of law in order to formulate the means by which to recognise rights that are contingent on other rights, such as between farm dwellers/labour tenants and farm owners. A property law shift would require the specification of how a contingent right may evolve into a legally recognised and recorded right.

Examples/suggestions for legalising farm dwellers/labour tenants' rights:

- acquire a right not unlike adverse possession or prescription[14]
- acquire a right by dint of 'beneficial occupation', the time period of which can be set low or high[15];
- acquire a right by dint of 'equitable title' which may arise in trust law (but not in SA). In a trust, one person may own the legal title, such as the trustees. Another may own the equitable title such as the beneficiary[16].

[14] Adverse possession is concerned with the extinction of the title of the original owner by a rule of limitation of actions. Prescription, on the other hand, is concerned with acquiring a right that did not previously exist.

[15] Beneficial occupation in the Restitution Act is defined as '10 years'. "The Restitution of Land Rights Act introduced a new dimension into South African real property law in that when defining a 'right in land' it included 'any right in land, whether registered or unregistered, and may include the interest of a labour tenant and sharecropper, a customary law interest, the interest of beneficiary under a trust arrangement and beneficial occupation for a continuous period of not less than 10 years prior to the dispossession in question'. The issue of labour tenants' rights, quite apart from restitution, is now subject to separate legislation .... beneficial occupation is one which is posing problems of interpretation. Beneficial occupation is not defined in the legislation ... " (White 1998)

16 English law holds that, since trust beneficiaries have, in essence, equitable ownership of trust assets, they have the right to direct the trustees to deal with those assets in a particular way. In South African law, trust beneficiaries are regarded as having only personal rights against the trustee until such time as the trustees actually vest the assets in the beneficiaries.

(c) Developing a hierarchy of rights

The development of adjudicatory principles for off-register rights will be guided by principles that will determine the relative strength of rights. We refer to this categorisation of the order of rights as a 'hierarchy of evidence' since the indicators for tenure are not of equal strength. The criteria that will order the hierarchy are socially responsive, there are no 'rules' outside the norms that society agree on. AFRA's field research should contribute towards the process of ascertaining and ordering the normative content of rights, as to which principles carry greater social strength than others. Naturally these norms and principles will be heavily contested, e.g. between farm owners and farm dwellers as well as between different categories of farm dwellers and labour tenants.

We have a multitude of examples of conflicting claims *within* settlements where Africans historically had quitrent and freehold title. For example, on the former 'black spot' settlements and farms collectively purchased in the early twentieth century, there have been bitter conflicts between the original purchasers'/title holders/residents, i.e. the original grantees/purchasers and the later arrivals, tenants and informal settlers (sometimes between the first categories combined and 'illegal' settlers (formerly known as 'squatters').

.

Hence the hierarchy should set out what principles trump other principles. These are likely to be employment, temporal and kinship factors such as:

- original settlers/first settlers
- employed farm dwellers/labour tenants
- kin of recognised residents
- length of occupation, etc.

9. Developing law

It is proposed that South Africa enact an Adjudication law. The law should not mirror the Kenyan example. The proposal is for adjudication for purposes of developing a land administration and recordal system for rights that are not necessarily registerable within the terms of the Deeds Registries Act, nor attempts to convert them into freehold rights, but as part of a system of recognition of *existing* rights.

In this way statutory recognition can be extended to all South African's with valid claims to land rights.

PART FOUR: RECOMMENDATIONS

1. Research tools

The first step towards developing a ground-up adjudication system is by means of a variety of research methodologies as a foundation to understanding the normative basis of land rights as understood by both landowners/employers as well as farm dwellers, labour tenants and employees on farms. Though proposed for ESTA and LTA rights holders in a particular geographic area, it is important to stress that the Pathways Project is ideally contributing to wider application. To be effective in the long run, the general principles, processes and procedures should be extended outwards to other tenure contexts, such as CPAs, informal settlements and communal areas so that the entire concept may be systematically developed.

