POLICY BRIEF

Land Tenure in Post FTLRP
Zimbabwe: Key Strategic Policy Development Issues

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This policy brief aims to inform and influence policy development in addressing land tenure issues in Zimbabwe in the wake of the Fast Track Land Reform Programme (FTLRP). The brief provides an overview of key political economic and strategic policy development options for the consolidation of land tenure policies, and strengthened property rights and tenure security in Zimbabwe following land reform.

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INTRODUCTION

This policy brief explores the dynamics of tenure reform in the context of the post-Fast Track Land Reform Programme (FTLRP) era in Zimbabwe. It examines the political, economic and legal issues of land and tenure reforms, and highlights the importance of developing and consolidating a solid and flexible legal institutional framework that strengthens security of tenure and legal transfer of land. It treats the development of tenure systems in the post FTLRP era as an experimental and ongoing process which requires learning and change to suit evolving conditions.

OVERVIEW OF LAND REFORM AND TENURE AFTER 2000

Land and tenure reforms in Zimbabwe are highly emotive and complex political issues, and closely linked to anti-colonial ideologies that focus on black empowerment and socioeconomic justice. Inevitably, one needs to understand the political nature of this issue and the historical context within which racially skewed land and tenure arrangements developed. What emerged from the colonial land policies was a dual land tenure system, socially engineered to create and distribute opportunities to whites. Such racially based ‘land grabs’ served to entrench white political and economic interests, while depriving Africans of socioeconomic opportunities.

Therefore, at the time of independence, Zimbabwe inherited a racially divided, dual, unequal and hierarchical land tenure system that gave whites freehold and leaseholds, the rights and duties pertaining to which were provided for and protected by law. The black indigenous population occupied ‘tribal lands’ and their rights to such lands were not protected by law but recognised administratively and subject to customary land tenure (with inferior forms of rights) (Moyo 2006, working document).

It is against this backdrop of dual, unequal and racially biased land tenure systems that the post-independence government of Zimbabwe sought to redress and address injustices and systemic problems in land allocation and distribution. Both land and tenure reforms have focused on conferring land rights to the previously marginalised black population. A detailed discussion of the FTLRP is not necessary in this policy brief because a considerable amount of literature on the subject already exists (Moyo 2003, 2006; Sachikonye, 2005). Relevant narratives on the FTLRP will be applied only in instances where these directly contribute to arguments on land tenure.

The FTLRP dramatically shifted land rights, tenure and administration in Zimbabwe. It brought to the fore contestations over land ownership, rights, and tenure security, among former landowners, those allocated land, land seekers, farm workers and other land claimants. The process created A1 and A2 farms, and official policy allowed prescribed farm sizes for A2 allocations to vary according to agroecological zones. It is suggested that over 15 000 new A2 farm rights and about 140 000 A1 farm rights have been allocated (Moyo 2006, working document). The land reform exercise has given the government an opportunity to revisit land tenure.
Tenure reforms introduced new tenure regimes, with lease documents for A2 farms and the ‘Permit’ for A1 farms. The lease agreements are legally binding tenure documents that state leasehold rights and obligations. The lease defines provisions on duration, property size, succession, use of natural resources, subletting, lease termination, developments, rentals, etc. The strengths of the lease agreement (A2) lie in its ability to meet universal characteristics of a lease contract. However, it has some weaknesses in terms of its vagueness in defining the following issues:

- Tenure security in duration of contract is relative despite it stating that the lease is 99 years. The question this begs is whether both good and poor farmers alike are guaranteed 99 years. Are the tenure rights of a poor farmer secure for the entire duration of the lease or they can be revoked? What appeal procedures exist in the event that the state cancels or wants to terminate the lease, and what is the level of compensation in the event of such termination? Or, if the leaseholder wants to surrender the lease to the state, what economic benefits will accrue to the leaseholder?

