Proposed Land Tenure and Land Administration Interventions
to Increase Productivity on Smallholder Irrigation Schemes in South Africa

Siyabu Manona, Jonathan Denison, Wim Van Averbeke and Thapelo Masiya

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Umhlaba Consulting Group (Pty) Ltd
PO Box 7609
East London, 5200
Ph: 043 7221246; Fax: 043 7437374
e-mail: siyabu@umhlabagroup.co.za
About the Authors

Siyabu Manona  Director, Umhlaba Consulting Group (Pty) Ltd
Jonathan Denison  Postgraduate Student, Rhodes University, Grahamstown
Wim Van Averbeke  Professor, Tshwane University of Technology, Pretoria
Thapelo Masiya  Postgraduate Student, Tshwane University of Technology, Pretoria

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Executive Summary

Survey data from 129 schemes showed that the relationship between land exchange prevalence and land utilisation was not significant statistically but narratives demonstrated demand for land, risk and frustrations in gaining access to land. The institutions and tools to handle efficient land transactions, particularly in the form of leases, were in most instances not available. The reform of two old order forms of tenure, is proposed, to add to the variety of tenure options. It is recommended that quitrent tenure be transformed to a perpetual or long term conditional state lease system and the PTO system to be transformed to usufruct or statutory rights which should both be underpinned by different levels of local level land administration system. A land administration intervention is aimed at improving land utilisation and productivity on smallholder irrigation schemes. The intervention aims to remove systemic obstacles to land exchange and establish institutions that enhance tenure security and facilitate land-lease markets. Key to the intervention is the provision of a practical and balanced way of dealing with of providing tenure options that can accommodate elements of the two extremes of customary and western property systems. While challenges of reforming the predominant Trust tenure system into a new order system exist, implementation of the intervention is localised and the costs of establishing land registers and satellite maps are relatively low. The establishment of local land-administration institutions, based on current local land-management practice and preferences, makes the proposed approach to invigorating land-markets practicable in terms of risks, time and costs.
1 Introduction

In this paper, a land administration intervention is proposed to improve land utilisation and productivity on smallholder irrigation schemes. The intervention will remove systemic obstacles to land exchange by establishing institutions that enhance tenure security and facilitate land-lease markets. In South Africa, about 300 smallholder irrigation schemes were established over the past sixty years. They cover about 50,000 ha of land, which is held by about 30,000 plot holders (Denison & Manona, 2007). In dry countries, such as South Africa, irrigation represents an important advantage because it reduces or eliminates water deficit in crop production. This makes irrigation land a valuable asset (Yokwe, 2004; Van Averbeke, 2008). Yet, land on smallholder irrigation schemes in South Africa land is not used as intensively as possible. For example, Perret (2002) reported that one third of the plots of the Dingleydale-New Forest Irrigation Scheme in Limpopo Province were lying idle because plot holders were no longer farming. The relatively low use of land on many operational smallholder irrigation schemes in South Africa contrasts sharply with the apparent demand for additional land by some farmers on these schemes (Van Averbeke & Mohamed, 2006) and also by people residing in the surrounds of these schemes (Van Averbeke, 2008). Poorly functioning land exchange markets, particularly for land rentals, appear to be one of the reasons why both dry land and irrigation land in African smallholder settings is not cropped more intensively (Shah et al., 1991; Van Averbeke et al., 1998; Roth & Haase, 2000; Bembridge, 2000 Tshuma, 2009). Inadequacies in tenure security, or at least the perceptions of such inadequacies among land holders and people seeking to lease land, has been identified as one of the reasons why land exchange markets do not function well (Thomson & Lyne, 1991; Perret, 2002; Machethe et al., 2004; Blanc, 2005; Dengu & Lyne, 2007; Van Averbeke & Bennet, 2007; Manona & Baiphethi, 2008, Tlou et al., 2006).