Multiple research methods or 'triangulation' refers to the application and combination of several research methods in the study of the same phenomenon. This means that it is best to use several methods — quantitative, qualitative and consultative/participatory — in order to strengthen the reliability of the results. This technique facilitates validation of data through cross verification from two or more sources.

AFRA has drawn up a structured research questionnaire for the pilot site to gather data through quantification. The survey will need to be supplemented by follow-up qualitative interviews, and both sets of qualitative and quantitative methods followed up with consultative methods such as focus groups and workshops in order to test the results in a more 'public' forum. It is better not to start with the latter methods, as participants are influenced by group dynamics and imagined outcomes that influence their responses in a group situation. It is important, therefore, for the facilitator to be aware of the earlier research results in order to manage the possibility of 'manipulated' results in focused group discussions, meetings and workshops. The latter are nevertheless crucial phases in developing a rounded response to the problem at hand.

The research is proposed to be the first crucial step towards more ambitious aims of providing a template for the development of a fully-fledged land rights administration system for ESTA occupiers and labour tenants, and ultimately also customary rights on communal land and in informal settlements. An effective adjudication system is dependent on adjudicating the 'right variables', and it is therefore self-evident that identifying the 'right variables' is dependent on rigorous research.

The general approach should be based on grounded local concepts and practices, rather than top-down rules. The research through surveys, interviews and meetings will, *inter alia*, help establish the local normative framework of rights on farms in the jurisdictions in which AFRA is working. The evidence should reveal both 'rules' and 'practices' and include the transmission of rights across generations.

AFRA will need to interpret the evidence before knowing how to prescribe the best possible adjudication processes and procedures to address farm dwellers' tenure insecurity. The empirical data, collected through multiple research methods, must first be analysed before it can be interpreted for the purpose of broadening and systematising the evidence into more standardised categories and criteria for the systematic recognition of off-register tenure rights.

There is nevertheless a large body of empirical research conducted by NGOs and academics over the years. These point to a general 'trajectory' of tenure norms, and seem to suggest fairly clearly emerging patterns. AFRA's research should tap into the research already available, and contribute towards enriching, enlarging and verifying existing research.

2. Quantitative Survey (structured questionnaire) and qualitative semi-structured interviews

AFRA's intended quantitative survey and semi-structured qualitative interviews should include questions that will illuminate social relations that are crucial for understanding local tenure norms.

The following relationships that affect tenure should be explored in questions and interviews:

- farm owners and farm dwellers;
- amongst farm dweller families;
- inter-familial;
- intra-familial;
- inter-generational relationships reproduced through transmission of land rights.

In other words, relationships between the registered owner and the farm dwellers and labour tenants; relationships between families and relationships within families with regard to rules and norms of access to the land, who controls and applies those rules; and how.

Examples are as follows:

1) Farm owners and farm dwellers/labour tenants
    a) Which relatives of employees does the farm owner allow on the farm, and on what terms?
    b) Terms upon which an employee OR long-term resident may occupy a house, and how that extends to other members of the family
    c) Terms upon which other land uses are allowed, e.g. cultivation, burial, ceremonies, and who may be allowed to participate in those.

2) Between farm dweller/labour tenant families (external issues)
    a) Are there rules/norms between families about who may have access to the farms in question, regardless of the formal rules laid down by the farm owner?
    b) Are there ever/sometimes conflicts between families with regard to other families being allowed access?
    c) Are there any local norms that prescribe terms for 'outsider' individual/s seeking unofficial access through the farm dwellers, e.g. payment of a 'consideration' or payment in kind? If so, which families have local 'authority' to grant such extra-legal considerations, and why?

3) Inter-familial relationships (kinship and property)

a) Are there norms that bind families through kinship relationships or other social networks and obligations that affect tenure arrangements, e.g. marriage between members of two farm dweller families.
b) Do issues of access to family members among one family affect their relationships with other families on the farm (i.e. how inter-related are issues of access?)

