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LAND TENURE OPPORTUNITIES FOR REFORM

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LAND TENURE OPPORTUNITIES FOR REFORM

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PART I: LAND TENURE AND VULNERABILITY IN SOUTHERN AFRICA

I. INTRODUCTION

This module is divided into three sections. *Part I* and *Part II* comprise the body of the module while a glossary of key terms and a table detailing land tenure related policies, laws, and programmes in selected Southern African countries make up the appendices.

Part I comprising *Chapters 1* to *5* traces the multi-dimensional links between land tenure and vulnerability in Southern Africa. *Chapter 1* defines the concept of land tenure and describes the major characteristics of the forms of land tenure that are found in Southern Africa. The chapter highlights the colonial historical origin of contemporary land tenure systems and explains the motivation for land tenure reforms, including the need to redress colonial imbalances and reduce vulnerability to social and economic shocks, as well as natural hazards. The chapter also notes that land tenure reform is a complex undertaking which requires political will, enhanced institutional capacity and resources, and an ever-present awareness to guard against distortions.

Chapter 2 discusses the links between land tenure and sustainable livelihoods. The chapter discusses how tenure reform can contribute to economic development and sustainable livelihoods by strengthening rights in the communal areas, by removing uncertainty, and by encouraging appropriate individual household and government actions, which include investment in risk reducing measures. Tenure reform can result in tenure security which in turn encourages investment by individual households in food production and storage, robust housing development, and environment and natural resource conservation and management, among other risk reduction actions. In turn, government at the various levels has the appropriate framework through which to provide infrastructure and services, and investment in development projects, particularly housing. Security of tenure also encourages actions by the private sector to invest in such areas as eco-tourism, forestry and agricultural projects, all of which enhance local communities' resilience to shocks.

Chapter 3 defines the concept of vulnerability as it is to be understood and applied in this module.

Chapter 4 discusses how land tenure insecurity in urban and rural areas can act to heighten vulnerability of communities to economic, social and natural shocks. Against the background of increasing urbanisation in the region and the associated mushrooming of informal settlements around Southern African cities, the chapter presents a case study of South Africa and highlights the diverse risks and multifaceted vulnerabilities related to insecurity of land tenure in these areas. The chapter relates how customary tenure, prevalent in the rural areas, accentuates environmental degradation and associated vulnerability, and leads to increasing disinvestment on vast tracts of rural land in the region.

Chapter 5 discusses gender-related land tenure insecurity and resulting vulnerability experienced by women in the region. The chapter highlights the integral role of women in the largely agro-based economies of Southern Africa, as well as women's role in securing livelihoods at the household level. The chapter explains the origins of existing unequal and discriminatory patterns and structures of access to land and other productive and developmental resources, and exposes the barriers standing in the way of secure land tenure for women. The chapter discusses the legal and policy background to the existing constraints on women's access, ownership and control of land and emphasises that law reform to give legal recognition to women's rights to land is critical for the promotion of gender parity in land and property rights.

II. LEARNING OBJECTIVES

On completion of *Part I* of this module learners should be able to:

- Define and explain what land tenure is;
- Describe the characteristics of the main forms of land tenure found in Southern Africa;
- Trace the historical origin of contemporary land tenure systems;
- Locate the origin of contemporary land tenure-related conflicts, insecurity and distortions in colonial administration of Southern African countries;
- Motivate for land tenure reforms in Southern Africa and explain the common pitfalls of the process;

- Analyse the strengths and weaknesses of land tenure reforms;
- Define and explain the concept of sustainable livelihoods;
- Explain how land tenure reforms can enhance livelihoods;
- Define and apply the concept of vulnerability;
- Explain the relationship between land tenure insecurity and vulnerability to disaster in urban and rural settings;
- Explain how land tenure security increases the resilience of communities;
- Explain the links between land tenure and gender based vulnerability to disaster; and
- Describe the barriers to secure tenure for women and how these can be overcome.

1. LAND TENURE AND REFORM IN SOUTHERN AFRICA

Land is crucial to most people. Nearly everybody requires land for shelter and, for many people, land is the basis of a livelihood (Reale & Handmer, 2011). Land tenure has been defined in a number of ways, including a 'system of rights and institutions that govern access to and use of land and other resources' (Maxwell & Wiebe, 1999) or alternatively 'the terms and conditions on which land is held, used and transacted' (Adams *et al.*, 1999). Reale and Handmer (2011) incorporate elements from both definitions to define land tenure as the terms and conditions on which land is held, used and transacted, within a particular system of rights and institutions that govern access to and use of land. Land tenure is one of the principal factors determining the way in which resources are managed and used and the manner in which benefits are distributed. In simple terms, land tenure systems determine who can use what resources for how long, and under what conditions (FAO, 2002).

The two principal forms of land tenure systems found in Southern Africa are customary and statutory tenure. The customary land tenure system is governed by unwritten traditional rules and administered by traditional leaders. Active occupation or usage of a piece of land is the main evidence of ownership or an existing interest on the land. In customary tenure, access to land is contingent upon tribal or community membership controlled by the chief. Households have strong, exclusive residential rights, seasonally exclusive rights to arable land, and shared rights to

grazing land and natural resources. Land is not alienable from the community trust, so it cannot be used as collateral for loans (ECA, 2003).

The statutory land tenure system is governed by modern law and supported by documentary evidence, such as a title deed or lease certificate, and administered by the government. Land ownership under the statutory tenure system is often built on freehold or leasehold entitlements to the land and offers exclusive rights to the owner, which guarantee land tenure security. Land rights in freehold include the ability to sell the land, rent it to others and to use it as collateral for a mortgage (ECA, 2003).

In practice, however, the neat distinction between these customary and statutory models of land tenure is considerably blurred (Cotula, Toulmin & Hesse, 2004). Before colonisation, the dominant form of land tenure system was customary. Today, virtually all countries in the sub-region have a dual land tenure system where the customary or communal system coexists with statutory private, freehold and leasehold land rights.

Land tenure is, also, often categorised as: private, communal, open access or

state (see Box 1). However, in practice, most forms of holdings may be found within a given society, for example, common grazing rights, private residential and agricultural holdings, and state ownership of forests.

In most Southern African countries, there are three forms of land tenure: private landownership through statutory freehold or leasehold land tenures; state or public

BOX 1: Categories of land tenure

- **Private:** the assignment of rights to a private party who may be an individual, a married couple, a group of people, or a corporate body such as a commercial entity or non-profit organization. For example, within a community, individual families may have exclusive rights to residential parcels, agricultural parcels and certain trees. Other members of the community can be excluded from using these resources without the consent of those who hold the rights.
- **Communal:** a right of commons may exist within a community where each member has a right to use independently the holdings of the community. For example, members of a community may have the right to graze cattle on a common pasture.
- **Open access:** specific rights are not assigned to anyone and no-one can be excluded. This typically includes marine tenure where access to the high seas is generally open to anyone; it may include rangelands, forests, etc, where there may be free access to the resources for all. (An important difference between open access and communal systems is that, under a communal system, non-members of the community are excluded from using the common areas.)
- **State:** property rights are assigned to some authority in the public sector. For example, in some countries, forest lands may fall under the mandate of the state, whether at a central or decentralised level of government.

SOURCE: FAO, 2002

ownership of land through both freehold/leasehold tenure; and, landownership of land through various forms of customary tenure (Moyo, s.a.).

Contemporary land tenure systems, arising from either customary systems of regulation or from statutory formal systems of tenure are embedded in unequal and discriminatory power structures and procedures, which allocate land unequally on the basis of class, gender, ethnicity and other forms of social hierarchy (Moyo, 2004). Southern Africa currently experiences many, multi-dimensional, barriers to human, social and economic development precipitated by the prevailing land tenure regimes in the region. Tenure reform must address a range of problems arising from settler colonisation and dispossession that marked the recent history of the region. Countries whose past was characterised by widespread settler colonisation, which include Namibia, South Africa and Zimbabwe, encounter more acute tenure problems different from those found in other counties such as Botswana, Lesotho and Zambia, where there was non-settler colonisation, and where there has been, subsequent to independence, a more flexible and gradualist approach with regard to the role of the traditional authorities.

A study by the Economic Commission for Africa (ECA, 2003) shows that land tenure insecurity is still widespread in Southern Africa and it manifests itself in a number of ways. For example, it appears in minority groups in Botswana and Malawi; in unclear or overlapping land rights and insecurity of farm workers and farm labour tenants in South Africa; in overcrowding in the form of high population to land ratio in Lesotho, Malawi and South Africa; in land alienation into leasehold in Malawi, Mozambique and Zambia; and in inappropriate and exploitative administrative practices and limited women's land rights in most countries in the region.

Colonial land expropriation was extensive in South Africa, Namibia and Zimbabwe where whites held 85%, 50% and 38% of the agricultural land respectively. However, in Zimbabwe, the radicalisation of land theft has reduced white farmer owned land to less than 3% (Moyo & Nyoni, 2007). In the countries which experienced extensive expropriation of land by colonial communities the repossession of alienated land by African citizens remains a central national objective. Land acquisition for redistribution and restitution has been given priority. Unfortunately, tenure reform has been relegated in importance, with focus mainly directed towards the simple specific

redistribution of white farmer owned farms to the black majority. So dominant is the imperative to repossess land, that insufficient attention has been devoted to post-settlement planning and support. Thus the livelihoods and the land rights of incoming settlers have too often remained insecure.

Gradually, however, notions of creating a secure land tenure system have begun to dominate research and tenure reform policy debates in Africa, although the content of security varies from country to country and across sub-regions. According to Maxwell and Wiebe (1998), in general, research on tenure has disproportionately focused on evolutionary changes or institutional reforms that lead to either greater equity in access or greater agricultural productivity and environmental conservation practices as shown in Figure 1

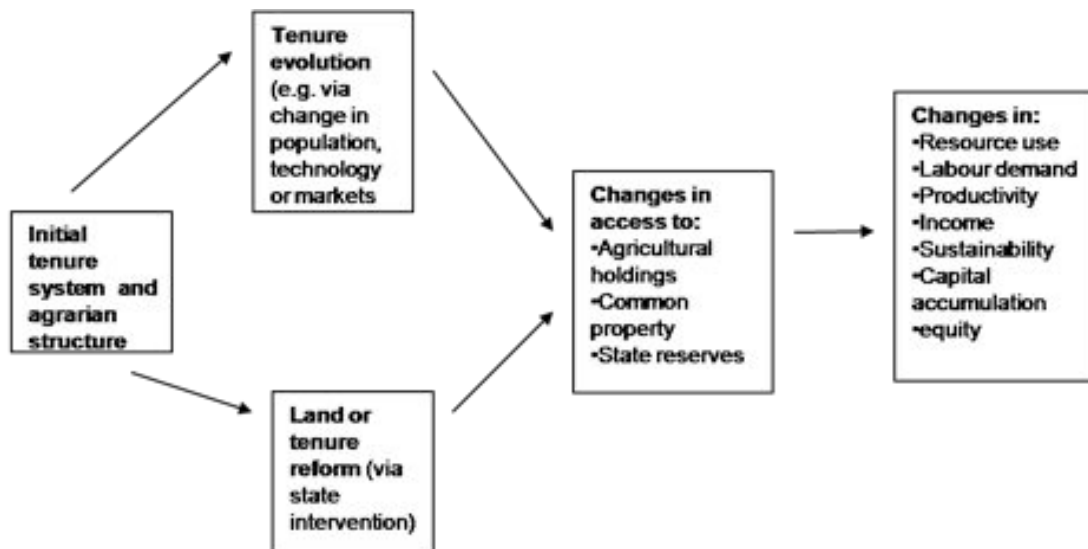


Figure 1: Conventional characterisations of the impact of tenure reform on production and income

1.1 Tenure reform in Southern Africa

The dual racially-based system of land rights introduced by colonial regimes continues to prevail in Southern Africa. Laws involving arbitrary racial distinctions have been repealed. However, land tenure reform is not just a matter of changing rules, but of implementing them. In most parts of Southern Africa land in the former reserves continues to be registered in the name of the State. Over large areas, the State is the legal owner of communal land. In addition, tenure reform must grapple with overcrowding in the communal areas and overlapping land rights, as well as cases of exploitation by traditional leaders, officials and politicians.