Irrigation schemes and irrigated farm enterprises are a complex interaction of physical, social and economic factors that can best be understood within an integrated systems framework (Lankford, 2002; Bembridge, 2000, Neeraj et al., 1998). Backeberg (2002) identified eight main factors that influenced this complex, namely knowledge; institutions; natural resources; economic location and factors; infrastructure and technology; financial services; feasibility of farming systems; and support to farming systems. Of these eight factors, land is but one of the resource subgroups and land tenure but one of the aspects that characterises land and yet several authors have identified land tenure as one of the critical factors to be considered in relation to underused resources on schemes (See Fig. 1 below). For example, the FAO (1997) identified tenure security as a primary issue when it stated that ‘tenure insecurity ... discourages land transactions that can make it possible for (successful) people to increase land sizes’, but what is meant by security of tenure?
The concept ‘security of tenure’ has different meanings. In a narrow sense it is used to indicate that the landholder’s possession or use of land will not be interfered with by the state or other entities, including private individuals (Bruce, 1993). In this sense the duration of possession may be short, for instance a lease of a month, but confidence in the legal system and a lack of worry about loss of one’s right to land are implied. The second meaning of the concept includes both the confidence factor and duration of tenure. When used in this sense adequacy of security of tenure is loaded with economic connotations, and can be examined in relation to the time needed to recover the cost of a particular investment. The third sense in which the concept is used adds yet another dimension, namely that of breadth of the rights.

**Figure 1: A systems view of a farm**

In agriculture, tenure security presents several advantages. It increases credit use through greater incentives for investment, improved creditworthiness of projects, and enhanced collateral value of land; increases land transactions and facilitates land transfers from less efficient to more efficient users by increasing the certainty of contracts and lowering enforcement costs; reduces the incidence of land disputes through clearer definition and protection of rights and raises productivity through increased agricultural investment (Roth *et al.* 2000, citing Feder and Noronha 1987; Barrows & Roth 1990).

An important component of tenure security is the confidence with which one can transact one’s rights (Adams *et al.*, 1999, citing Lawry, 1993). Rights associated with land tenure include user
rights, exclusion rights, transfer rights and enforcement rights (Feder & Feeney, 1991; Adams, Cousins & Manona, 1999; FAO, 2002). User rights stipulate the privileges a holder has to utilise the land for production or other purposes, to make permanent improvements, harvest products from the land and to derive income from the land. Exclusion rights specify the privileges a holder has to exclude others from claiming use or transfer rights in relation to a piece of land. Transfer rights spell out the privileges a holder has to transmit the rights of the land to his or her successor, or the right to alienate all rights to the land (through sale, donation, mortgaging, leasing, renting or bequeath). Enforcement rights refer to the legal, institutional and administrative provisions that are available to guarantee the rights related to the land. Using the somewhat limited definition of ‘security of tenure’ as the ability to use land for a certain period and for a defined purpose, some scholars contend that property rights in communal areas are secure (Cross, 1988). While land rights can be held in perpetuity and can be bequeathed to an heir, these rights are often subject to compliance to tribal or group rules, which at times might be inconsistent with individual farmer requirements. Thomson and Lyne (1991), using the more comprehensive definition of tenure security, which included breadth, duration and assurance of property rights, argued that these limited property rights did not guarantee that individuals could reap the benefits of their efforts, or transact land to their benefit. Using this definition, if any of the three conditions are lacking or limited, tenure is not secure.