- Termination of the lease seems not to carry any penalties. Neither does the lease state the degree of state compensation. This gap creates potential disincentives for investment and sustainable land use.

- The lease is silent on incentives for sustainable use of natural resources and ambiguous about the sustainability of agricultural operations on the farms. For example, the statement that agricultural operations should be carried out in a “sustainable manner to the satisfaction of the lessor” is highly subjective and open to the personal interpretation of different government officials and/or other relevant parties.

- The conditions for subletting, cession and partnerships are ill defined. Given the current economic hardships in Zimbabwe, failure to create viable partnerships or innovative lease transfer or subletting may result in poor utilisation of land.

POLICY ISSUES

Seven key policy issues in land tenure and agricultural development are discussed below.

Clarifying Land Tenure Ambiguities

The A1 and A2 farm tenure regimes under leasehold are still characterised by unclear claims to land rights because of the delays in awarding leases. In some instances, the remaining white LSCF farmers who have been granted formal or informal permission to farm also experience ambiguous and unclear rights to land arising from political uncertainties. With the passing of Amendment No. 17 of the Zimbabwe Constitution, which removed the right to contest land acquisitions per se, the security of tenure of remaining LSCF farmers (about 1 332) remains highly questionable and the opportunities available to other former LSCF farmers to apply for land under the A2 scheme are not clarified. What are the tenure implications of the state taking over former LSCF areas, and converting them to state leasehold land? Will the remaining LSCF farmers retain
their freehold status? Are the procedures to deal with these issues transparent and well enough articulated to facilitate conversion and compensation? Without clarifying the conversion procedure and creating confidence in the conversion process, the provisions of legally binding tenure instruments (leases) may not be sufficient to guarantee security of tenure. Therefore, land tenure principles need to be clarified and operationalised. We recommend that the government address the information gaps with regard to land rights and access, clarify tenure issues for both A1 and A2 farmers, and communicate procedure so that there is perceived commitment, sincerity and interest in building trust among all stakeholders.

To date, A1 settlers have not secured formal documentation and A2 farmers are still awaiting lease agreements, while some settlers have not received their offer letters from Government. Such delays in legal transfer of land create insecurity of tenure for farmers under both the A1 and the A2 models (Sachikonye, 2005). Such uncertainty and insecurity reduce the new settlers’ confidence and investment commitment on farms. Unless these issues are addressed, investment in farming by new settlers will be marginal.

It is important that policy makers explore redress opportunities for both A1 and A2 farmers who feel that they received undersized farms compared to the policy prescriptions, otherwise these variations may create conflict and insecurity. The clarification of such variations in land demarcation and distribution needs to be done in a transparent manner in order to contain ongoing land rights allocation struggles. Land rights allocations must be informed by objectives of political, social and economic sustainability that recognise the imperatives of food and livelihood security and socioeconomic development.

**Land Tenure as a Governance and Empowerment Issue**

Land tenure is a key ingredient in agricultural production and management of resources within specified lands. However, developing appropriate land tenure systems is a complex process, with crosscutting social, political, economic and environmental implications. Consequently, land tenure development is intimately linked to the broader political economic issues of democracy, governance, social justice, empowerment, equity and development. Until the historical issues and political challenges of redistributing resources are recognised, any solutions to land and tenure questions will lack context and will fail to fulfill the important objective of transforming property relations and creating social change. It is, therefore, imperative to envisage appropriate tenure systems and support them with long term policy solutions. There is a need to shift from the current inclination for short term laws for the here and now towards looking for long term solutions that do not change according to social and political whims.