Tenure reform is, in most cases, a complex and uncertain undertaking. The economic and other benefits flowing from it are difficult to predict, and the necessary administrative costs therefore difficult to justify. It invariably threatens powerful vested interests: land owners and commercial farmers on private land; and traditional leaders or other structures in the communal areas. Yet the costs of taking no action may be high. Also, for people in communal areas, tenure reform may be a more acceptable and realistic measure than participation in some far-off government resettlement project. Formal institutions with the mandate to provide efficient land tenure systems are faced with many challenges. These include, limited political will, inappropriate legal frameworks, rules and regulations and lack of capacity for enforcement and implementation (Ley & Herrle, 2007).

Another common dilemma across Southern Africa is finding the funds for tenure reform. The funding of an effective system of land rights management is a precondition for securing the land rights of poorer citizens, both in the communal areas and on private land. While communities can be expected to allocate their own resources for this purpose, government should ensure that adequate measures are in place to protect people from exploitation by elites. At the outset, when systems are being established, funds also have to be found for public information, the training of officials, community facilitation and dispute resolution, among others.

The introduction of an individualised formal title does not equate with tenure security and has in some cases made land access less secure. The introduction of individualised titles has been known to benefit powerful private interests, opening up opportunities for the concentration of land in the hands of political and other elites. Clover and Eriksen (2009) argue that, with few safeguards for the non-formalised land rights of rural communities, a formal, market-based system has often resulted in a shift power in relations so that the more powerful are able to take advantage of new forms of land registration.

In addition, tenure reforms which simply dole out title deeds have also proven problematic in informal settlements where they have often led to the softest form of eviction yet. In many cases, simply giving out title deeds has created an increase in poverty by placing residents of informal settlements at the mercy of a voracious property market where property developers and other elites buy out the residents

from their newly secured property to resell or rent, leaving them to move to other less secure and more hazardous locations to set up new informal dwellings.

1.1.1 Factors mediating tenure security

In proposing tenure reforms, it is important to avoid generalisations about the security of particular types of tenure over others. While factors internal to the form of tenure such as, for example, whether land is occupied through leasehold or it is owned, are important, there are other factors that exist *external* to the tenure but that will mediate its security (Reale & Handmer, 2011). Reale and Handmer (2011) identify five factors which are significant in their effect on tenure security: (i) the local legal system; (ii) government administrative authority; (iii) the economy; (iv) evidence of tenure, and (v) custom and dominant social attitudes.

I. Local legal system

The way in which a state-run legal system treats a particular kind of land tenure will help to determine how secure it is. For example, the law might recognise customary title, or give certain rights to tenants not granted by other jurisdictions.

II. Government administrative authority

This factor refers to the way the tenure type is treated by the local political government administrative system. Issues of governance are relevant here. For example, a clear system of land titling may be irrelevant if the government is too weak to enforce compliance.

III. Economy

The economy will also affect tenure security. Where demand for particular types of land is high, tenure security is likely to be threatened, as more people or groups lay claim to a particular piece of land and rents increase.

IV. Evidence of tenure

An interest in land is only effective if it can be evidenced to others, for example, through land title documentation or through personal witness.

V. Custom and dominant social attitudes

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In some instances, the way that society views a particular type of tenure will influence its security. For example, where squatters enjoy societal acceptance, their tenure is usually more secure. Likewise, although women may have legal property rights, these rights will be diminished if they are not respected by the wider community and society.

In practice, these factors determine the strength of each particular form of tenure. Table 1 shows the relevance of each mediating factor to particular types of tenure.

Table 1: Relevance of mediating factors to particular tenure types

Tenure type	Most relevant mediating factors	How factor is relevant
Customary tenure	Local legal system	Whether the law recognises and gives rights to landholders under customary tenure.
	Government administrative authority	Whether governments support such landholders, or want them evicted. Whether the government bureaucracy makes it easy or difficult to evict.
	Economy	As land becomes scarcer, competing interests are more likely to present themselves, which threatens security of tenure.
	Evidence of tenure	Evidence of interest in land is required to assert right against others.
	Custom and dominant social attitudes	Where society is generally accepting of customary tenure, eviction is less likely.
Squatter/ Informal Settler tenure	Local legal system	Whether the law recognises and gives rights to landholders under squatter tenure. Whether the law recognises endogenously derived rights.
	Government administrative authority	Whether governments support squatters, or want them evicted. Whether the government bureaucracy makes it easy or difficult to evict.
	Economy	As land becomes scarcer, competing interests are more likely to assert themselves, which threatens security of tenure.
	Evidence of tenure	Evidence of interest in land is required to assert right against others.
	Custom and dominant social attitudes	Where wider community or society accepts validity of squatter tenure, other threatening interests are less likely to present themselves.
State-sanctioned ownership (e.g. freehold, leases)	Local legal system	Whether land can be acquired by government and whether compensation is granted in response. Whether rights of the landowner are protected against other parties. Whether restrictions are placed on the use of the land.
	Government administrative authority	Whether the authority practises good governance—weak governance can cause landholders to lose rights (e.g. land grabbing); informal transactions may not be protected by law.
	Evidence of tenure	Evidence of title to land required to assert interest against others.
Leasehold	Local legal system	The rights of tenants under lease agreements vary across jurisdictions.
	Economy	Supply and demand factors affect availability and affordability of rental properties. Where rent is no longer affordable, tenure security is threatened.
	Evidence of tenure	Evidence of leasehold interest required to assert interest against others.
	Government administrative authority	Government provision of public housing increases supply and thus decreases cost of housing, making it less likely that renters will fall into arrears. Governments can also intervene in private rental market - e.g. providing rental price caps.
Pastoralist tenure	Local legal system	Movement can be hampered by state boundaries, laws that govern hunting, fishing and cultivation, and laws that restrict the right to encampment.
	Government administrative authority	Movement and encampment rights may be hampered by government bureaucracy.
	Custom and dominant social attitudes	Presence of pastoralists is dependent on whether accepted by others in area.

SOURCE: Reale & Handmer, 2011

2. LAND TENURE AND SUSTAINABLE LIVELIHOODS

Land tenure problems are often an important contributor to food insecurity, to restricted livelihood opportunities, and therefore to poverty and vulnerability (FAO, 2002). For those relying largely on local resources for their livelihood, a secure place to live, free from threat of eviction, with access to productive land and natural resources, is essential for livelihoods in the region. These elements are generally found in the customary land tenure categories common in most of rural Southern Africa: 'the holding' and 'the commons'. 'The holding' refers to land possessed and used relatively exclusively by individuals or households for residential purposes, farming or some other business activity. 'The commons' refers to land shared by multiple users for grazing and for gathering veld products (fuel, building poles, medicinal plants, etc.) and may be broken down into:

- Controlled access – commons over which a group exercises control, at a minimum having the ability to exclude non-members; possibly also regulating use of the resource by members; and
- Open access – which implies an absence of control.

2.1 Land tenure reforms and sustainable livelihoods

The sustainable livelihoods framework put forward by Carney (1998) helps analysis of the strengths of particular systems of land tenure, and of their evolution. The framework (see Box 2) is useful when considering options for reform and their likely impact on people's asset status. The resulting access to capital assets, including finance, land, natural resources and social capital, determines how and how far livelihoods can be enhanced by reforms. Where financial resources are lacking, social capital can provide the basis for a range of livelihood opportunities, including customary access to land and natural resources and opportunities for the poor to sell their labour.

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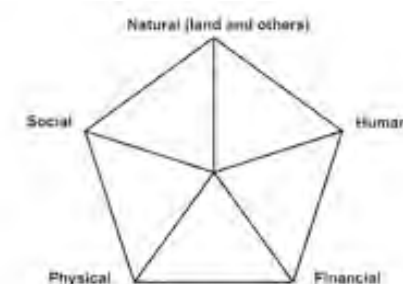
BOX 1: The Sustainable Livelihoods Approach

The Sustainable Livelihoods Approach (SLA) is based on a multi-dimensional understanding of people's lives, which recognises the different assets and entitlements that people hold in relation to the wider context and institutional, regulatory and cultural norms. It is a way of thinking about the objectives, scope and priorities for development (DFID, 1999). The approach assumes that the poor behave as 'strategic managers' in negotiating their livelihoods spontaneously by selecting from a range of options available within a particular locality and context (Carney 1998). The approach's point of departure is that inadequate attention has been paid to the complexity of rural livelihoods and the multiple dimensions of rural poverty. In this context poverty is seen not only in terms of economic figures but in a holistic manner where the livelihood circumstances of the poor, their lack of secure conditions of life, including their asset status, the activities in which they engage, the threats they face and the encouraging or discouraging character of the institutional context within which their livelihood strategies unfold. An asset-based approach to determine the status of the poor is seen as a fundamental way to understand the options open to them. The overriding goal is to help poor people achieve lasting improvements against the indicators of poverty that they themselves identify. Among the various definitions of a livelihood the one employed by Ellis (2000) provides a clearer understanding of the concept:

"A livelihood comprises the assets (natural, physical, human, financial and social capital), the activities and the access to these (mediated by institutions and social relations) that together determine the living gained by the individual or household" (2000:10).

The assets or capitals, it is argued are the basis on which the people construct complex livelihood portfolios. Natural capital comprises the land, water and biological resources that are utilised by people to generate means of survival. Physical capital is created by economic production processes; it includes buildings, roads, irrigation, lands, tools and machinery. Human capital is the labour that is available to the household, its education, skills and health. It is enhanced by investment in education and training as well as by the skills acquired through pursuing one or more occupations. Financial capital is the stock of money to which the household has access. This could be in the form of savings and access to credit in the form of loans. Social capital is 'reciprocity within communities and between households based on trust deriving from social ties' (Moser, 1998). It is an attempt to capture the community and wider social claims on which individuals can draw by virtue of their belonging to social groups. The asset holding is highly dynamic as people engage in trade-offs between assets to sustain a livelihood. These trade-offs are carried out within a particular environment mediated by institutions and processes in which livelihoods are carried out. Social relations, institutions and organisations are critical mediating factors for livelihoods because they encompass the agencies that might inhibit or facilitate the exercise or capabilities and choices by individuals or households. As Scoones (1998) elaborates: "Access is defined by the rules and social norms that determine the differential ability of poor people in rural areas to own, control, otherwise 'claim' or make use of resources such as land and common property" [quoted in Ellis 2000:9].

Figure 1: The assets comprising a livelihood



SOURCE: Murisa, 2007

Key aspects of the SLA include:

- a) Poor people as focus
- b) Encourages participation
- c) Emphasis on partnerships
- d) Advocates for holistic approach
- e) Understand policy and Institutional links
- f) Building on strengths
- g) Dynamic and flexible
- h) Accountability / Responsiveness
- i) Sustainability

Although the SLA was conceived mainly to understand the complexity of rural livelihoods, many people in the rural areas of the region currently obtain their livelihood from places far apart, including through gainful activities pursued in urban areas. Urbanisation is relatively rapid in the region; however, a majority of the population either depend on the land for their livelihood or have continuing and strong ties to the land and rural areas (ACTSA, 2010). Generally, vulnerability occurs when landholders do not have a livelihood alternative that is not connected to that particular piece of land (Reale & Handmer, 2011). Diversity in the sources of livelihoods is critical for increasing people's capacity to cope and recover from severe shocks. For example, a family that has different sources of income which may include a tract of rural land and various other activities in which they may engage in the urban centres finds it easier to recover if their crop fails and draught animals die due to drought or severe flooding events by turning to income coming from their productive activities in the urban areas. Investment on strengthening mediating institutions and policies that enable diversification of livelihoods of the people in disaster prone areas can be an effective strategy for disaster risk reduction in the long run (Yodmani, 2001).

