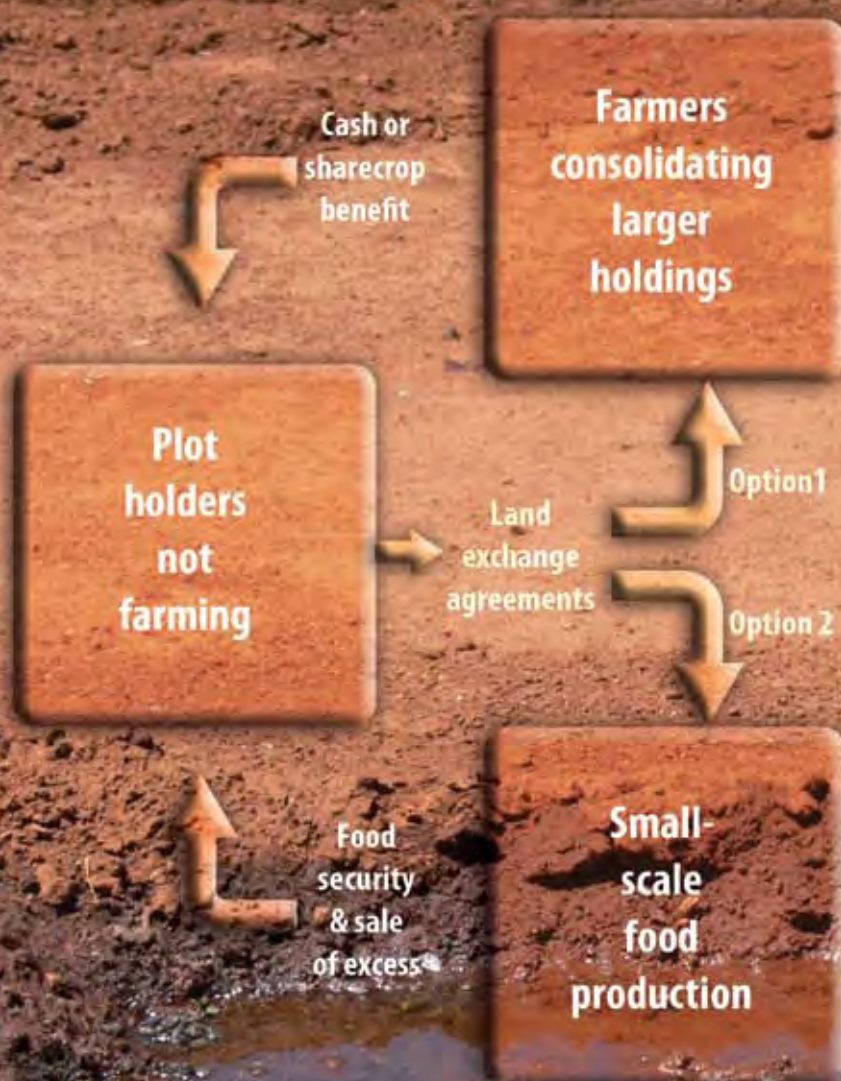


Developing a Land Register and a Set of Rules for Application of Infield Rainwater Harvesting in Three Villages in Thaba Nchu: A Pilot Project

S Manona & M Baiphethi



TT 367/08



Water Research Commission

**DEVELOPING A LAND REGISTER AND A SET
OF RULES FOR APPLICATION OF INFIELD
RAINWATER HARVESTING IN THREE
VILLAGES IN THABA NCHU:
A PILOT PROJECT**

Report to the Water Research Commission

by

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EXECUTIVE SUMMARY

The Water Research Commission (WRC) is supporting a five (5) year solicited research project in various villages around Thaba Nchu, titled, "Social and economic factors affecting the adoption of rainwater harvesting and conservation practices". The project commenced in April 2006 and follows on other WRC funded projects. To complement the broader research project, the WRC contracted Umhlaba Consulting Group to develop a land register and facilitate the development of rules for local land administration for three villages (Potsane, Feloane and Gladstone). Prior to the commencement of this assignment, the University of Free State had completed soil surveys in the three (3) villages, the intention of which was to identify soil suitability for infield rainwater harvesting (IRWH).

The process was initiated on 18 October 2006 with a reconnaissance field visit by Umhlaba, which laid the basis for the drafting of a proposal. The first phase of the assignment was initiated in January/February 2007 through a consultation process with a range of statutory bodies, intended to inform them of the scope of the process, expected outputs and to seek input as well as mobilise support for the process. The second phase involved a consultation process with existing organisations and community members. The third phase entailed a tachy-numerical survey of arable fields, which yielded the actual land register. The fourth and final phase of the assignment in January 2008 entailed the engagement of land rights holders on the land register and a survey of the land owners using a semi-structured questionnaire to determine some important perceptions about access and administration of land. The process of developing the rules, to aid land administration and access, ran parallel to the second phase and was concluded alongside the fourth phase of the project.