2 Tenure systems and tenure security on South African smallholder irrigation schemes

2.1 The legal perspective
A wide range of tenure systems apply on South African smallholder irrigation schemes. These include at least various forms of Trust tenure, traditional tenure, lease hold, quitrent and freehold (Lahiff, 1999; Mosaka & Mullins, 2006; Van Averbeke & Maake, 2010). Generally, Trust tenure was implemented by the state on land in the Native Areas that belonged to whites and was bought by the South African Native Trust, later called the South African Development Trust (SADT) in terms of the Development Trust and Land Act, No 18 of 1936 (De Wet, 1987). However, Trust tenure also applied when smallholder irrigation schemes were created on tribal land, particularly in the case of canal schemes that were established during the nineteen-fifties and -sixties in the north of South Africa (Van Averbeke, 2008). Transfer from tribe to the Bantu Development Trust usually followed negotiations between state and tribal leadership. Typically, the chief of the tribe and the homesteads that held land within the boundaries of the proposed scheme were offered compensation for making way to the development by being offered a plot on the scheme (Van Averbeke, 2008). On these type of schemes, the legal instrument that governed access and use of land was “The Control of Irrigation Schemes in the Bantu Areas”,

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also known as Proclamation R5 of 1963 (Lahiff, 1999). There are also irrigation schemes where “The Bantu Areas Land Regulations”, also known as Proclamation R188 of 1969 was the legal instrument governing access and use of land, as in the case of the Arabie-Olifants Irrigation Scheme in Limpopo Province (Lahiff, 1999). The important difference between the two legal instruments was that traditional leadership was excluded from the land administration processes where Proclamation R5 of 1963 applied, but had a say on schemes where land access and use was governed by Proclamation R188 of 1969. Irrespective of the legal instrument, land allocations on schemes where Trust tenure applied were made by means of Permission to occupy (PTO) certificates. Allotments on Trust land were made conditionally and if any of these conditions was broken the field could be forfeited (Cokwana, 1988). As a result, trust tenure was considered insecure (Cokwana, 1988; Kille & Lyne, 1993; Roth & Haase, 2000).

In traditional tenure, arable land was usually obtained through the tribal chief or the village headmen who acted on his behalf (Lahiff, 2000). Where traditional tenure applied and land was available for allocation, land was provided to applicants, provided they were married and were permanent residents in the village (Lahiff, 2000). The Luvhada Irrigation Scheme established in 1952 is but one of five smallholder schemes in the Vhembe District of Limpopo Province where traditional tenure applies. This form of tenure was also implemented on schemes that were created more recently, such as Mangondi (1993) and Lwamondo (1999).

In quitrent tenure, land was technically owned by the state, with a perpetual usufruct right awarded to the holder. The right was held subject to a annual payment of “qui rent”, subject to certain stipulated conditions being adhered to (De Wet, 1987). Freehold tenure in schemes is always in relation to individuals (Kille & Lyne, 1993:105). Quitrent and freehold are tenure systems that are mostly limited to the Cape and KwaZulu-Natal. Zanyokwe in Keiskamahoek, Eastern Cape, is one of few irrigation schemes where both of these tenure systems occur (Van Averbeke et al., 1998).

In the last decade, revitalisation interventions by the state have focused heavily on commercial partnerships, where land is consolidated and effectively leased through a co-operative institutional structure. Those with prior traditional rights gained a share in the partnership, which typically vested decision-making with the commercial entity, and shared risk and profit between them.

2.2 The practical perspective
Various uncertainties affect the legal \textit{(de jure)} contents of tenure systems that apply on South African smallholder irrigation schemes. In the case of Trust tenure, Sibanda (2004) pointed out that the power of the former homelands and former South African Development Trust to issue PTO (permission to occupy) certificates was not delegated to the Provinces when the Interim Constitution of the Republic of South Africa came into effect in 1994. The only exception was KwaZulu-Natal, where the delegation of this power was issued in September 1998. Legally, therefore, PTO certificates issued after 27 April 1994 in provinces other than KwaZulu-Natal are invalid but they remain the instrument being used by officials to transfer land on irrigation schemes in other parts of the country, particularly Limpopo Province (Van Averbeke, 2008; Masiya & Van Averbeke, 2010). In the case of quitrent and freehold tenure, title deeds are often registered to deceased persons because their heirs failed to register the change of ownership due to expense and effort involved (Kille & Lyne, 1993, Van Averbeke & Bennett, 2007).