4) Intra-familial relationships (kinship and property)
    a) Do family members of an officially approved rights holder (e.g. an employee) regard themselves as rights holders by virtue of another rights holder/employee.
    b) Are there rules of access applying to members of a household, e.g. a new wife of a son who is not employed but lives in his parent's house.
    c) Which members of families have authority to negotiate or make decisions about tenure and access? And why that particular family member.
    d) How do family members negotiate their continued rights of access when an important (i.e. authority-or employment bearing) family member dies?
    e) Do families conduct familial ceremonies on the farm? What is the significance of a family ceremony for their perception of their land rights and for what purpose are they held on the farm? Is this activity allowed by the owner, and if not, does it nevertheless happen?
    f) How is moveable property transmitted between family members when someone dies (particularly valuable property such as cattle or other livestock).

The semi-structured interviews are important as a follow up to explore details that are not possible to gather from the data that will be quantified from the structured survey, as there are nuances that simply cannot be explored in questionnaires. The interviews should be one-on-one, which does not literally mean only one person, but only one family unit at a time.

The best approach in interviews is to ask the respondent to tell their story about their lifetime experience with regard to land access without too many structured questions. I.e. the interviewer should not follow a format but allow a conversation to develop naturally. During the course of the interview, the interviewer asks questions of clarity, including time frames, kinship relationships with people on and off the farm, as well as relationships with the farm owner/employer, land uses, etc.

3. Consultative forms of research

It is recommended that consultative and participatory research should occur towards the final stages of research. While a range of consultations will have to occur at the early stages of the project in order to set up the research process, the actual participatory research is best done later in the process. Focus group meetings and workshops are likely to be more effective in terms of information gathering once the facilitators are more aware of local dynamics, local leadership struggles, local disagreements or conflicts, etc., in other words, are able to ***interpret the significance and meaning*** of local norms in the context of local history.

4. Examining the evidence to standardise the variables

The most crucial and challenging stage of the research is examining the evidence with the view to assessing how the data may be systematised into standardised variables so that the qualitative data and quantitative data is transformed into more standard variables, which can be compared across regions and tenure domains.

While it is not possible to pre-empt or predict what the evidence may be, the following example may help to illustrate this stage of 'abstraction':

a) A majority of respondents may answer that there is an unofficial norm to transmit their rights of access to their wives and/or kin. The standardised variable would be '***heritability***' while the detailed criterion would be whatever norm is accepted into law (or not), such as ***rules of transmissibility***.

b) A majority of respondents may regard their land rights to be associated with a *particular* farm, and would be loathe to relocate to any other farm if given the opportunity, even if it is situated close by. The standardised variable would be ***'fixed parcel of land'*** and the norm would be an ***indigenous claim*** based on factors such as pre-colonial history of settlement on that farm prior to white ownership; long inter-generational duration of settlement on that farm, historical factors; etc., depending on what is expressed repeatedly by the respondents. Alternatively, respondents may be willing to settle on any farm if given tenure security, in which case the standardised variable would be ***'flexible land parcel'*** (or some such) and the norm would a right/claim to ***alternative accommodation/tenure security.***

5. Interpreting language

It is critically important to bear in mind that respondents do not use the language of researchers and scholars. Respondents generally do not use the terms and concepts that researchers or analysts use, including those used in this report. Respondents are thus unlikely to use the terms used in the examples mentioned above.

For example, with regard to transmission, they may describe the details of family members' access across generations, without generalising that process into a 'right of transmission' or 'heritability'. The latter (or its absence) is to be deduced by the researcher from multiple sources of evidence.

It is the researchers' responsibility to analyse the evidence, apply conceptual standards and interpret the emerging normative patterns. The key is to have sufficient scale of responses that begin to indicate clear patterns. This does not mean that each response should be the same in order to point to a pattern. Patterns emerge from an underlying normative logic that is applied to all events or challenges, but the precise pieces of evidence are not usually identical, since the outcomes are contingent on family circumstances, and are often borne from a particular struggle.