Moyo (2004) notes that, in Malawi for example, just under 50% of rural household incomes are derived from own farm production crops and livestock. According to Reardon (1997), in Sub-Saharan Africa between 30 and 50% of rural household income is derived from non-farm sources and this figure can reach up to 80-90% in Southern Africa. Thus, reform of residential tenure may be of critical importance for households whose alternative source of livelihood is pursued outside a rural area but who return there regularly. At the same time, tenure reform in peri-urban areas becomes more important as populations migrate over the longer term to informal settlements, often found on communal land bordering major cities, where they live as they pursue productive, income- generating activities in the city (Box 3). Often in peri-urban areas land also supports other livelihoods which would be lost if tenure were lost. For example, a home-based enterprise will be located on land, which, if lost, will force the proprietor to relocate. Even if relocation is possible, the business is likely to lose important clientele and employer/employee relationships (social capital), which may make starting afresh difficult (Reale & Handmer, 2011).

BOX 2: Tenure needs in informal settlements on communal land

Individual family needs include: assurance that they will not be evicted without compensation; assurance that they can improve their house to protect themselves against weather, thieves, etc; assurance that their children can inherit the property; the ability to sell or otherwise transfer the property; the ability to borrow money using the property as collateral; a reduction in property related disputes; properties to be serviced with such things as water, electricity and the upgrading of roads; and an inexpensive and easily accessible system of administering property rights.

The government needs the system to be: nationally uniform and sustainable; a basis for implementing local taxation, land use and building control and for the provision of infrastructure; a flexible means of administering property rights, e.g. the ability to accommodate individual and group rights, the rights of the middle class, business and poor people; a basis for land titling which is accessible, user-friendly, not perceived as inferior, and capable of upgrading to freehold; a basis for delivering social justice in relation to land reform and resource allocation.

SOURCE: Adams *et al.*, 1999

The poorest rural households may not be involved in migratory labour and may benefit more from the reform of tenure arrangements for arable land and the commons in the village-homestead setting. In all these cases, tenure security, sustainable economic opportunities and good governance are the components that tenure reform should aim to deliver.

Tenure reform can contribute to economic development and sustainable livelihoods by strengthening rights in the communal areas, by removing uncertainty, and by encouraging appropriate individual household and government actions. With regard to individual households, tenure reforms can encourage increased production of agricultural goods; leasing, renting and sharing of crop land; sustainable management and use of natural resources for household food and fuel needs, medicinal plant needs, craft production, building; long-term investments in forest reserves, planting of trees around the house, establishment of a village pharmacy, training of village health workers, education or functional literacy, all of which are fall back resources which reduce long-term vulnerability. Tenure reforms also encourage investment by community members in local economic development via small enterprises; participation in development projects jointly with private investors; and adoption of peaceful and legal means for resolving land related disputes rather than resorting to land invasion and violence (Yodmani 2001; Moyo, 2004). For the government, tenure reforms promote actions at different levels to: provide infrastructure and services, and invest in development projects, particularly housing; and, on the understanding that their investment is secure, encourage actions by the

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private sector, to invest in eco-tourism, forestry and agricultural projects (Moyo, 2004).

Several countries in Southern Africa are currently reforming their land policies and laws with tenure reforms being adopted in Malawi, Mozambique, Lesotho, Swaziland, South Africa and Zimbabwe. Tables 2 and 3 show some of the characteristics of these tenure reforms.

Table 2: Land tenure regime (percentage of total land area)

Country	Customary land	Statutory private/ freehold/ leasehold	Statutory state land and other
Botswana	70	5	25
Mozambique	80	6	14
South Africa	14	72	14
Zimbabwe	50	11	39

SOURCE: Clover & Eriksen, 2009

Table 3: Land tenure reforms in some Southern African countries

COUNTRY	INITIATIVE	IMPACT/PURPOSE
Botswana	Tribal Land Act of 1968, amended in 1993. A system of 12 decentralised 'tribal' Land Boards since 1970 (under the Ministry of Lands). Draft Land Policy pending since 2005.	Land boards managed to introduce some democracy; policy is addressing land alienation, tenure insecurity of women, minority groups and the poor. Freehold constitutes less than 5% of the total land and is diminishing as it is purchased by the State.
Mozambique	Land Policy of 1995; Land Law of 1997. New legislation aimed at harmonising the rules on urban land tenure with the needs of urban expansion and development in the pipeline (2007).	State land ownership enshrined in the Constitution. Customary land tenure legally reinforced through demarcation and titling of community lands. Definition and recognition of representatives of local communities land administration; establishment of local land tribunal system accepting oral testimony; women land rights granted. Protects small-holder farmer rights – greater leasehold security. Public-private partnerships require investors to negotiate with communities to acquire land use rights.
South Africa	Three principal components for improving land tenure security: land redistribution; restitution of land to those who were dispossessed, and tenure reform to bring about security within a variety of tenure systems. A number of Acts passed between 1994 and 2004. Land Policy of 1997, Land Tenure Security Bill, 2010 and Draft Green Paper on Rural Development and Land Reform, 2010.	Secures the rights of those without formal documentary rights, pending the long-term law; transfer of title from State to communities; registered, legally protected and enforceable rights of occupation. Inadequate protection for the rights of labour tenants on privately owned farms. Acts have failed to address inequities of access, confusion and chaos that surround land rights and administration in 'communal' areas. However, by early 2011 two new pieces of legislation were expected. The Land Tenure Security Bill, 2010, would seek to promote and protect the relative rights of persons working on farms, persons residing on farms, and farm owners, enhance the security of tenure of persons residing on farms and promote food security. A Draft Green Paper on Rural Development and Land Reform, 2010, sought to propose a three-tier land tenure system comprising: state land under leasehold, private land under freehold

		with limited extent, and foreign ownership linked to productivity and partnership deals with local citizens.
Zimbabwe	Land Acquisition Act of 1992; Draft National Land Policy of 1998. Fast-Track Land Reform Programme (FTLRP) initiated in 2000.	Right to land for the indigenous population guaranteed. Very rapid and seemingly chaotic land reform programme – seemingly erratic farm invasions; corruption; multiple farm ownership, usually by elite.

SOURCE: Adapted from Clover & Eriksen, 2009

2.2 Analysing tenure reforms

There are several critical political, economic, social, cultural and legal considerations when analysing tenure reforms through the sustainable livelihoods lens. Important questions include:

- Given the inherent complexity of land tenure systems, the limited capacity of the State and the costs of tenure reform, is reform necessary for reducing poverty and securing sustainable livelihoods?
- What kinds of reform are appropriate?
- How should tenure reform be phased in?

Political: Is land ownership distinct from jurisdiction, i.e. is the tenant in a feudal relationship with the landowner? How is tenure reform linked to land reform in the wider sense? Do political conditions favour tenure reform? How effective is the administration of land tenure at national, regional and local levels?

Economic: How do tenure systems affect agrarian and other sources of production and income? What economic use is made of common property resources? How does the land tenure system intersect with markets for land, capital, labour, inputs and outputs? Does lack of clarity about land rights discourage investment?

Social and cultural: How are rights to land embedded within wider social and cultural relationships? What is the impact of the structure of land rights on gender inequality? Are tenure systems associated with class, racial, ethnic and/or other forms of inequality? Are rights to land an important source of asset-based security for the poor? How have indigenous tenure forms been affected by colonial and post-colonial laws? How do reform policies interact with informal evolutionary processes?

Legal: Do constitutional and legal frameworks affect tenure? Are there appropriate and legally secure options for rural and urban situations? What is the legal basis of common property arrangements? When and where are titling and registration

programmes appropriate? Do group forms of ownership require titling and registration?

3. UNDERSTANDING VULNERABILITY

While the sections that follow detail the intersections and relationships between land tenure status and physical, environmental and socio-economic vulnerability it is instructive, at this juncture, to clarify the concept of vulnerability.

The UN/ISDR (2004:7) defines vulnerability as:

‘The conditions determined by physical, social, economic and environmental factors or processes, which increase the susceptibility of a community to the impact of hazards’.

Vulnerability is not natural. It is the human dimension of disasters, the result of the whole range of economic, social, cultural, institutional, political and even psychological factors that shape people’s lives, and create the environment that they live in (Twigg, 2004). Within a community individuals differ in vulnerability due to differences in gender, physical status, social ties, control over socio-economic resources, as well as the location of their dwellings. It is the weaker groups in society that suffer worst from disasters: the poor (especially), the very young and the very old, women, the disabled, and those who are marginalised (Elo, Palm & Vrolijk, 1995). Generally, those who are already at an economic or social disadvantage tend to be more likely to suffer during disasters.

The underlying factors contributing to vulnerability are complex. For example, while one may conclude that people are vulnerable because they live in rickety houses situated in unsafe locations, one needs to consider why they live there, which could be the product of such forces as:

- poverty (itself the result of local, national and even global economic forces);
- population growth;
- displacement due to economic development (for example, loss of small-holdings to commercial agriculture);
- migration to towns and cities (which has a variety of socio-economic causes);
- legal/political issues, such as lack of land tenure;

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- discrimination;
- government macro-economic and other policies; and
- other political features, such as the failure of government and civil society institutions to protect citizens.

The chain of causality, from root causes to local dangers, can be both long and complex, but by tracking it one can identify a progression of vulnerability that builds up pressures on communities. These pressures can be released by taking measures to reduce vulnerability all along the causal chain (see Figure 3).

Blaikie *et al.* (1994) developed the Pressure and Release (PAR) model to explain the progression of vulnerability. The basis of the PAR model is the recognition that a disaster is the intersection of two opposing forces: the process of generating vulnerability on one side, and physical exposure to hazard on the other. Increasing pressure can come from either side but to release the pressure, vulnerability has to be reduced (Twigg, 2001).

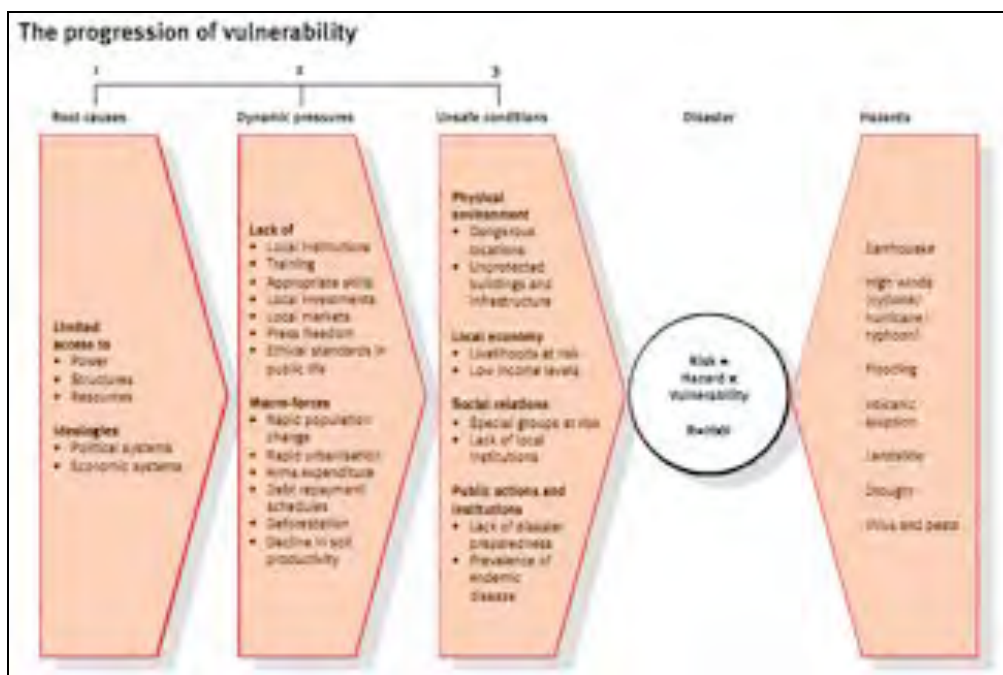


Figure 2: The Pressure and Release (PAR) model (Source: Wisner *et al.*, 2004)

In this model:

Root causes are structural elements in society such as economic, demographic and political processes. They reflect the distribution of power in a society and are connected to the functioning and power of the state.