**Mainstreaming Gender in Land Rights Allocation**

Moyo (2003) argues that women were marginalised, as individuals, in land allocations because of the predominant criteria that assumed households centred on a married couple or that women would seek land within the family context. Only 10 to 16 percent of beneficiaries of the land reform programme were women. What emerges from this
‘gender blindness’ in land policy is the perpetuation of the marginal rights of women in land allocation and their insecurity of tenure. The socioeconomic pattern of land allocation in post-2000 Zimbabwe is embedded within wider sociocultural relationships, and the succession and inheritance laws of Zimbabwe. For example, Clause 15 of the A2 lease contract outlines the succession and inheritance of the lease, and defines rights according to customary law. Given that customary law (or tenure) is often perceived as inferior to received law, the tensions attendant on customary law will also apply to the inheritance of the lease. Consequently, the lease may entrench and perpetuate gender inequalities, especially when subjected to cultural interpretations.

Gender sensitivity is required in meeting land tenure needs, as is the implementation of a strategy to level opportunities for women to gain land rights as legally recognised leaseholders. A bold policy approach that supports women’s empowerment and the transfer of land rights to women is important.

Another tenure policy issue concerns security of tenure vis-à-vis inheritance, bearing in mind that cultural practices in Zimbabwe have often failed to protect the children of deceased parents. The proposed lease agreement does not adequately address the inheritance issue and seems oblivious to the realities of conflict over inheritance. Innovative share type ownership that recognises the rights of children of deceased parents (with leasehold) should be developed to ensure tenure security and livelihood opportunities. Measures that reduce insecurity of tenure and uncertainties in the event of death of leaseholders need to be identified.

Rights to Infrastructure

Government policy on infrastructure allocation, use and management in A1 and A2 farms varies. This lack of uniformity has both advantages and disadvantages. In A2 areas, the social infrastructure is largely treated as state property to be used for the public good, while productive properties, such as irrigation equipment and barns, are regarded as state assets to be utilised on a shared basis. The policy recognises infrastructure shortages and hence seeks to increase capacity utilisation through sharing mechanisms.

However, in A2 farms, the proposed lease agreements stipulate conditions underlying the allocation and utilisation of infrastructure. The principle of custodianship is applied. It is interesting to note that, without clear specification of obligations, asset ownership, access and equity regarding A2 infrastructure, there is a potential problem of low reinvestment in infrastructure development and inefficient maintenance of this infrastructure. It is important that the A2 farmers’ sense of asset ownership and sustainable investment in infrastructure development be crystallised through the provision of security of infrastructure tenure on A2 farms.

Moyo (2006) argues that the A2 lease fails to grant plotholders without infrastructure on their plots any right of control, access or use of any infrastructure not located on their farms. In addition, allocation of farm compounds to A2 farmers has engendered unclear rights and obligations on their use, particularly by neighboring A2 plotholders without
compounds and farm workers. This problem has raised concerns about the residential rights of farm workers on A2 farms.

Ambiguities and lack of clarity on infrastructure tenure (rights) potentially discourage investment and increase the risks of farming investment. Therefore, from a political and economic standpoint, it is necessary to re-examine the provisions of A1 and A2 leases to address shortcomings that compromise opportunities for productivity and investment in farms. Certainly, there is a dynamic link between security of tenure, and the economic and agricultural productivity of A2 farms. It is important that strategic economic perspectives inform tenure policy and provide an understanding of how leases interact with the market in creating investment confidence. This interaction influences financing of farming investment and the lease should be a viable form of collateral and security.

We argue that the principles of custodianship and the sharing of infrastructure are important, given the transitional challenges of land and tenure reforms in Zimbabwe. There is also a need to think of how the lease agreements could remove disincentives to investment in sustainable infrastructure on farms, promote full cost recovery on infrastructure, and reduce rent seeking behaviors among the newly settled farmers in the long term. Transparent inventories of existing infrastructure on farms and the financing of infrastructure development on farms without it should be carefully done to enhance fairness in farm (lease) rental charges.