It is nevertheless possible to discern an underlying normative logic that derives from similar or comparable norms.

6. Recording land rights

a) Test the use of various recordal models currently available for recording off-register rights in digital format, and embark on developing a records system for the rights of farm dwellers in a pilot project. This step is already in motion, and the BFAP's tool (developed at the University of Pretoria) is being adopted. It may be worthwhile to compare its features with the others, such as STDM, Talking Titler, and others.

b) Engage with government officials on an ongoing basis regarding: the development of a repository for land records; the jurisdictional home for the records; the means of updating the records; and most challenging of all, developing the appropriate social and spatial units for the records based on the empirical data.

7. Inter-disciplinary professional engagement

This section refers to professional and not political engagement. Political engagement is important but subject to ongoing processes between AFRA and political institutions.

a) Officials from the Deeds Registry
b) Academic lawyers such as property law experts who are sympathetic to new interpretations of property, e.g. Prof Hanri Mostert (UCT law faculty), Prof Elmien du Plessis (North West Univeristy law faculty)
c) Geomatics Professors Michael Barry (Univ of Calgary) and Jennifer Whittle (UCT) to test these ideas against prevailing common and statute law.
d) Local government with the view to developing institutional capacity to record and hold the evidence and recorded rights collected by AFRA as a first step towards advocating more broadly for policy, law and institutions to administer off-register land rights.
e) Provincial government with the view to developing repositories for the recorded rights.

8. Charter of Prescripts and Principles

The FAOs Voluntary Guidelines (VGGTs) are a good example of a charter of foundational human rights principles that should be applied globally to land rights policies and the development of land law. The VGGTs are not exhaustive and may need further development and adjustment to specific country contexts. They could be seen as a basis for developing a South African charter on land rights institutions that is appropriate to the South African historical context. The AFRA Pathways project and some of the ideas and concepts in this report could make a valuable contribution to the development of a South African Land Governance Charter.

REFERENCES

Baden horst, Pieter, Pienaar, Juanita and Mostert, Hanri. 2006. *Silberberg and Schoeman's The Law of Property.* Durban: LexisNexis, Butterworths

Chanock, Martin. 2001. The Making of South African Legal Culture 1902-1936. Cambridge: Cambridge University Press.

Christensen, S.F. 2004. "The Flexible Land Tenure System – The Namibian solution bringing the informal settlers under the register". Proceedings of Expert Group Meeting on Secure Land Tenure: 'New legal frameworks and tools'. UN-Gigiri in Nairobi, Kenya, 10-12 November. FIG Commission 7

De Soto, Hernando. 2000. *The Mystery of Capital. Why Capitalism Triumphs in the West and Fails Everywhere else*. New York: Basic Books.

Food and Agriculture Organisation of the United Nations (FAO). 2012. 'Voluntary Guidelines on the Responsible Governance of Tenure of Land, Fisheries and Forests in the Context of National Food Security'. Rome.
http://www.fao.org/docrep/016/i2801e/i2801e.pdf

Haugerud, Angela. 1989. 'Land Tenure and Agrarian Change in Kenya'. *Africa. Journal of the International African Institute*, 59 (1), 61-90.

Kingwill, Rosalie. 2004. 'Seeking Equilibrium: Land Rights Adjudication in off-register, non-formal, or formalising contexts in South Africa' in *New legal frameworks and tools. Proceedings of the Expert Group Meeting on Secure land tenure*: Gigiri, Nairobi, Kenya; International Federation of Surveyors (FIG) Commission 7.

Kingwill, Rosalie. 2005. 'Options for developmental Land Administration Systems in the context of Communal Tenure situations; & implications for Service Delivery'. Report prepared for the Association for Rural Advancement (AFRA), Pietermaritzburg.

Kingwill, Rosalie. 2014. "The Map is not the Territory. Law and Custom in 'African Freehold': A South African case study'. PhD thesis. Institute for Poverty, Land and Agrarian Studies, University of the Western Cape.