Dynamic pressures channel the root causes into particular forms of insecurity that have to be considered in relation to the types of hazards facing vulnerable people. These include population changes, environmental degradation and market activities.

Unsafe conditions arise from interaction of the above and are the specific forms in which the population's vulnerability is expressed in time and space in conjunction with a hazard. Examples include people having to live in dangerous locations, being unable to afford safe buildings, having to engage in dangerous livelihoods or having minimal food entitlements.

These factors change over time and interact with each other in complex, sometimes, unpredictable ways. Viewed as above, vulnerability is thus conceptualised as a dynamic process, rather than as a static outcome (Van Riet, 2008).

4. LAND TENURE INSECURITY AND VULNERABILITY TO DISASTER

The growing trend whereby Southern African land tenure systems tend to promote the concentration of unequal landholdings has generated discriminatory and insecure tenure in the various existing land tenure regimes with widely variable use, exclusion, and transfer rights (Moyo, 2004). In countries where customary land tenure systems are predominant there is a tendency towards high population densities on degraded lands largely around mountainous areas and scarce arable land. Furthermore, the tendency for the majority small-scale rural farmers to be largely concentrated in these marginal land areas, and to have the least access to water infrastructures and investment finance, renders their land uses extremely vulnerable to environmental and human-made hazards. Along with insecure tenure and lack of infrastructure, land use regulation in the rural areas is coercive rather than based on incentive and communities are thus not encouraged to invest in measures that reduce vulnerability.

Although often overlooked, land tenure is an important variable impacting on vulnerability to disaster. Vulnerability can occur either where land tenure is perceived to be insecure, or where insecure tenure results in the loss of land, especially when alternative livelihood and housing options are limited (Reale & Handmer, 2011).

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Land tenure helps to anticipate an individual or group's vulnerability to hazard particularly in the present era of growing climate variability. We are seeing an increase in natural hazards, including wildfires, floods, cyclones and droughts, with the Intergovernmental Panel on Climate Change predicting an increase in climate related hazards due to climate change (IPCC, 2007). The 2007 IPCC Fourth Assessment Report indicates that Southern Africa is expected to experience increased incidences of floods and more intense droughts as a result of warming temperatures. Cyclonic activity is also expected to become more intense with larger peak wind speeds and heavier rains. Such hazards will often exacerbate insecure land tenure, exposing otherwise hidden vulnerabilities (Reale & Handmer, 2011). Table 4 summarises the possible impacts of climate change due to changes in extreme weather and climate events in the region.

Table 4: Possible impacts of climate change due to changes in extreme weather and climate events

Phenomenon and direction of trend	*Likelihood of future trends	Examples of major projected impacts by sector			
		Agriculture, forestry and ecosystems	Water resources	Human health	Industry, settlement and society
Warm spells/heat waves: Frequency increases over most land areas	Very likely	Reduced yields in warmer regions, due to heat stress; increased danger of wild fire	Increased water demand; water quality problems, e.g. algal blooms	Increased risk of heat-related mortality, especially for the elderly, chronically sick, young and socially isolated	Reduction in quality of life for people in warm areas without appropriate housing; impacts on the elderly, very young and poor.
Heavy precipitation events: Frequency increases over most areas	Very likely	Damage to crops; soil erosion; inability to cultivate land due to water logging of the soils	Adverse effects on quality of surface and groundwater; contamination of water supply; water scarcity may be relieved	Increased risk of deaths, injuries and infectious respiratory and skin diseases	Disruption of settlements, commerce, transport and societies due to flooding; pressure from urban and rural infrastructures; loss of property
Area affected by drought increases	Likely	Land degradation, lower yields/crop damage and failure; increased livestock deaths; increased risk of wildfire	More widespread water stress	Increased risk of food and water shortage; increased risk of malnutrition; increased risk of water- and food-borne diseases	Water shortages for settlements, industry and societies; reduced hydro-power generation potentials; potential for population migration
Intense tropical cyclone activity increases	Likely	Damage to crops; windthrow (uprooting) of trees; damage to	Power outages causing disruption of public water supply	Increased risk of deaths, injuries, water- and food-borne diseases; post-traumatic	Disruption by floods and high winds; withdrawal of risk coverage in vulnerable areas by private

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		coral reefs		stress disorders	insurers; potential for population migration; loss of property
Increased incidence of extreme high sea level (excludes tsunamis)	Likely	Salinisation of irrigation water, estuaries and freshwater systems	Decreased fresh-water availability due to salt water intrusion	Increased risk of deaths and injuries by drowning in floods; migration-related health effects	Costs of coastal protection versus costs of land-use relocation; potential for movement of population and infrastructure; also see tropical cyclones above

*The following terms have been used to indicate the assessed likelihood, using expert judgment, of an outcome or a result: *Virtually certain* > 99% probability of occurrence, *Extremely likely* > 95%, *Very likely* > 90%, *Likely* > 66%, *More likely than not* > 50%, *Unlikely* < 33%, *Very unlikely* < 10%, *Extremely unlikely* < 5%.

SOURCE: IPCC, 2007

4.1 An urban perspective

Most of the literature on land tenure predominantly focuses on tenure problems associated with rural agricultural land ownership and use, to the exclusion of urban land issues. This is understandable given that the agrarian question constitutes the primary concern of the discourse circumscribing the broader land question in post-colonial Southern Africa. However, urban areas are increasingly a critical site of struggles in the context of the drive to ensure sustainable development in an increasingly urbanising region and particularly in terms of the growing demand for land for residential purposes, as well as for its use as working space (Moyo, 2004).

Since the 1960s, populations in Southern African cities have grown at alarming rates with the current urbanisation rates reaching 30% and higher in some countries compared with less than 15% then. Urban fertility rates and rural to urban migration both continue to drive urbanisation leading to expanding demands for access to urban and peri-urban land. Urban demands for land include its requirement for residential purposes, for urban farming in the context of supplementing the basic food and income needs of the urban poor, and for working space for small-scale informal trade, 'back yard' industries and other services provided by the formally unemployed (Moyo, 2004).

Tenure contestations are prevalent between the state, at central and local urban municipality level, customary authorities and leaders within and around urban areas, communities of families claiming indigenous rights to land and various social categories of urban and peri-urban residents, including informal settlers, as well as real estate developers and other elites involved in land speculation. Contested land claims are mediated through competing urban land tenure regimes, which in most cities are driven by a process of the conversion of urban land from customary land tenure regimes towards state (public) tenures and private property regimes (Moyo, 2004). The demand for security of tenure in these urban areas is often expressed as a desire for freehold land rights, due to the poor relations between tenants and private landlords, and tenants and different levels of the state (Marcus *et al.*, 1996).

Tenure issues associated with informally settled communities have gained prominence against the background of increasing urbanisation and the associated mushrooming of informal settlements around Southern African cities.

4.1.1 Case: Vulnerability and disaster risks in informal settlements in South Africa

South Africa is, today, a country of stark contradictions. Within its economically vibrant cities live millions of the poor with little or no access to housing and basic infrastructure such as running water, sewage, and electricity (Napier & Rubin, 2002). South Africa has a dual economy in which highly modern, competitive and globally interconnected sectors (the first economy) coexist with mass poverty and huge service delivery backlogs (the second economy) and currently, “too many South Africans are trapped in the second economy, characterised by poverty, inadequate shelter, uncertain incomes and the despair of joblessness,” (Msengena-Ndlela, 2004).

With an average of 16% of the country's population living in informal housing, South Africa's major metropolitan areas of Cape Town, Johannesburg, Pretoria and Durban all have figures well above the national average, registering 22%; 22%; 23% and 28%, of their total populations living in informal settlements, respectively (Napier & Rubin, 2002).

Informal settlements occupy an ambiguous legal position in South Africa. They are technically illegal, but residents are protected by legislation granting them *de facto* tenure rights by virtue of living on the land. Also, where informal settlements are the result of invasion of privately owned land and people are protected from eviction by law, they effectively do not have secure tenure that would encourage them to implement long-term investment into securing their dwellings. Further, settlements often fall outside the mandate of the cities they border thereby precluding the possibility of service delivery to these settlements by the city governments.

Figure 4 shows proportions of housing in four of South Africa's six metropolitan areas. Where figures are available, informal housing is broken down into freestanding settlements, backyard shacks, and sites and services (denoted by "S&S").

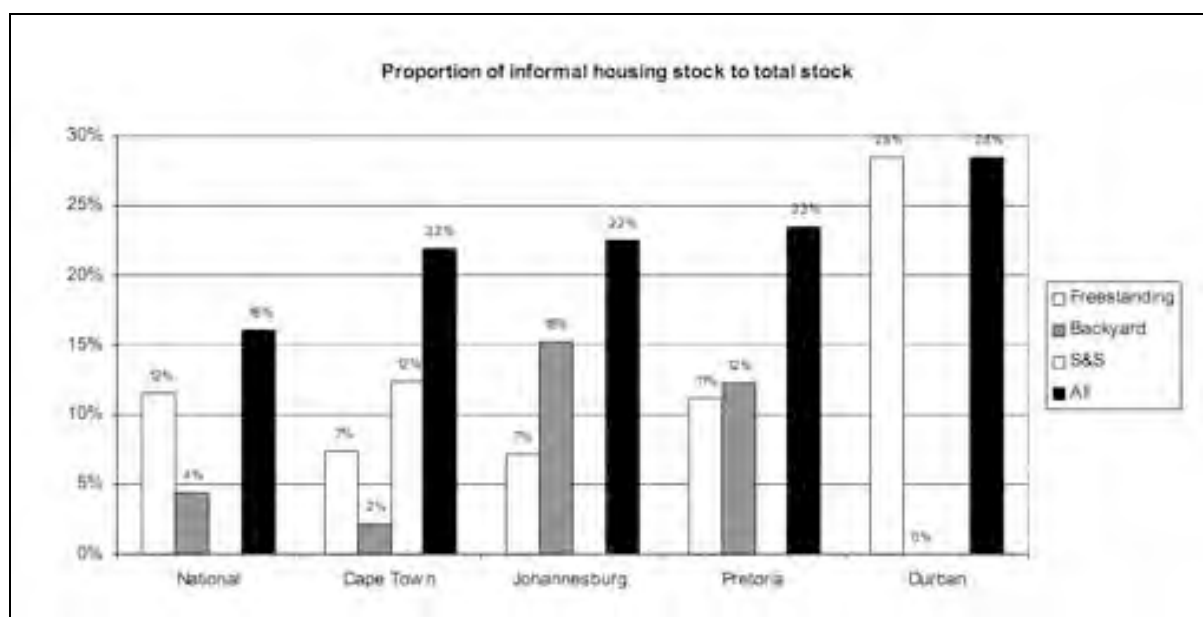


Figure 4: Proportion of informal housing stock to total stock (Source: Napier & Rubin, 2002)

These figures are only broadly indicative of exposure to risk, because the location of the settlements and the quality of the construction are not evident. According to Napier and Rubin (2002), over a third of all households in the country can be said to be living in housing types which are potentially dangerous or unhealthy, and just under half the country's population is living in situations of income poverty and therefore experiences a degree of vulnerability when it comes to recovering from shocks such as disasters and other emergencies.

Napier and Rubin (2002) note that in South Africa the 12% of households living in freestanding informal housing are most often located on the far distant peripheries of cities. They experience the added risks associated with lack of services and land that is often inappropriate for settlement. Vulnerability to disaster is increased as a result of certain qualities of the location, such as settlements on steep slopes (Inanda, Durban), within floodplains (Alexandra, Johannesburg), close to mine dumps (East Rand, near Johannesburg), close to heavy industrial areas (Wentworth, Durban), or even on landfill sites. Other hazards arise from the nature of the settlement itself, such as risks of rapidly spreading fire (Joe Slovo, Cape Town) or health risks from rising damp, poor indoor air quality and collapsing structures.