**Land Sharing, Subletting and Rental Tenure Arrangements**

The proposed leases exhibit a degree of tenure rigidity in that they permit subletting and land sharing only with the permission of the lessor. The possible grounds for refusal of subletting or ceding such land are not clearly articulated in the documents but left to the discretion of government officials. Hence the process could be open to abuse by land officials. To counteract these problems, clarification and transparency on the potential grounds upon which permission for subletting and ceding will be allowed or denied is needed. While it is perfectly understandable that the government, during this transitional phase of tenure reform, needs to prevent re-concentration of land control, it has to be creative in formulating strategies for promoting market sensitive land subletting and sharing to allow optimal use of land in Zimbabwe. Moyo (2006) suggests that the government needs to establish “benign land rental or leasing markets and/or off-loading land to new aspirants”. In addition, Moyo (2006) calls on Government to broaden its perspective on land tenure by developing progressive, legally secure land sharing arrangements and regulated, flexible land exchange systems.

The flexibility in land exchange would help address the problem of underutilisation of land as well as increase farm productivity. Field and anecdotal evidence reveals the persistence of land underutilisation and allocation of oversized farms to farmers without the capacity to effectively utilise them. Hence, flexible land exchanges based on utilisation capacity could assist the country’s efforts to promote land use optimisation. However, this proposed system of flexible land exchange in land tenure policy requires an effective land administration system.
Land Tenure Administration

Land and tenure reforms are complex political, emotive and legally challenging processes. Land reform, allocation of land rights and granting of leases in Zimbabwe are essentially political processes and, therefore, the construction of ‘exclusive’ rights remains contested terrain. We argue that rights in the A2 leases, while legally constructed, cannot be separated from the political processes of land reform that gave birth to them. In order to make the lease an attractive instrument of tenure security, there is a need to move from the domain of politics to independent judiciary and transparent land tenure administration systems.

Tenure security is enhanced when the land tenure administration system is perceived to be fair and transparent, and Government demonstrates a commitment to respecting the independent decisions of the system. In addition, the capacity of the land administration system to manage land and farm records effectively, execute evictions, promote land rentals or subletting in a just and fair manner, and mediate land conflicts is a critical ingredient in tenure policy administration. The issue of compliance with land policy and lease agreements raises important questions about regulations on land utilisation, infrastructure utilisation and access to land.

If Zimbabwe is to gain maximum mileage out of the land and tenure reforms, land policy needs to pay serious attention to land tenure administration and ensure resources are committed to its effective operation. Without farmer confidence in the land tenure administration system, insecurities will persist, to the detriment of productivity and investment in farms. It is important that the land administration jurisdictions of Rural District Councils, traditional leaders, government ministries and the National Land Board be clarified, with due recognition of capacity, technical efficiencies and political sensitivities. A clear institutional framework for tenure reforms must provide the structure and direction of tenure reform processes. The ideal situation would be one in which the National Land Board delegates power to local authorities while it focuses primarily on providing technical support and strategic direction. Sachikonye (2005:43) suggests that a Land Commission “be established to simplify decision-making and to delegate more power to local authorities” and that it concentrate on settler identification and technical aspects. The general thrust of this is the necessity of striking a balance between centralisation and decentralisation.

Farm Workers

Sachikonye (2005:37) states that the land and tenure reforms have paid “little attention to the 200,000 farm worker households that have been displaced by the process”. The failure to set land allocation quotas for former farm workers has undermined opportunities for them to gain access to resettlement land.

In some cases, newly settled A2 farmers resist mandatory granting of residency rights to former farm workers in their farm compounds, preferring only those workers whom they employ on their farms (Chambati and Moyo, 2005). Consequently, the farm workers do not have defined and secure rights, or access to residential land. We propose that the
Government of Zimbabwe develop a policy which addresses the concerns of farm workers, particularly former LSCF farm workers. The policy needs to create access to adequate land for residential purposes as well as for subsistence farming.