Legal conditions that apply to tenure systems have been reconfigured by both plot holders and officials. For example, on irrigation schemes where tenure was governed by Proclamation R5 of 1963, conditions for occupation were particularly strict. Plot holders, referred to as probationers in the PTO application form, were not allowed to absent themselves for longer than 14 days without prior approval from the superintendent. They were to comply with general farming practices and were to contribute to the proper maintenance of roads and irrigation infrastructure and to the construction of any new infrastructure of this kind. They were to observe the limit of their holdings when cultivating, pay the rent in time and were informed that the right conferred by the permission to occupy certificate was not transferable. Practically, many of these conditions are no longer adhered to by plot holders nor enforced by the authorities (Van Averbeke, 2008). Whereas relaxation of conditions has removed many of the anxieties of plot holders, it inadvertently also contributed to the deterioration of infrastructure on the schemes.

3 Land exchange and land utilisation

A survey of 129 smallholder irrigation schemes in Limpopo was conducted over the period from June 2009 to June 2010. The survey instrument was developed to address each of the eight components of the irrigation scheme complex as set out by Backeberg (2002) and different variations by others (Bembridge, 2000; Lankford, 2002; Neeraj \textit{et al.} 1998). For the purpose of this paper, the data were used to examine the association between the occurrence of land exchanges and cropping intensity on these schemes. The following land-exchange and related tenure issues were indentified: whether or not land-exchange was prevalent on the scheme; if so what were the formal and informal approval processes that took place; the durations of
agreements, and the motivations for engaging in land-exchange. Cropping intensity was estimated by asking key informants to estimate and demonstrate in the fields, the winter and summer cropping areas and the range of crops that were grown in each season. A transect survey was carried out and observations were made as to actual land-use by crop type, fallow and weedy fallow at the time of the survey. The transect observations were used to provide a degree of reliability, and where necessary, further interrogate and improve the respondent’s estimates.

Two sets of data were extracted from the survey data to examine the association between land-exchange prevalence and land utilisation, on operational schemes. Land-exchange was only analysed for those schemes that were operational at the time of the survey (82 of the 129 schemes) because the complete collapse of a scheme, resulting from infrastructure failure or otherwise, prevented any land-exchange taking place for irrigation activity. Operational schemes were defined as those schemes where some irrigation was practised at some time of the year and therefore also included schemes that were in a poor state of repair, but were still functioning at a basic level.

Land exchange was defined as the occurrence of any type of land exchange on the scheme at the time of survey, regardless of the motivation. Included were exchanges based on sharecropping, ploughing services, cash or in the spirit of “ubuntu”. Land utilisation was defined as the total area planted to crops in a year, divided by the irrigable area. As a result, a parcel that was cropped twice per year, which is achievable when water is adequately available, would result in a cropping intensity of 2.0.

Land exchange, occurred in some form on 84% of the operational schemes. This was more common than expected. Detailed analysis of motivations has been completed for the Vhembe District, which had the most schemes in Limpopo. The motivations behind land exchange were as follows: cash (82%); free land preparation of own parcel (52%); a share of the crop (27%) and as a favour (9%).

Land utilisation on operational schemes, shown in Figure 1 was also higher than expected, with an average ratio of 0.94 for the 82 operational schemes and with considerable variation in the extent of utilisation. The schemes with a high ratio (more than 1.6) comprise four commercial partnerships and one individual, all operating high-tech pumped systems. It is worth noting that there were six canal irrigation schemes, which had moderately high utilisation (between 1.21 and 1.6), despite their average age of 52 yrs and degraded infrastructure.
The relationship between land exchange prevalence and land utilisation was then evaluated using independent t-test and was found not-to be statistically significant at the 5% probability level. This meant that statistically, schemes with land exchange did not demonstrate higher cropping intensities than those with exchange. However, this result should not be interpreted as meaning that land-exchange is not an important factor, but rather that the complexity of irrigation scheme functionality might have obliterated its significance, which would reinforce the notion that globally the identification of single factors that explain cropping intensity on South African smallholder irrigation schemes is unlikely.