Unplanned and rapid urbanisation, from which informal settlements originate, provides the conditions that turn natural events into disasters, and also modify the physical environment, generating hazard and risk from flooding and fire (Pelling & Wisner, 2009). It is usually poor and marginalised households living in informal settlements and low-cost housing built of inferior building materials, that are most vulnerable to fires, severe weather events and seasonal flooding (DiMP, 2008:14). Thousands of households in these areas suffer severe losses resulting in significant development setbacks (DiMP, 2008:2). Recurrence of hazards such as fire and flooding erodes what little progress has been made to accumulate resources and savings, progressively increasing the vulnerability of informally settled households over time (Pelling & Wisner, 2009). Often, the impacts of flooding are exacerbated by recurrent outbreaks of water-borne disease.

The level of access to essential services also provides an indication regarding risk of exposure to environmental health risks. Currently, service delivery is not adequate with the Government of South Africa failing to meet its ambitious targets for the provision of housing and basic infrastructure such as running water, sewage, and electricity to the poor, most of whom live in informally settled areas. Inadequate service delivery increases both people's exposure and vulnerability to hazards. For instance, poor drainage infrastructure prevents flood waters from draining away, while rotting human and household waste clogs drainage ditches and contaminates standing water with germs and poisonous chemicals that cause disease (Pelling &

Wisner, 2009). The vague legal position of informal settlements in South Africa frequently prevents provision of even minimal basic services.

In some cases, current policies and practice worsen exposure to risks by continuing to support poor location and inadequate housing quality (Napier & Rubin, 2002). For instance, risk can be increased (or decreased) suddenly through eviction by authorities from formal or informal housing. Despite a raft of policies which shape the location and development of new settlements, and which also govern how the issue of illegal informal settlements should be addressed as well as a set of disaster and disaster risk management (reduction) policies, informal settlements on badly located land continue to grow (sometimes as a strategy on the part of residents to access government housing benefits more quickly) (Napier and Rubin, 2002). In addition, new formal settlements with inadequately designed housing in distant and sometimes hazardous locations continue to feature even in the formal South African landscape. The situation is exacerbated by authorities who continue to evict people from informal settlements, despite laws protecting residents from eviction, thus often creating and cultivating the preconditions for disaster, particularly through exposure to hazards.

Poor people in informal urban settlements typically have higher levels of everyday risk, even without considering the impact of natural hazards (UN, 2009). Residents in these areas encounter many stresses, including lack of a reliable income, drugs, alcoholism, prostitution, disease, crime, and domestic, physical, and sexual abuse. The interaction of these social conditions with recurring climate extremes and other environmental hazards presents a constant threat of disaster among the informally settled (DiMP, 2008).

Informally settled communities in South Africa face an array of threats to their livelihoods. Among the most devastating are the disasters brought on by uncontrolled fires, extreme weather and diseases associated with localised flooding. Disasters that affect people in informal and traditional settlements most adversely are flooding, famine, drought, fires, windstorms and epidemics. Less reported are the creeping disasters that relate to conditions of poverty such as high infant mortality, and deaths from HIV/Aids and other illnesses. The recent spate of xenophobic violence experienced mainly in informally settled communities has arisen from an

intersection of conditions of poverty, unresolved issues with lack of service delivery and heightened competition for scarce resources, employment and income making opportunities among residents, accentuating the vulnerability of sections of these communities.

Technological disasters, most of which do not necessarily affect informal settlement residents more than other urban residents, include transportation accidents, industrial accidents and other miscellaneous accidents.

A recurring theme in solutions advocated for ameliorating the problem of vulnerability to disaster in informally settled areas in South Africa is the importance of systems of land tenure, and the need to grant appropriate forms of tenure to the urban poor. For poor households, low incomes and a lack of secure land tenure discourage residents from improving the safety of their homes and the sanitary conditions of their immediate surroundings (DiMP, 2008). Opportunities for enhanced disaster risk reduction in informally settled areas arising from tenure reforms are discussed in Chapter 8.

4.2 The rural perspective

Although the promotion of specific forms of land administration systems has predominantly been for the promotion of formal statutory land titling and 'modernised' land administrative structures of land tenure systems, the majority of rural Southern Africans gain their land on the basis of customary rights rooted in notions of 'community' and kinship. Access to land also comes through derived rights, including a series of informal contractual relations (such as sharecropping) with those who hold primary rights (Moyo, 2004). In customary land tenure, individual rights to land are derived from their relations with other persons in the household and community, as these in turn are determined and shaped by societal institutions. While governments have endeavoured to promote statutory land tenure systems, there have been very few successes comprehensively reforming land administration in this light, let alone in efforts to impose full control of land tenure practices in most rural and some peri-urban areas (Moyo, 2001).

4.2.1 Customary tenure, pastoral rights and natural resource management

The central land tenure problem in rural Southern Africa revolves around struggles over the imposition of land management institutions and rules, during colonial and in post-independence times, which have served to diminish access to land and security of tenure among a growing majority of citizens. Land tenure in rural Southern Africa consists of the social relations established around the control and use of land, while land tenure systems and their sets of tenure relations are interwoven and related to other societal structures and institutions, including economic structures as well as family structures with their marriage and inheritance practices (Lastarria-Cornhiel, 2002). The current land tenure complexities are based on administrative and resource rights systems imposed during the colonial period, and confounded by the emergence of rural markets as well as the commoditisation of natural resources. Colonialism in Africa defined land as a communal and customary possession (Mamdani, 1996), and thus customary tenure was related to both personal relations (marriage, succession, movement) and access to productive resources (land).

Generically in customary tenure regimes, the community chief or lineage head is considered the ultimate custodian of community land, but all households belonging to the community have recognised rights to this land and other natural resources. The degree of control and management that community leaders have over land and resources, and therefore the control that individuals hold, varies considerably across customary systems (Moyo, 2001). Rights for individuals and families vary from discrete temporary uses such as gathering natural resources in communal forest, grazing on communal pastures or cultivating a specific field for one or several seasons to permanent control over a piece of land or other resource for cultivation and to pass it on to their heirs (Lastarria-Cornhiel, 2002).

Understanding of the land tenure systems that obtained in the pre-colonial states and the transformation process they went through as a result of colonialism is critical to our appreciation of the land tenure conflicts that obtain today (Moyo, 2004). Colonialism introduced new dimensions to the form of land ownership and title, and land management, as well as to the rights and responsibilities related to land and natural resources. As a direct result of the multifaceted subjugation of the indigenous black populations the colonial state alienated land to white settlers on the basis of

freehold tenure and thereby gave virtual absolute ownership to them with the greatest bundle of rights.

The bundle of land rights in any tenure regime consists of three types of rights: use rights, exclusion rights, and transfer rights:

- Use: rights to use the land for grazing, growing subsistence crops, gathering minor forestry products, etc. Use rights may expand to include other commercial uses such as planting productive perennials or extracting soils, and gravel for sale or other uses.
- Exclusion: the right to exclude unauthorised people from using the land
- Transfer: rights regulate how and to whom the landholder can transfer the land, including giving, inheritance, renting out, pledging, and selling land to others.

The displaced and dispossessed majority black population was then settled on the worst lands and governed by administrative discretion while land rights were held in trust by the colonial state. Thus at independence most African countries inherited a dual, unequal and hierarchical system of land tenure in which freehold and leasehold land-rights were treated as superior forms of land rights over customary land rights (Shivji Moyo, Ncube & Gunby, 1998). This remains a dilemma that most land tenure reform initiatives face.

Cheater (1988) notes that colonial administrations initiated and nurtured the notion of customary tenure with three key distortions that were contrary to practices that prevailed in the pre-colonial African societies:

- First, was that the notion of community rights became so one-sided that it was not in agreement with the concept of individual rights;
- Secondly, the definition of customary authorities who would exercise the right to allocate community land for household use, mixed up ritual powers with proprietary rights; and
- Thirdly, another serious distortion was the identification of the community with the tribe and hence all migrants who did not belong to the particular tribe were viewed as strangers and had no traditional right to access land.

Shivji *et al.* (1998) note that contrary to indigenous tradition, since colonial times Africans living in areas under customary systems or forms of land tenure have tended to occupy lands by the permission of the state, which was, and in many instances continues to be the ultimate owner or the holder of title. Their occupation

and use of land was controlled by criminal law and sanctions while they had no legally entrenched rights, in contrast to the state as an owner. Among themselves, they were allowed to continue to relate to each other under the customary law that also governed their land relations and tenure, but, whenever the state so desired, the permission to occupy and use land could be withdrawn by administrative fiat, including forced removals and African lands being appropriated without resort to law.

With slow post-independence reforms, this form of land governance framework has remained in place (although sometimes not presented or perceived as such) and tenure, particularly in rural areas, remains insecure and fragile. Furthermore, even after independence, land tenurial and distributional depravations arising from the colonial era have yet to be fully incorporated in current democracy and governance discourses. In most countries, customary lands are essentially state land and cannot, for instance, be transferred through the market system (Moyo, 2004).

Land tenure systems in place in most of Southern Africa determine existing land use patterns which themselves reflect environmental vulnerability and technological backwardness of existing farming methods. Land held under freehold tenure systems and by the state tends to be the least regulated while customary tenure systems, under which most of the indigenous people in the communal areas of Southern Africa live, attract numerous coercive and top-down land-use regulations (Moyo, 2004). Land use regulations in communal areas tend not only to determine which commodities are to be produced but also the timing and methods of production. In this respect, land use regulations themselves have been part of the problem of food insecurity at both national and household levels, given their promotion of so-called 'cash' (and export) crops over domestic food crops, in keeping macro-economic incentives and agricultural support services directed at promoting these land use patterns (Moyo, 2004). Such processes have themselves exacerbated the scale and scope of environmental degradation and associated vulnerability caused by the huge demographic pressures and increasing disinvestment on the vast tracts of rural lands governed by customary tenure systems in the region.

4.2.1.1 Pastoralism

Pastoralism constitutes a major source of livelihood in rural areas, especially in drylands, e.g. among the Basarwa in Botswana. However, a significant proportion of pastoralists' activities based on rangelands are non-monetarised and their contribution to the livelihoods of the rural poor has often been underestimated or in some cases unaccounted (Cotula *et al.*, 2004).

Colonial policy with respect to rangelands in the region was based on their being seen as unoccupied. Thus, rangelands were expropriated for other uses, primarily agriculture and commercial ranching, backed by new concepts of land ownership. Controls on livestock movement and marketing were often imposed to protect the interests of settler farmers, while much pastoral land was also lost to wildlife reserves and game parks as a result of a strong conservationist lobby (Cotula *et al.*, 2004). Although in isolated cases post-independence, governments have engaged more substantively to try and “modernise” the pastoral livestock economy, customary pastoral land rights have rarely been acknowledged, since there are often no clear marks of appropriation, in contrast to land that has been taken into farming. Moreover, governments and donors have sought to control rangeland degradation through the regulation of livestock numbers and movement. For these reasons tenure security remains unavailable to most pastoral communities in the region. This renders them vulnerable in times when their stock is decimated by disease or drought as they have limited access to land on which to carry out alternative livelihood activities.

5. GENDER, LAND TENURE AND VULNERABILITY

Land is considered the most fundamental resource to women's living conditions, economic empowerment and, to some extent, their struggle for equity and equality. More than 60% percent of women in Southern Africa are dependent on land for their livelihoods. Women's land rights are insecure and inadequate for their ascribed roles as the majority of agricultural producers in the rural areas and the primary managers of the household in both rural and urban areas. Southern African economies are highly dependent on agriculture. Women play a crucial role in agriculture, making up more than 60% of small farmers while providing 80 to 90% of the labour in

subsistence production and over 70% in cash crop production. More than 70% of women in the region live in rural areas and derive their livelihood from agricultural production (Mtangadura, 2004). However, despite the importance of land to women in the sub-region, their land rights are still largely discriminated against.

5.1 Barriers to secure tenure for women

Deriving from the unequal and discriminatory patterns and structures of access to productive and developmental resources in today's Southern African society is the disproportionately low access to and control of land by women. In reality, what is oftentimes summarily referred to as the 'community' is in fact non-homogenous and differentiated along class, other social, and gender lines and reproduces unequal and inequitable access to and use of land, particularly for women. Women's access to and control of land is inadequate and constrained by various customary and generally patriarchal social relations. In general, where women hold land, their land tenure is extremely insecure.