**BUTTRESSING SECURITY OF TENURE**

The development and implementation of appropriate tenure policies is critical in promoting and strengthening security of tenure. Creating an enabling environment that stimulates confidence and security should be the primary social, political and economic objective of the land tenure policy. While the context of land reform has been characterised by political conflict and social and economic contestation, the tenure reforms should aim for decisiveness in guaranteeing the rights of newly settled farmers and ensure that the rights are legally protected against social and political whims. It is imperative that land tenure and legal transfer of land in Zimbabwe, despite initially being entangled in the politics of land reform, be legally constituted in the rule of law and crystallise the rights of new farmers as well as strengthening their tenure security.

Below, we examine the implications of the A2 lease as an instrument for creating and strengthening security of tenure for A2 farmers, noting that it is designed as an instrument for economic transformation as well as a political tool for social change. By legal standards, the proposed A2 lease meets the accepted universal characteristics of a lease, raising questions as to why critics of the land reform have demonised it. It specifies the rights of both the lessor and lessee, and gives a favorable leasing period of 99 years. Among many other important protections and rights that it accords in the provision of security of tenure, it addresses the following areas:

- **Transferability** Clause 14.3.1 spells out that consent of a lease transfer must be sought from the Minister. Unfortunately, it does not specify the possible conditions of transfer or restrictions, including those for changing land use. Without clarifying the boundaries of transferability, the lease could easily leave individual leaseholders subject to political whims as well as potentially alienating important investors (e.g., financial sector and joint venture capitalists) from recognising the lease as solid collateral. However, the limitations on the right to transfer reflect legitimate concerns in the transitional context and are aimed at reducing the likelihood of the land becoming concentrated in the hands of the few who are able to buy out leases. It also reduces speculative activities in the land market and hence limits the re-entry of former settlers (LSCF farmers). While the fears of concentrating land in the hands of white former farmers and speculators are pertinent, failure to think creatively of ways to promote a flexible land market, might mean that Zimbabwe experiences poor land utilisation and reduced agricultural productivity. We argue that it is necessary to address the competing political and economic objectives of land and tenure reforms.

- **Exclusivity** referring to the determination of who to include or exclude from rights. The A2 lease confers exclusive possession of the title for 99 years in terms of agricultural land (Clauses 2 and 5) and 25 years for wildlife farms. While the lease is attractive in this regard, it needs to be understood within the political context that gave birth to it. Political factors play a key role in influencing A2 leases
and seem to shape who defines and guarantees exclusive rights. While the Minister of Lands is the administrator of the leases, in reality, several interests influence the administration and application of exclusive rights on the lease. Sociologically, land reform and allocation of land (A2 farms) and the granting of leases cannot easily be divorced from the political processes that ultimately construct ‘exclusive rights’. This problematic area could be addressed by moving tenure administration from the political domain to independent technical land administration and judiciary systems. The systems have to safeguard enforcement rights. In other words, there have to be institutional, legal and administrative provisions and systems to guarantee rights spelt out in the lease as well as constitutionally.

- **INHERITABILITY** refers to issues of succession and inheritance of the lease (Clause 15), which is subject to the succession and inheritance laws of Zimbabwe. Particular attention needs to be paid to lease inheritance, given the disturbing wider sociocultural dynamics and relationships associated with customary practice in Zimbabwe. Provisions must be put in place to mitigate gender inequalities, family abuses and disregard for laws governing inheritance and succession when cultural interpretations are applied. We are aware of the tensions and social problems attendant on customary law, especially when narrowly applied or interpreted in given sociocultural contexts.

**STRATEGIC POLICY DEVELOPMENT**

This policy brief has deliberately addressed the issue of security of tenure beyond formal title and identified ways in which security of tenure could be strengthened in a manner that will promote sustainable land use, agricultural productivity and investment in Zimbabwe. The land tenure policy should clearly delineate the rights of leaseholders, particularly the right to exclude others from using and benefiting from the land and resources on the allocated farms, and also grant the leaseholder enforcement rights (to enforce exclusionary rights). All these guarantees or rights serve as incentives for custodianship or ‘ownership’ over the farms or land given by Government. Means of developing strategic land tenure policy are discussed below, based on the belief that policy thinking and development must demonstrate political and economic maturity, and stimulate renewed interest in farming.