Kingwill, Rosalie. 2016. "[En]gendering the Norms of Customary Inheritance in Botswana and South Africa. *Journal of Legal Pluralism and Unofficial Law,* 48(2)
The Journal of Legal Pluralism and Unofficial Law, 48:2, 208-237,
DOI to link to this article: http://dx.doi.org/10.1080/07329113.2016.1185829

Mackenzie, Fiona. 1993. '"A Piece of Land Never Shrinks": Reconceptualising Land Tenure in a Smallholding District, Kenya'. In Bassett, J. & Crummey, D. (eds) *Land in African Agrarian Systems*. 194-221. Madison: University of Wisconsin Press.

Mackenzie, Fiona.1989. 'Land and Territory: The Interface between Two Systems of Land Tenure, Murang'a District, Kenya'. *Africa. Journal of the International African Institute*, 59 (1), 91-109.

Nyadimo, Eric. 2006. 'The Role of Private Sector in Land Adjudication in Kenya; A Suggested Approach'. XXIII FIG Congress, Munich, Germany, October 8-13, 2006 https://www.fig.net/resources/proceedings/fig_proceedings/fig2006/papers/ts89/ts89_03_nyadimo_0640.pdf

Rubin, Margot & Royston, Lauren. 'Beyond ownership? Local land registration practices and their potential for improving tenure security in informal settlement upgrading' in Donna Hornby, Rosalie Kingwill, Lauren Royston and Ben Cousins (eds). 2017. *Untitled: Securing Land Tenure in Urban and Rural South Africa. Forthcoming*. University of KwaZulu-Natal Press. Pietermaritzburg.

Rutsch Howard Consortium. 2004. 'The extra-legal land market: extra-legal land markets in Kwazulu-Natal.' Durban: KwaZulu-Natal Provincial Planning and Development Commission.

Socio-Economic Rights Institute (SERI). 2016. 'Evictions and Alternative Accommodation in South Africa 2000-2016: An analysis of the jurisprudence and implications for local government. Johannesburg: SERI.

Van der Walt, Andre J. 1999. "Property Rights and Hierarchies of Power: A Critical Evaluation of Land-Reform Policy in South Africa." *Koers* 64 (2 & 3): 259-295.

Van der Walt, Andre J., and Duard Kleyn. 1989. "Duplex Dominium: The History and Significance of the Concept of Divided Ownership." In Essays in the History of Law, edited by Daniel Visser, 213-260. Cape Town: Juta.

Von Benda-Beckmann, Franz, Keebet von Benda-Beckmann, and Melanie Wiber. 2006. "The Properties of Property." In Changing Properties of Property, edited by Franz von Benda-Beckmann, Keebet von Benda-Beckmann and Melanie Wiber, 1-39. New York, NY: Berghahn Books.Benda

White, Martin. 'Land Claims and Restitution in South Africa — The Valuation Perspective'. 4th Pacific Rim Real Estate Society Conference Perth, 19-21 January 1998. http://scnc.ukzn.ac.za/doc/GEOG/Land_Claims/White-MJ_Land_claims.pdf

Case Law

Tongoane and Others v Minister of Agriculture and Land Affairs and Others [2010]. Constitutional Court of South Africa. CCT 100/09

Bangani v Minister of Rural Development and Land Reform & another [2016] CA25/2016

Bhe and Others v Magistrate, Khayelitsha and Others [2005] (10) SA 580 (CC)

Alexkor Ltd & another v Richtersveld Community & others [2003] (12) BCLR 1301 (CC)

Msomi v Train NO and Others (LCC 95/2009) [2010] ZALCC 32

123 Jabu Ndlovu (Loop) Street,
Pietermaritzburg, 3201,
KwaZulu-Natal,
South Africa

P.O. Box 2517,
Pietermaritzburg, 3200,
KwaZulu-Natal,
South Africa

(+27) 33 345 7607
(+27) 33 345 8318

Email: afra@afra.co.za

AFRA | Association For Rural Advancement