The major forms and sources of this unequal land distribution and tenure problem are derived from the dominance of patriarchy and customary land tenure systems and local authority structures. Gender based struggles for land where men and their male heirs have inequitable control of land are common in Southern Africa (Moyo, 2004). Gender relations can be examined through the different ways in which men and women are inequitably treated in land ownership and land use relations especially in terms of the role land plays in the wider subordination of women in the patriarchal structures which dominate broader social and production relations. Race, class, ethnicity, ageism, economic and political circumstances are systematically structured to influence gender relations with respect to land and the benefits derived from the productive use of land. Often there are ambiguous overlaps between customary and formal systems, and between family and community structures which are manipulated by the interests of powerful groups in the allocation and use of land, leading to unequal gender outcomes of social equity, citizenship and land rights (Lastarria-Cornhiel, 2002).

Table 5: Overview of barriers to women acquiring land rights under customary and statutory land tenure systems

Barriers linked to the socio-economic well-being of women	Barriers linked to custom/traditional law	Barriers related to statutory law
• High female illiteracy rates • Ignorant of their land rights • Lack of resources to claim their rights • Internalised discrimination • Limited participation of women in decision-making bodies on land tenure issues	• Limited rights of women to own land due to patriarchy • Land allocation administered by traditional leaders • Traditional leaders do not know about land laws that provide for women's rights • Daughters cannot inherit land • Limited participation of women in traditional community decision-making	• Land law does not have a clause that promotes the land rights of women • Land law is non-discriminatory but is not harmonised with other laws in the system • Lack of capacity/ knowledge by implementers • Some legal clauses do not allow joint ownership of land

Sources: ECA, 2003; Mtangadura, 2004

While there is general agreement that customary land tenure rules discriminate against women in Africa, why this is so, the ways in which such discrimination occurs, and therefore the most effective solutions for this are in dispute (Tsikata, 2001). According to Tsikata (2001), historical and anthropological research on women's interests in land in both patrilineal and matrilineal groups has sought, among other things, to demonstrate that women did have some significant interests under customary land tenure, and that these have, in fact, been eroded by the processes of agrarian change and codification of customary law. Moyo (2004) notes, however, that women have fought this erosion of their interests in various ways, including engaging in practices which reduce women's land tenure insecurities by recourse to favourable traditional practices, and less commonly, by recourse to legal processes. Tsikata (2001) emphasises that, in customary societies, citizenship or membership is differentiated along ethnic, lineage, gender and age lines, but colonial taxation systems conferred citizenship on male adults through taxes, and thus effectively re-enforced land rights on them in this way. It is worth noting that direct and secure rights to community land and natural resources and to long-term control over certain pieces of land were, generally, only available to full members of the community who, following this logic, would thus only be male. Allocation of land is generally given to men, particularly after reaching a certain age or after marriage. Minority ethnic groups and women in patrilineal kinship systems are generally denied the right to receive allocations of land, particularly women who marry into the

community; they only have use rights to land allocated to them by their husbands (Tsikata, 2001).

Within the logic of customary societies the extended family with its expansive network of kin has provided individuals, including women and other persons considered to have lower status (e.g. minority groups and immigrants), with a secure basis of material support and protection. However, much of this social network has been breaking down during the last century which has been dominated by the emergence of the market economy (Lastarria-Cornhiel, 2002). Thus both the relics of the customary tenure regime and the market economy undermine women's land rights (Moyo, 2004).

The deprivation of women's rights (control and use), through customary and currently practised procedures on land inheritance and property distribution after divorce is the most widely contested issue between women and the state/patriarchal institutions (Tsikata, 2001). However, men remain central heirs and holders of land rights in patrilineal communities under customary land tenure regimes, as well as in many existing formalised property relations (Moyo, 2004).

The social and economic implications of not recognising the rights of women to land and property, unequal access to secure land tenure and widespread discrimination and exploitation of women tend to marginalise women from the benefits of control of their land and the products of their labour, thereby disproportionately heightening their exposure and accentuating their vulnerability.

5.2 The legal and policy context relating to women's land rights in Southern Africa

Not only are women's land rights impacted by land laws, but also by other related laws that are applied to challenges that women commonly face, including marriage, divorce, inheritance, domestic violence etc. It is therefore necessary to highlight how the State is perpetuating minimal enjoyment of land rights by women through poor legal and policy formulation and/or implementation. Women's land rights remain at the periphery of law and policy making and law and policy implementation in Southern Africa (Kachika, 2009). In most Southern African countries women's land rights are still compromised by the existence of customary laws, operating alongside

statutory law. Laws and practices governing customary land in Southern Africa are largely biased against women and the existence of the dual land system has led to the creation of mixed tenure systems that often disadvantage women, especially in owning land.

Despite policy efforts to redress this situation (see Box 4 and Appendix 2), unequal gender relations in land control and use have over time worsened and deprived women of their land rights in many parts of the region, reduced the extent and quality of the land rights that they continue to hold, and failed to cater for the new forms of land rights and growing land needs of women (Moyo, 2004).

BOX 3: Legal and policy provisions for the improvement of the status of women in relation to land in selected countries:

- South Africa's Constitution provides for equal treatment of men and women;
- In Malawi, legislation allows women to register land independently of men;
- The Mozambican Land Act enshrines the right of both men and women to use and benefit from land;
- Women's rights to land are provided for in the National Land Policy of Tanzania;
- In Zimbabwe, policy provides for the joint registration of land in resettlement schemes between husband and wife; and
- The Communal Land Bill of Namibia provides for women to be represented in the Land Boards, which are expected to be responsible for the survey and registration of approved forms of land title in their jurisdictional areas

SOURCE: Moyo, 2004

5.3 Addressing constraints to women's access, ownership and control of land

Law reform to give legal recognition to women's rights to land is often the first step necessary to promote gender parity in land and property rights. Related to the changes in the law, there needs to be harmonisation of other laws that affect women's land rights (marriage and inheritance laws) with the land law to ensure that women can fully utilise the provision of owning land provided by the land law (Mtangadura, 2004). Law as an instrument of social change needs to be supported by an efficient law enforcement system and by legal rights awareness campaigns to promote a change of attitudes among both women and men and to enable beneficiaries to pursue land claims. For women to get and fully utilise independent land rights it is critical for them to be equipped with the economic and social

resources to be able to own and meaningfully benefit from land ownership (Mtangadura, 2004). For instance, while research shows that women are more efficient than men in paying back micro-finance loans, ironically they have the hardest time in securing loans.

Table 6: Actions required to improve the position of women's ownership and control of land

Initiatives to improve the socio-economic well-being of women	Initiatives to address barriers linked to custom/traditional law	Initiatives to address barriers related to statutory law
• Education / literacy campaigns • Legal education to women • Economic empowerment of women through provision of credit, market access • Affirmative action (waive fees for land registration, land quotas for women) • Improved participation of women in decision-making bodies on land tenure issues	• Limited rights of women to own land due to patriarchy • Disseminate new land laws and build capacity/knowledge of traditional leaders not to discriminate against women • Educate society on women's rights	• Ensure land law has a specific clause that promotes the land rights of women • Harmonise land laws with other laws in the system (marriage laws, inheritance law) • Disseminate new land laws and build capacity/knowledge of implementers • Translate laws into effective programmes for implementation
• Monitoring and evaluation of progress made on women's land rights – at regional, national and local levels • Develop indicators to monitor progress		

SOURCES: ECA, 2003; Mtangadura, 2004.

The HIV/AIDS epidemic has brought a new dimension to land tenure problems in the sub-region. Little work has been done on the impact of HIV/AIDS on tenure systems in the sub-region as a whole. However, in those countries where research has been done, including Lesotho, Malawi and South Africa, it is reported that the epidemic has increased the vulnerability of women, children and poor households to land dispossession by patrilineal kin on the death of male household heads and increased risk of losing unutilised/underutilised land (ECA, 2003). The main recommendation emerging from these studies is for legislation to protect the land rights of women and people living with HIV/AIDS.

Studies by the Economic Community for Africa (2003) and Mtangadura (2004) into women's access, ownership and control of land in Southern African make the

following recommendations to help reverse the pattern of discrimination against women:

- The review and repeal of all personal, family and customary law, including provisions on inheritance, which discriminate against women, as well as the review and repeal of any other legislation that prevents women from owning land or entering into contracts in their own right.
- Disseminate new laws that promote the rights of women to land so that they are widely known among Government officials, NGOs, the media, traditional leaders, land allocation committees, and the development community working in rural areas;
- Support the training of legal personnel (including those who administer customary law) on women's land rights issues;
- Statutory provision for joint registration of customary and statutory household land rights for spouses;
- Harmonise land, marriage and inheritance laws;
- There is a need to form a body at the national level that will closely monitor the implementation of the legal framework on the ground to ensure that some progress is made in achieving land rights of women. If such institutions are already in existence, there is a need to strengthen them to achieve their goals;
- There is a need to develop national and local level indicators (gender disaggregated) that would measure progress towards equity for women in land rights;
- Equal representation of men and women in municipal councils, tribal authorities and all decision-making structures related to land;
- Active sensitisation and education campaigns to change the patriarchal attitudes. Establishing new laws alone is not enough; existing gendered social relations and cultural norms may quickly shape these laws. There is a need for measures to counter pre-existing social forces through education and training of both men and women;
- Empower women socially and economically. This may involve legal literacy campaigns, provision of credit, waiving transaction costs for land registration, and providing market access;

- Draw up legislation that can protect the land rights of women and orphans in the context of the HIV/AIDS epidemic; and
- It is important for the United Nations and civil society to help individual countries to promote women's rights in compliance with the convention and fulfil their reporting requirements.

PART II: LAND TENURE REFORM AND OPPORTUNITIES FOR RISK REDUCTION

I. INTRODUCTION

Part II of this module highlights opportunities for risk reduction that can be derived from land tenure reforms. Discussions in this section arise from initiatives and best practice in other parts of the world and what lessons these have for the practice of disaster risk reduction in the region.

Land tenure reforms are integral to rural development efforts in Southern Africa. *Chapters 6* details how tenure reforms can foster economic development and diverse livelihoods in rural areas and thereby increase the resilience of rural communities. Evidence from other countries shows how farmers with secure tenure are more inclined to adopt sustainable environmental practices, new, appropriate technologies, and invest more in securing their crop and infrastructure against hazards.

Chapter 7 cites evidence from Africa, Latin America and Asia to show that tenure reforms can be used to promote improved environmental management and reduction of the risk of environmental disaster. It is shown that lack of secure tenure and land ownership, among other factors, limits the capacity that communities have to properly manage their territories or seek long-term investment for the proper management of their environment and its resources.

Chapter 8 shows a direct relationship between secure tenure and increased investment in risk reduction in informally settled areas. It is emphasised that in the absence of secure tenure, residents of informal settlements have little incentive to invest in robust housing structures and maintain their dwellings, thereby increasing their vulnerability to hazards. Advancing tenure security to informally settled

residents encourages vulnerable communities to invest in long-term measures that ensure the reduction of disaster risk, with full knowledge that their investment is protected by secure tenure.

II. LEARNING OBJECTIVES

On completion of *Part II* of this module, learners should be able to:

- Explain the link between secure tenure and diversity of rural livelihoods;
- Detail how access to land and secure tenure enhances rural development and resilience to disaster;
- Explain how insecure tenure leads to environmental resource degradation and vulnerability;
- Explain the link between security of tenure and improved environmental management and vulnerability reduction; and
- Explain how security of tenure encourages long-term investment and vulnerability reduction in informal settlements.

1. LAND TENURE, RURAL DEVELOPMENT AND OPPORTUNITIES FOR RISK REDUCTION

Poverty in Africa has a primarily rural face and will remain primarily a rural phenomenon for the foreseeable future (Sabates-Wheeler *et al.*, 2008; IFAD *et al.*, 2006). Access to land and security of tenure, especially for rural poor people, are central to economic growth and poverty reduction in rural areas (Clover & Eriksen, 2009). Land is the enabler of development and it fosters economic growth and poverty reduction. Very poor people tend to be landless or have limited access to land. Rural women, in particular widows and women-headed households, often have weaker land rights and as a result are among the most vulnerable in a society.