**Incentive Structure and Tenure Security**

In the search for sustainable land use, agricultural productivity and investment, it is necessary to formulate appropriate incentive structures that translate leaseholding into secure tenure and confidence among investors that investments made on the farms will allow benefits or guaranteed returns. People largely invest when they know that there will be returns on investment or that the lease allows the investing farmer to optimise benefits from the farm. Consequently, perceived security of tenure influences the level of investment and strategies for sustainability on A1 and A2 farms. Lack of clarity and the existence of ambiguities in tenure rights discourage investment. It is important, therefore, that serious attention be paid to the development of appropriate incentive structures, while
removing distortions in the current land allocations and the current de facto incentives for speculation, corruption and rent seeking behavior among the newly settled farmers.

The 99 year lease for agricultural farming and 25 year lease for wildlife farming should be given to farmers on condition that they have demonstrated commitment and capacity for farming within the initial five to ten years of farm occupation. This should serve as an incentive for farmers to commit resources to farming. Related to farming commitment, certain developments, production activities, and environmental management and conservation measures should have been put in place in the initial phase of occupation.

The government should take bold measures beyond mere political rhetoric to eliminate sporadic land invasions that serve to undermine the security of tenure of newly settled farmers. It is important that the law takes its course in restoring the sanctity of freehold and leasehold tenure, and evictions of illegal land occupiers should be swift and in accordance with the law of the country.

Efficient Land Tenure Administration

While the country is experimenting with land tenure reforms, in the context of very limited support from the donor community and the models they promote, the government needs to improve the efficiency and effectiveness of line ministries and departments tasked with land and tenure reforms. Clarification on coordination and oversight of land tenure policy as well as implementation responsibilities is an important aspect of land tenure administration. The institutional arrangements and context of land tenure administration have to be linked to the strategic goals of land reform and ensure that tenure rights are upheld. Without an efficient land administration system, Zimbabwe will continue to experience administrative and capacity problems in land allocation, tenure, and transfers. It is our conviction that an efficient land administration system would play a key role in tenure system design, communication of issues of tenure security and creation of dialogue among various landholders. Unfortunately, the slow pace of allocating formal lease contracts in A2 areas, the persistence of multiple farm ownership, and administrative problems in the issuance of offer letters can be attributed to the lack of efficient land administration systems in the country. What Zimbabwe needs is a robust administrative system to implement and monitor land tenure administration, and re-examine the provisions of leases to engender fairness, investment and productivity. A question requiring broader reflection is how Zimbabwe could create favorable political conditions for tenure reforms and effective land tenure administration (Gomera and Maguranyanga, 2006).

POLICY RECOMMENDATIONS

The following recommendations are drawn from the above discussion:

1. Create a conducive legal and institutional environment for land tenure reforms and policy implementation;
2. Provide stronger incentives for farm investments and sustainable land utilisation;
3. Develop flexible tenure rules or legally secure land sharing arrangements through a regulated land exchange system (see reference to Moyo, page5);
Create an efficient land tenure administration system and structure that would oversee the implementation of land tenure policy and allocation of land rights;

Ensure transparency and open dialogue in dealing with land tenure issues;

Create independent land administration systems and dispute resolution mechanisms that enjoy the confidence of all stakeholders; and

Develop a unified land tenure system that accords equal rights to land to both communal land dwellers and those in freehold and leasehold areas.

References


GoZ 1996 Land Acquisition Act (amended 2002) (for land designation and compulsory land acquisition with compensation)

GoZ 2001 Rural Land Occupiers Act (‘legalised’ occupations prior to March 2001 and gave legal protection to occupiers)

GoZ 2005 Constitution Amendment Act No. 17 (nationalised the acquired land and removed opportunities for legal recourse against acquisition of land by Government)