The importance of land exchange, and more particularly the tenure security aspects that affect the land exchanges that do occur, is supported by the narratives of scheme participants. For example, in 2004 at the Dzindi canal scheme, plot holders were highly sceptical about the idea of exchanging land, claiming it was forbidden, and they were correct, as it was one of the stipulations contained in the application form for plot allocation, which is still being used (Masiya & Van Averbeke, 2010). Underlying the suspicions surrounding the legalities of land exchanges and the possible repercussions when entered into, was the recollection of historical events that were accompanied by eviction of plot holders from the scheme. During the era when the Department of Bantu Administration and Development had authority over the homelands, several plot holders had lost their holding for non-compliance with the conditions of the PTO, whilst during the era of the Venda homeland administration another wave of expulsions occurred based on the ethnicity of plot holders, whereby Tsonga-speaking plot holders were forcefully removed from the scheme, because it was located in Venda (Van Averbeke, 2008). Talking
about land exchange at farmers’ meetings and encouraging plot holders who had land in surplus to engage in land exchange arrangements with others, did result in land exchanges becoming more common and in 2010, 16% of plot holders at Dzindi were engaged in exchanges of land (Masiya & Van Averbeke, 2010). However, new narratives were recorded which provided accounts that discouraged land exchanges, particularly those involving rentals for cash. Three of these narratives, all involving rental arrangements for specified periods in return for cash turned sour when the lessor claimed his or her plot back before the agreed upon leasing period had expired. In each case, the lessees incurred financial losses and complained about the absence of a mechanism to see recourse (Masiya & Van Averbeke, 2010).

The general absence of formalisation as far as land exchanges were concerned was also clearly evident from data base of schemes in Vhembe (Van Averbeke & Maake, 2010), which showed that where land exchanges occurred, the administrative procedures that applied to these exchanges were extremely limited and had virtually no element of formalisation. As a result, the tools to handle conflict and ensure time-efficient and low-risk transactions were in most instances not available. There is, therefore, a need to address the systemic constraints to land exchange, not in isolation, but in addition to other interventions that support the overall complex of factors essential for improved irrigation production. The proposal set out in this paper aims to achieve this outcome and is structured on the foundation of old order rights and in a way that responds to democratic imperatives and increased security from a right-based perspective.

4. Land Tenure Policy at a glance

In South Africa the key constitutional directive on land tenure states “A person or community who’s tenure or land is legally insecure as a result of racially discriminatory laws or practices is entitled, to the extent provided by an Act of parliament, either to tenure which is legally secure, or to comparable redress” (DLA, 1997). The following (Table 1) provides a summary of some of the key policy informants for tenure reform.

<table>
<thead>
<tr>
<th>Legislation</th>
<th>Purpose</th>
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<tbody>
<tr>
<td>Upgrading of Land Tenure Rights Act 112 of 1991 (ULTRA).</td>
<td>Provide for the upgrading and conversion into ownership of certain rights granted in respect of land; for the transfer of tribal land in full ownership to tribes; and for matters connected therewith.</td>
</tr>
<tr>
<td>Development Facilitation Act (no. 67 of 1995),</td>
<td>Among other things, provides for security of tenure through formalisation. Community or tribe should be treated as co-owner of the land, even though formal legal ownership may be held by the State</td>
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<tr>
<td>Act</td>
<td>Description</td>
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<tr>
<td>Communal Property Association Act, No 28 of 1996 (CPA).</td>
<td>Enables communities to form juristic persons, to be known as communal property associations in order to acquire, hold and manage property on a basis agreed to by members of a community in terms of a written constitution; and to provide for matters connected therewith.</td>
</tr>
<tr>
<td>Interim Protection of informal Land Rights Act 31 of 1996. (IPIRRA)</td>
<td>Provides for the temporary protection of certain informal land rights to and interests in land which are not otherwise adequately protected by law; and to provide for matters connected therewith.</td>
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<tr>
<td>Communal Land Rights Act, (No 11 of 2004) (CLaRA)</td>
<td>Intended to be the primary tool for providing legally secure tenure, comparable redress, democratic land administration, cooperation on municipal functions, setting up of land rights boards and to repeal or amend other laws from inherited from the Apartheid era.</td>
</tr>
</tbody>
</table>