In the rural areas of Southern Africa land is not only the primary means for generating a livelihood but often the main vehicle for investing, accumulating wealth, and transferring it between generations. Thus, land policy is increasingly viewed as an integral element of a broader development process rather than as a string of narrowly oriented technical interventions (Deininger & Binswanger, 1999). The World Bank, whose land reform policy was first formulated in 1975, and initially

recommended, without reservation, that communal tenure systems be abandoned in favour of freehold titles and the subdivision of the commons, argues today that within the broader context of rural development some communal tenure arrangements do in fact increase tenure security and provide a (limited) basis for land transactions in ways that are more cost-effective than freehold titles. It is argued that although individual titling has great potential to increase investment and productivity, several preconditions must be satisfied for this to be a desirable intervention. The circumstances under which title is conferred are important; for example, titling should be area-based (that is, it should cover an entire area at once) and fit within a broader strategy of rural development. Otherwise, imperfections in other factor markets such as lack of access to capital and insurance markets, put owners of small tracts of land at a disadvantage and may undermine or even eliminate the advantages from possession of title, at least for the poor. Such imperfections which limit small-holder farmers' ability to cope with risk could offset the cost advantage that small family farms enjoy (Deininger & Binswanger, 1999).

Redistributive land reform, accompanied by new appropriate tenure arrangements can make a significant contribution to food security, households' nutritional well-being, and their ability to withstand shocks. Access to land remains fundamental to most family asset bases and to social sustainability, in terms of food security, as capital and buffer against external shocks and as a safety net (Clover & Eriksen, 2009). Further, landownership affects economic growth and poverty reduction through credit-financed investment. According to Deininger and Binswanger (1999), the underlying idea is that, without secure tenure accompanied by the full bundle of rights (use rights, exclusion rights, and transfer rights), the lack of collateral precludes landless individuals from making investments in education, livestock, wells, and so on, that would require credit, even though the investments would profit both the individual and society. Thus, secure tenure can encourage – or, through access to credit, enable – investments in developmental, disaster mitigating measures (Reale & Handmer, 2011).

Rural development and strategic approaches to poverty reduction in rural areas need to possess an understanding of the role that non-farm activities and income sources play in raising incomes in rural areas. The sustainable livelihoods approach (see Box

2) shifts emphasis from seeking improvements in forms of agricultural production to looking at the full diversity of the strategies by which poor people in rural areas sustain their livelihoods and seek ways to strengthen their options. Tenure reforms that foster a broad activity portfolio and income diversification are the most promising routes toward equipping households with more resilient livelihood sources (Messer, 2003). As noted earlier, one way to achieve a diverse activity portfolio is securing residential tenure for rural dwellers who supplement their on-farm activities with income generating activities in far off places.

Rural development is intricately associated with development and uptake of new appropriate technologies. However, research has shown that insecure land tenure is often a barrier to technology adoption. In a study of the extent to which extension education can promote adoption of cropping systems other than slash and burn Schuck *et al.* (2002) found that land tenure issues may limit the effectiveness of extension education in Cameroon. Their results indicate that higher visitation rates by extension personnel reduce the likelihood of farmers choosing slash and burn agriculture, but farmers with lower levels of land ownership are less likely to adopt alternatives than those with higher levels of land ownership. Similarly, Bezbaruah and Roy (2002) find that being a tenant farmer discourages the application of higher doses of fertilizers in Assam.

2. LAND TENURE SECURITY AND ENVIRONMENTAL MANAGEMENT

Land is central to the rural development and environmental challenges facing the region. As a principal source of natural capital and for earning a living, it is one of the most vital assets for millions of poor people in Southern Africa (Clover & Eriksen, 2009). The lack of secure tenure has been associated with the unsustainable use and degradation of natural resources. Helping communities develop structures that establish effective and secure tenure can enhance the sustainability of resource use, prevent environmental degradation, and promote the overall efficiency of land use. Evidence from elsewhere (Sotomayor, 2008) indicates that lack of secure tenure and land ownership, among other factors, limits the capacity that communities have to properly manage their territories or seek long-term investment for the proper

management of their environment and its resources. In other cases, farmers with uncertain land tenure have largely been unable to take up new innovations and technology, a common problem with tree planting in many parts of the tropics. Also, the land holdings often are too small and fragmented to make it compatible with this technology (Ramakrishnan, 2008).

It should be noted, however, that a direct relationship between tenure insecurity, especially as it relates to rural farmers operating under customary tenure, and environmental degradation is disputed in some quarters. A study by the Economic Commission for Africa in Southern Africa (2003) states that although customary tenure is partly responsible for land degradation, the behaviour that leads to land degradation by smallholder farmers under customary tenure cannot be linked to their lack of tenure security under this form of tenure. Instead, environmental mismanagement has more to do with other reasons such as lack of knowledge of conservation practices, use of traditional agricultural production practices that are not sustainable, and lack of inputs such as labour.

Nevertheless, tenure reforms are essential in the Southern African region to address issues of environmental management and disaster risk reduction significance. Tenure reforms can prevent exploitation of ecologically fragile areas such as hillsides, which leads to soil erosion and watershed degradation and thus increased natural hazard risk. In a report covering the period 1980 to 2000, Selebalo (2001) notes some of these issues regarding environmental management and disaster reduction, that motivated Lesotho's attempts to wrest land control from traditional leaders and introduce new types of tenure such as leasehold, namely:

- There is a persistent vicious cycle of growing food crops on marginal and highly erodible soils, adhering to unsustainable grazing patterns, rapid population growth and the degradation of the environment, i.e. the loss of land and gradual deterioration in yield;
- These land use practices are not only uneconomic and in a way a waste of human and natural resources, but at the same time contribute to the deterioration of the capacity of the natural environment for human subsistence; the assumption of relative food security in rural Lesotho is only a (however persistent) myth, since a growing number of households in agriculture are not capable of producing

enough food for their own consumption or a cash income to buy food on the market; and

- The current land tenure system contributes substantially to these processes: currently, there is no longer sufficient land produce available, the majority of Basotho have no access to land, and those who have it have uncertain security over it; thus, in spite of its aim to support subsistent agriculture, the rural tenure system is losing its role as a rural safety net.

Similarly, evidence from outside Southern Africa shows that tenure reforms can be used to promote improved environmental management and reduction of the risk of environmental disaster. Tenure reforms were a critical component of strategic interventions employed by a project designed to ensure sustainable use of available rangeland by pastoralists in Morocco following several consecutive years of drought which resulted in severe degradation of rangelands and overgrazing of areas around water points (Messer, 2003). Among tenure related interventions, livestock herders normally entitled to graze their flocks as they pleased were brought together to agree limits for their territories. Having agreed such limits the Government extended compensation in the form of barley or concentrated feed to the herders in exchange for ensuring a resting period to allow degraded rangelands to regenerate. This had a strong psychological impact on herders: the offer of compensation was proof that the government had acknowledged their right to these rangelands, and they had exercised their right to transfer ownership to government at a mutually agreed fee. Through this exercise, formerly severely degraded rangeland covering a total of 450 000 hectares has been rehabilitated.

3. TENURE REFORMS AND INVESTMENT IN RISK REDUCTION IN INFORMAL SETTLEMENTS

A huge number of informally settled people in the major urban centres of Southern Africa live on the peripheries of cities where they frequently settle in dry low-lying areas, close to rivers and streams – places local authorities consider inappropriate for human settlement (Bethke, Good & Thompson, 1997). Communities living in these informal settlements are particularly vulnerable to environmental hazards, whether these are as a result of the nature and location of the settlement itself, or

from threats originating outside the settlement (Napier & Rubin, 2002). Pelling (2007) notes that risk emanates from increasing poverty and inequality, crowded living conditions and the siting of residential areas close to hazardous industry or in places exposed to natural hazards as well as the modification of environments which generates new hazards.

In cities, a range of factors influence people's priorities resulting in low investment in planning security features and thereby substantially increasing vulnerability. A critical factor is land pressure and tenure; if people fear that their house could be bulldozed by the authorities (as is the case in many informally settled communities in Southern Africa cities), they will not invest in security measures (Wamsler, s.a.). Secure tenure provides a tangible asset, a contractual agreement between the citizen and the State, demarcating ownership of a plot of land. It is a promise of permanent residence and a clear statement that the government will not evict residents without much negotiation and compensation. When communities of the urban poor do not have ownership rights to their settlement, the impulse toward improvement is stifled because there is no incentive to invest in something that will eventually be bulldozed. But with a formal address and title agreement, communities naturally begin to build incremental, robust, structures because every investment is secure.

In the absence of secure tenure, residents have little incentive to maintain their dwellings, thereby increasing the vulnerability of their homes to hazards. In such situations there may be no incentive to make improvements such as drainage and terracing which reduce the area's susceptibility to floods (which occur frequently in informal settlements in South Africa) (Elo *et al.*, 1995). In this regard lessons can be drawn from the Rio Flood Reconstruction and Prevention project which followed the February to March 1988 floods that left 298 people dead, 734 injured and 18560 homeless in Rio de Janeiro. One of the strategies employed to ensure prevention of similar disasters happening in future was the provision of 11000 families in the *favelas* (informal settlements) with unrestricted and unconditional title to land on minimally serviced plots (Munasinghe *et al.*, s.a.). Such a move encourages vulnerable communities to invest in long-term measures that ensure the reduction of disaster risk, with full knowledge that their investment is protected by secure tenure.

A study (Field, s.a.) on the correlation of residential investment in informally settled areas in Peru with tenure security reveals similar, encouraging, results for the enhancement of risk reduction through tenure reforms in the region. Field (s.a.) examined the impact of a nationwide titling programme in Peru in which 1.2 million property titles were distributed to urban squatters on public land, focusing on the effect of increased tenure security on the rate of residential investment. Results of the study indicate that strengthening tenure security through property formalisation in urban squatter settlements has a large positive effect on investment. Increased security of tenure was shown to be associated with a 68% increase in the rate of housing renovation within only four years of receiving a title. Significantly, the study also revealed a considerable increase in renovations financed out-of-pocket and in total investment among non-borrowing households.

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APPENDIX 1: GLOSSARY OF TERMS

Access

The ability to use land and other natural resources (e.g., use rights for grazing, growing subsistence crops, gathering minor forestry products, etc.), to control the resources (e.g., control rights for making decisions on how the resources should be used, and for benefiting financially from the sale of crops, etc.), and to transfer rights to the land to take advantage of other opportunities (e.g., transfer rights for selling the land or using it as collateral for loans, conveying the land through intra-communal reallocations, transmitting the land to heirs through inheritance, etc.)

Bundle of rights

The bundle of land rights in any tenure regime consists of three types of rights: use rights, exclusion rights, and transfer rights.

Control rights

A right to control the management of the property. It may include rights to make decisions about how the land should be used including what crops should be planted, and to benefit financially from the sale of crops, etc.

Customary tenure

The tenure usually associated with indigenous communities and administered in accordance with their customs as opposed to statutory tenure usually introduced during the colonial periods. However, some countries in Africa are giving legal status to customary tenure. It often includes communal rights to pastures and exclusive private rights to agricultural and residential parcels.

Disaster

A serious disruption of the functioning of a community or a society involving widespread human, material, economic or environmental losses and impacts, which exceeds the ability of the affected community or society to cope using its own resources.

Disaster risk

The potential disaster losses, in lives, health status, livelihoods, assets and services, which could occur in a particular community or a society over some specified future time period.

Disaster Risk Reduction

The concept and practice of reducing disaster risks through systematic efforts to analyse and manage the causal factors of disasters, including through reduced exposure to hazards, lessened vulnerability of people and property, wise management of land and the environment, and improved preparedness for adverse events. *While the term “disaster reduction” is sometimes used, the term “disaster risk reduction” provides a better recognition of the ongoing nature of disaster risks and the ongoing potential to reduce these risks.*

Exclusion rights

The right to exclude unauthorised people from using the land

Formal property

Rights which are explicitly acknowledged by the state and which may be protected using legal means.

Freehold

The everyday expression for what is usually regarded as “ownership” providing the holder with use rights, control rights, and transfer rights and otherwise enjoyment of the land parcel to the extent permitted by law. The term derives from a particular type of tenure found under English common law, i.e. the land holder was free from the obligation of providing feudal services.

Gender

Gender refers to the social construction of roles of women and men and the resultant role-perceptions about men and women. There is a need to differentiate between sex and gender so as not to mistake one for the other. Sex is the biological difference between men and women and is the same all over the world. The roles and expectations of men and women are not the same all over the world. Gender

relations depend on context and can change over time. Gender relations are also affected by other determinants like religion, culture, class, caste or age.

Hazard

A dangerous natural phenomenon, substance, human activity or condition that may cause loss of life, injury or other health impacts, property damage, loss of livelihoods and services, social and economic disruption, or environmental damage.

Indigenous tenure system

Tenure system of local origin, see customary tenure.

Informal settlements

Residential areas that do not comply with local authority requirements for conventional (formal) townships. They are, typically, unauthorised and are invariably located upon land that has not been proclaimed for residential use. They exist because urbanisation has grown faster than the ability of government to provide land, infrastructure and homes. Informal settlements tend to be characterised by:

- Infrastructure that is inadequate
- Environments that are unsuitable
- Population densities that are uncontrolled and unhealthily high
- Dwellings that are inadequate
- Poor access to health and education facilities and employment opportunities
- Lack of effective government and management

Inheritance

The right to transfer property to one's heirs. In many societies, property descends to males, and females have no or little right to inherit. In some societies, tenure rules may provide for females to inherit but, in practice, daughters are expected to give up this right on the basis that they will, upon marriage, gain access to the lands of their husbands. In matrilineal societies, upon the death of the wife, property descends through the line of the matrilineal uncle, and the surviving husband may lose rights previously enjoyed. In patrilineal societies, the widow may lose rights and be evicted.

Livelihood

A livelihood comprises the assets (natural, physical, human, financial and social capital), the activities and the access to these (mediated by institutions and social relations) that together determine the living gained by the individual or household (Ellis, 2000)

Land reform

The redistribution of land to the rural poor for equity and agricultural efficiency purposes.

Land rights

Rights held to land and other natural resources. More than one person may hold rights to a parcel of land which gives rise to the concept of a “bundle of rights.”

Land tenure

The relationship, whether legally or customarily defined, among people, as individuals or groups, with respect to land and associated natural resources (water, trees, minerals, wildlife, etc.). Rules of tenure define how property rights in land are to be allocated within societies. Land tenure systems determine who can use what resources for how long, and under what conditions.

Land tenure reform

Changes to the rules of tenure. It can include the legal recognition of customary tenure rights, strengthening the rights of tenants, etc.

Open access

Tenure where there is no control on access to resources: specific rights are not assigned to anyone and no-one can be excluded. It may include rangelands, forests, etc., where there is free access to the resources for all.

Ownership

The rights to land that are, in everyday language, associated with the ability to use, control, transfer, or otherwise enjoy a land parcel as long as those activities are allowed by law. In statutory tenure ownership is often associated with freehold. However, land law does not tend to define explicitly what is meant by “ownership”.

Risk

The probability of harmful consequences or expected losses (death, injuries, property, livelihoods, economic activity disrupted or environment damaged) resulting from interactions between natural or human-induced hazards and vulnerable conditions.

Sharecropping

A form of tenure where a land owner allows a person (“sharecropper”) to use the land in return for a share of the crop produced on the land.

Tenure security

The certainty that a person’s rights to land will be protected. People with insecure tenure face the risk that their rights to land will be threatened by competing claims, and even lost as a result of eviction. The attributes of security of tenure may change from context to context: investments that require a long time before benefits are realized require secure tenure for a commensurately long time.

Title

The evidence of a person’s right to land, or “entitlement”.

Transfer rights

Rights that regulate how and to whom the landholder can transfer the land, including giving, inheritance, renting out, pledging, and selling land to others.

Use rights

Rights to use the land for grazing, growing subsistence crops, gathering minor forestry products, etc. Use rights may expand to include other commercial uses such as planting productive perennials or extracting soils, and gravel for sale or other uses.

Vulnerability

The conditions determined by physical, social, economic and environmental factors or processes, which increase the susceptibility of a community to the impact of hazards.

APPENDIX 2: LAND TENURE RELATED POLICIES, LAWS, AND PROGRAMMES IN SELECTED SOUTHERN AFRICAN COUNTRIES

COUNTRY	POLICY, LAWS, PROGRAMMES	KEY FEATURES/COMMENTS
Malawi	Constitution 1994 (section 20; 24(1))	- Provides for non discrimination on the ground of gender, among other grounds - Guarantees women the right to hold property, either jointly or severally
	Land Act, 1965	Is outdated, and does not guarantee women equal rights to land as men. Currently under review.
	Land Policy, 2002	Recategorises land into private land ¹ , public land ² , and government land ³ . It provides for equal rights for men and women, but without clear strategies to achieve this, it has been critiqued as being too gender blind.
	Prevention of Domestic Violence Act, 2006 (PDVA)	Has the potential to promote women's land user and control rights where they are violated within a domestic relationship through abusive conduct - psychologically, economically and physically
	Wills and Inheritance Act, 1967	Currently promotes inequalities between men and women with regard to their land rights by not allowing the inheritance of customary land and crops growing on such land.
	Community Based Rural Land Development Project (CBRLDP), 2004	Designed to increase the incomes of about 15,000 poor rural families by implementing a decentralized, community-based and voluntary approach to land reform in 4 pilot districts in southern Malawi. The approach to land reform piloted under the project includes (i) voluntary acquisition by communities of land sold by willing estate owners, transferred to communities by government, or donated by private individuals); (ii) on-farm development, including the establishment of shelter, and the purchase of basic inputs and necessary advisory services; and (iii) land administration, viz. the regularization, titling, and registration of beneficiaries' property rights in land.
Mozambique	Constitution	Guarantees gender equality, whereby both men and women are equal before the law in all spheres of life. ⁴

¹ Private land is land that is exclusively owned, leased, held and occupied under: freehold tenure, customary tenure, leasehold tenure.

² Public land is land which is held in trust and managed by the government or traditional authorities, and is openly used or accessible to the public. It includes land which is gazetted for use as national parks, recreation areas, forest reserves, conservation areas, historic and cultural sites, etc.

³ This is land acquired and privately owned by the government and dedicated to a specified national use at the discretion of government buildings, schools, hospitals etc; or government owned land leased for exclusive use by individuals, companies and institutions for which ground rent is often paid.

⁴ Article 36

LAND TENURE OPPORTUNITIES FOR REFORM

	Law of 1997 (Lei de Terras, Lei No.19/1997)	Creates a system called Direito de Uso e Aproveitamento da Terra (DUAT). The DUAT entails “user right titles,” where by individuals, households, groups and local communities can apply for DUAT from the State. Both men and women are entitled to apply for DUAT, regardless of marital status. They only have to prove that they can use the land for a productive enterprise.
	2004 Family Law	Addresses women’s and men’s rights to land by guaranteeing men and women equal rights with regards to property, and has the potential to impact directly on women’s access and control of land.
South Africa	1996 Constitution (Section 25 (5) & (6))	- Requires the State to take reasonable legislative measures within its available resources to foster conditions which enable citizens to gain access to land on an equitable basis. - Entitles a person or community whose tenure to land is legally insecure as a result of past racially discriminatory laws or practices to either a legally secure tenure or comparable redress to the extent provided by the law.
	1994 Land Rights Act, as amended by the 2004 Restitution of Land Rights Amendment Act	The 1994 Act aimed at restoring the property rights of persons and communities dispossessed of property as a result of racially discriminatory apartheid laws and practices. It established the Commission on Restitution of Land Rights and a Lands Claims Court for purposes of receiving and adjudicating restitution claims using a market based strategy. The 2004 Amendment Act expanded the scope of the Ministry of Land Affairs in Land restitution matters. The Act does not explicitly mention women as a group deserving of special protection.
	1996 Land Reform (Labour Tenants) Act and the 1997 Extension of Security of Tenure Act	Form part of the legal framework that governs land distribution and tenure reform in communal agricultural areas. These laws focus on protecting rural groups that live under insecure tenure arrangements due to racially discriminatory property and labour laws that existed prior to 1994.
	The 1997 White Paper on Land Policy	Framed a land reform strategy with the three components of land restitution, land redistribution, and tenure reform. ⁵
	Settlement/Land Acquisition Grant (SLAG), 1997	Introduced the provision of a grant for purchasing land, enhancing tenure rights, or for investing in infrastructure, home improvement and farm capital.
	2004 Communal Land Rights Act (operational in 2008),	- Combines customary land tenure practices and titling by vesting ownership of land in a large group that lives under the authority of a Traditional Council. - Land rights are administered by committees according to administrative powers conferred on a committee by the rules of the community

⁵ Land restitution, i.e. restoring ownership of land to persons who were dispossessed of it on racial grounds or providing them with just and equitable redress for their losses; Land redistribution, specifically, redistributing 30% of white-owned commercial agricultural land by 2014 through the provision of grants which facilitate the acquisition and development of land by Black citizens; Tenure reform, i.e. formalizing informal tenure rights and preventing private individuals or public agencies from arbitrarily evicting occupiers of land. Tenure reform laws aim to make land available for settlement and farming in rural and communal areas by setting out criteria for legally recognising consensual long-term usage and/or rental rights to land where none existed before.

LAND TENURE OPPORTUNITIES FOR REFORM

	The Land Redistribution and Agricultural Development Programme (LRAD), 2001	• Provided a grant, determined on a sliding-scale basis, and matched the applicants' own contributions— which could be in cash or in kind. • Focused on two components (i) transferral of agricultural land to distinct individuals and groups and (ii) the improvement of access to municipal and tribal land for grazing purposes.
	2008 Provision of Land Assistance Amendment Act	Regulates the provision of financial assistance for the acquisition or improvement of land and tenure rights. South Africa also has the 2004 Land Rights Act (operational in 2008), which combines customary land
	Land Tenure Security Bill, 2010	The Bill repeals the Extension of Security of Tenure Act, 1997, and the Labour Tenants Act, 1996. It seeks to give effect to sections 25(5) and (6), and 26 of the Constitution by making provisions for the following: • to promote and protect the relative rights of persons working on farm, person residing on farms, and farm owners; • to enhance the security of tenure of person residing on farms; • to create conditions conducive to peaceful and harmonious relationships on farms and in farming communities; and • to sustain production discipline on land in the interest of food security.
	Draft Green Paper on Rural Development and Land Reform, 2010	• To outline a new land policy framework and an omnibus of legislation consolidating all land-related laws. • Proposes an overhaul of the current land tenure system. A three-tier land tenure system is proposed, namely, state land under leasehold, private land under freehold with limited extent and foreign ownership with precarious tenure (Foreign ownership would have to be linked to productivity and partnership deals with local citizens).
Zambia	Republican Constitution (Article 23 (4) (c, d))	Recognises the application of customary laws in matters dealing with land.
	Lands Act of 1995	Provided that people in Zambia could only have user rights to land through a leasehold tenure of 99 years. Allows the State to convert customary tenure to a 99 years leasehold tenure if an application is made to, and approved by a Chief.
	Gender Policy, 2000	Recognises the fact that acquisition and ownership of land in Zambia continues to be a major hindrance to women's participation in national development.
	Matrimonial Causes Act of 1973	Entitles parties who are married under the Act to an equal share of property upon divorce. This limitation in the applicability of the Act implies that all women who are not married under the Act cannot enjoy the same rights to property upon divorce.
	Succession Act of 1989	Supersedes customary law, and confers inheritance property rights for spouses (20%), children (50%), parents (20%), and eligible dependants under 18 years (10%).