On the basis of the current policy trajectory, the one option is for the irrigation land to be surveyed and registered in the name of CPAs, which can have powers to allocate and administer substantive rights to individuals to the schemes. However, based on the widespread disfunctionality of these body corporates, that would not be a wise route to take (CSIR, 2004). Typical problems recorded in CPAs are mismanagement by CPA committees, discrimination against women in allocation of land rights, conflict between committees and members regarding land uses. Many have become dysfunctional and some even ceased to exist, or are caught up in conflict (Hall, 2005). The disfunctionality was partly a reflection of the state not taking on its land administration function, post-transfer.

In October 2009 the North Gauteng High Court judgement declared invalid and unconstitutional key provisions of the Communal Land Rights Act No 11 of 2004 (CLaRA) that provide for the transfer and registration of communal land, the determination of rights by the Minister and the establishment and composition of land administration committees (LRC Website, 2010). On 31 May 2010, the Constitutional Court declared the CLaRA unconstitutional. Some of the criticisms of CLaRA s include the fact that the state is abdicating its responsibility for land administration and ‘washing its hands’ of communal areas, with the unrealistic expectation that these former public roles could be fulfilled by unremunerated community members (Claassens 2003:33). The future of CLaRA is unknown until the much awaited Green paper and White Paper processes by the Department of Rural Development and Land Reform are concluded, the question of where government is going with CLaRA is not yet clear.

While the main policy trajectory is definitely poised in the direction of the state transferring individual as well as group rights to the rights holders, very little action has happened in practice, partly due to cost and associated capacity factors. The new government after 1994 adopted what
could be considered an approach of either “full formalisation” or “do nothing approach” in respect of quitrent and the trust tenure, respectively. This was largely founded on the notion that these were considered “old order” rights or tenure form. There was no attempt to reform these tenure systems to fit into the new order. In retrospect, this resulted in a situation where land rights were incrementally undermined due to the poor land administration systems supporting these tenure forms. The opportunities associated with reforming these forms of tenure was lost with time.

4 Proposed tenure reforms
One of the key principles of the tenure reform policy is that it must allow people to choose the tenure system which is appropriate for their circumstances (DLA 1997:60). This implies that there will be various options from which people can choose. Another key principle is that tenure reform must move away from permits towards rights. The option of reforming quitrent and trust tenure into “perpetual/long term conditional state leasehold system and “usufruct/statutory right”, respectively is consistent with both of these key policy principles. The proposal is to expand the tenure menu by adding two reformed tenure forms which are founded on the footprint of old order tenure forms. The two proposed tenure forms would not only add to the variety of tenure options available to land reform beneficiaries, but would help revive thinking on land administration institutions. The reformed quitrent system could provide an opportunity to build into its conditions the concept of a family property, which is consistent with social tenures. These “reformed” forms of tenure would not only be cost effective to implement but also provide a smooth transition from old order rights to new order rights. The one key principle underpinning the proposed new tenure forms is that, security of tenure, which is a constitutional imperative, does not necessarily equate to ownership or freehold. In addition to the deeds system, local land administration offices could be authorised to administer changes of ownership and receive lease payments.

4.1 From PTO to a “rights based statutory (usufruct) right”
With respect to the PTO system, there is an opportunity to creatively remove all the undesirable elements of the current system and to build in new elements on the footprint of the old PTO, with a shift in emphasis from permit based tenure to a rights based statutory system. The result of that would be a legally “statutory right” where the state retains legal ownership of the land and through statutory mechanisms provides recognition of rights of historical and current rights holders.
The key proposed departure from the old system are that for the proposed “statutory rights system” are firstly the definition of the nature and extent of the rights in land should be sufficiently clear; and secondly that there should be 'efficient locally based procedures to allow transactions to be completed quickly, inexpensively, and transparently (Van Der Molen, 2005). The elements of the proposed system can be summarised as follows:

• While not a prerequisite, a land information office, probably at a local municipality level with GIS/GPS capacity would be beneficial to management of land rights and development. Such a facility would not only assist in managing land rights, but would support broader development decision making.

• Norms and standards on what levels of information are available at what level could be developed over time, bearing in mind costs, without undermining the principle of transparency. For irrigation schemes the state would only have to survey the outer boundaries of each scheme for purposes of identification. A further internal GPS survey of the individual plots could be undertaken be undertaken locally to allocate identification numbers to each plot. (see Figure 4).

• Rights holders would need to be identified and linked to their respective land parcels in the form of a land register, developed interactively with landholders. Conflict around ownership would be identified and resolved, with outside intervention if needed (rights inquiry).

• Once identified, rights holders would need to be supported in establishing a body corporate that would manage the land on their behalf, without transferring the land ownership. In addition to managing the land the body corporate could be responsible for the management of infrastructure and water. The state would then give the body corporate responsibility for managing land rights in each particular scheme, with some guidelines, which would be managed through state support.

• The body corporate would manage land exchange arrangements between rights holders and farmers, thereby creating a distinction between land ownership and farming. The body corporate could be a legal entity (such as a association, agency, identified by a particular name) comprising of a collection or succession of individual who (in view of law) have existence, rights and duties distinct from their existence, rights and duties as individuals. More or less as is envisaged in the CPA legislation, each body corporate should have to develop a constitution and a set of rules which would need to be reviewed through an institutionalised system.

• A “statutory rights certificate” held in perpetuity (similar to the current PTO certificates) would be issued to each rights holder or groups or rights holders as a record of the right.
This would entail a description of as well as physical illustration of boundaries of the land and the attributes of the right allocated where rights relate to a specific piece of land.

- Legal ownership of the land would be retained by the state in trust on behalf of the rights holders listed in the land register. Each right holder would be given perpetual usufruct right to his/her (family) plot without interference from the body corporate, for as long as there is adherence to the conditions of the usufruct rights.

- Simple land exchange contracts would have to be part of the new system, which stipulate clearly obligations to the lessee and lessor in relation to plots and associated services. These could be standardised or purpose made. There should be residual responsibilities which the land right holder should retains, such as issues relating to management of irrigation water, in case of canals., which typically use time tables to regulate access to water, and pumping cost (and perhaps equipment) sharing in the case of pressurised systems. The central management body would deal with whoever is responsible for each aspect, based on the contract. The lessee should be subjected to clear written conditions of use.

The figure below (Figure 4) is a demonstration of how a typical local land register could look like.
Figure 3: Typical Layout Map of Irrigable Plots with a Land Register
4.2 From “quitrent” to a “a perpetual state lease right”
Given the proximity of the “quitrent” system to freehold, a reformed “quitrent” system would also present an option that rights holders could consider under special circumstances. The state would retain ownership of the land and issue out a perpetual lease right, with new conditions built in. This system would be largely administered through the existing registry system, with to local level land administration offices links. Local level land administration offices could potentially be linked to local municipality land management functions. All that would be required are information management policies and GPS/GIS infrastructure and skilled personnel.

4.3 Description, functioning role players and consultation processes
By and large the proposed “reformed” rights systems should be constructed on the footprint of the old quitrent and trust tenure, with modern progressive elements implanted. As an element of the conditions, the “perpetual state lease” system could even incorporate elements of family rights, beyond what is possible in freehold. While there should be flexibility allowed in how the proposed body corporates are structured and how they operate, there should be broad guidelines which allow for local variations. The body corporate would use the constitution and rules of the scheme to manage registers of rights holders and take on some enforcement functions. The state would need to support the administrative functioning of these bodies.

Subject to local conditions, the body corporate could include, traditional leadership, local municipality, elected representatives of rights holders, delegated officials of Department of Water Affairs, Department of Agriculture, Department of Rural Development and Land Reform, Department of Environmental Affairs. Departmental officials would have to be given built in responsibilities for policing issues pertaining to their mandates. In situations where a traditional a leader has support s/he could play a more prominent role while in situations where they are not favoured, they could be involved as ceremonial figures or even excluded.
**4.4 Challenges and implementation considerations**

Some of the key implications of the proposal are as follow:

- There has to be political will and commitment to allocate sufficient government staff and resources to render support on an ongoing basis to establishment and post establishment obligations including assistance in the administration of rights, monitoring and evaluation and intervening when the proposed body corporate are showing signs of disfunctionality.

- As land management is a function that cuts across different spheres of government and between different government departments, all the key government departments should engaged with a view to ensure that that their roles are clearly defined in relation to land administration.

- Specific focus areas for possible reform in respect of reforming PTO/quitrent need further interrogation and investigation. Such investigation should involve looking at substantive issues such as balancing between customary and democratic practice.

- Elaborate research into the state of land administration in the various provinces has been done by MXA (2003) and that could be partially used as a basis further consideration of implications of reforming the old order tenure system into a new order system.
5 Conclusions

Empirical analysis from a field survey of 129 smallholder schemes in Limpopo was used to determine land exchange prevalence and land utilisation on schemes. Both land exchange (84% of schemes) and land utilisation (ratio of 0.94) were higher than expected on the 82 schemes that were operational. The relationship between land exchange prevalence and land utilisation was found not to be significant statistically ($p \leq 0.05$), suggesting that cropping intensity on schemes where some form of land-exchange occurred was not different from that on schemes where no land exchange occurred. Yet the narratives that were recorded provided widespread accounts that discouraged land exchanges. The narratives showed that administrative procedures in support of land exchange contracts were extremely limited and had virtually no element of formalisation. The tools to handle conflict and ensure time-efficient and low-risk transactions were in most instances not available. The results from the narratives reinforced the well-established notion that land is a critical factor. For this reason, the absence of a statistically significant positive association between land exchange prevalence and cropping intensity was considered to be the result of schemes being complex systems with multiple critical factors, causing the specific effect of the single variable of land exchange prevalence to be masked.

The proposed land administration intervention aims to improve land utilisation and productivity on smallholder irrigation schemes by increasing security of tenure. Two “new” forms of tenure, which are variations of old-order forms, are proposed. These are perpetual statutory rights and perpetual conditional state lease system, underpinned by a local land administration system. The first new form of tenure will in effect provide for the transition from a permit based system to a ‘rights-based tenure system. The effectiveness of the proposal depends on two concurrent elements: the explicit definition of rights; and the establishment of efficient local procedures to support secure, transparent and inexpensive transactions. The second new form of tenure is to reform the quitrent system to a “perpetual conditional state lease”right. This would be largely administered through the existing registry but strengthening the system through a local administration offices. Legal ownership of land would be retained by the State, but each rights holder (or group) would be issued with certificate held in perpetuity, linked to the land register and conditions (agricultural use, compliance with administration system etc.).
The intervention removes important systemic obstacles to land exchange by establishing a framework and essential institutions that define rights and processes. The intervention is localised and the costs of establishing land registers and satellite maps are relatively low. However, when implemented in isolation the intervention will not necessarily lead to increased land utilisation on smallholder irrigation schemes. Other parallel interventions that support the production, financing, marketing and infrastructure elements of the agricultural enterprise, are essential for improved land utilisation and production.
References