The process received overwhelming support from both statutory bodies as well as community-based structures. The process revealed the complex nature of land tenure and the total collapse of land administration in the three villages. The underlying drivers of the collapse of land administration can be attributed to a lack of a coherent policy and legislative framework since 1994. On the one hand government discontinued the implementation of permission to occupy (PTO) legislation and did not replace it with new legislation, while other organisations that were historically key role players in land administration were removed from the functions they played in the past.

The interactions with the selected communities revealed that in Feloane and Potsane there was still consensus on who the rights holders are in relation to arable land. The situation was much more complex in Gladstone, resulting from original arable rights holders leaving the village for Botshabelo township. A survey conducted among the three villages revealed a widespread support for extension and/or revitalization of cultivation to arable fields, albeit with conventional technologies in mind, as shown by the appeal for the provision of machinery commonly used in conventional tillage methods. The observation was not surprising since the farmers had not been exposed to the use of the IRWH techniques beyond the household food plots. Furthermore, land rights holders expressed sufficient support for an improved local land administration system that would support land exchange agreements. While fencing of the fields does not necessarily fall within the realm of land administration, it was seen to be a major constraint towards the cultivation of arable fields. This is largely because of the threat of damage to crops by livestock from within and the neighbouring villages.

Following from support to developing and/or strengthening local land administration, an initial framework of rules that would govern local land administration was agreed to by the three villages. This process was undertaken mindful of the lack of supportive legislative framework and therefore lack of enforcement mechanisms. Nonetheless, the communities were willing to devise and revitalize some of the traditional and collective initiatives to ensure the launching of the local land administration system. There was consensus across all three (3) villages on how a local land administration structure should be set up. The process of setting up of rules was seen as a dynamic and continuous process which should be facilitated by the local land administration structures over time.

The study recommends that all the high level organisations involved in the process should start by developing a memorandum of agreement, which should provide a guide on roles. The study further recommends the idea of extending IRWH to arable fields should start with a demonstration to allow participatory evaluation and enhance further knowledge sharing concerning the use of the technique over larger areas. In the likely event that a consensus is reached about the desirability and sustainability of the system in larger areas, the expansion process should start with organisation building. This should also run parallel to a complementary and participatory land use planning exercise to assist local communities to agree on land use. On the basis of

an adopted land use plan, various blocks of land could then be fenced in a phased manner, to allow for a gradual growth of the project.

ACKNOWLEDGEMENTS

This project was initiated and funded by the Key Strategic Area : Water Utilisation in Agriculture of the Water Research Commission. The support and guidance of Dr Gerhard Backeberg in this regard is gratefully acknowledged.

The research for this report was done in collaboration with Mr Mompoti Baiphethi and contributes to the research done as part of WRC project K5/1648 "Assessment of the social and economic acceptability of rainwater harvesting and conservation practices in selected peri-urban and rural communities" which is being undertaken by the University of the Free State and the University of Fort Hare. The findings and recommendations regarding a set of rules to gain access to land for rainwater harvesting and conservation should also be read in conjunction with the recommendations of the report by Dr Malcolm Hensley *et al.*, 2007 on "A procedure for an improved soil survey technique for delineating land suitable for rainwater harvesting" (WRC Report TT 311/07).

CHAPTER 1

INTRODUCTION

1.1 Background

The Water Research Commission (WRC) is funding a 5 year research project in rural villages around Thaba Nchu, titled *Social and economic factors affecting the adoption of rainwater harvesting and conservation practices*. The project commenced in April 2006 and is lead by the University of the Free State, even though it was commissioned as a solicited project in 2005. The project follows on other WRC funded projects in the same area that aimed at the improvement of crop production, thus poverty alleviation, through the use of infield rainwater harvesting (IRWH) techniques developed by the Agricultural Research Council's Institute for Soil Climate and Water (ARC-ISCW).

During the 2001/2002 growing season demonstration plots were used to demonstrate the technique in a few villages and on a trust farm. According to Botha, Baiphethi, van Rensburg & Anderson (2004) in excess of 950 households from 42 villages and one trust farm have employed the technique successfully in their homestead food gardens. The perceived success of the project on homestead gardens, led the community, in collaboration with the WRC embarking on a drive to facilitate the expansion of the project to the arable field allotments. As part of this process a soils analysis (soilscape) of the arable fields was undertaken (Hensley *et al.*, 2007). Arable soil survey revealed that the area of good land for Infield Rainwater Harvesting (IRWH) amounted to 1,177 ha in Gladstone and 183 ha in Feloane and Potsane.

In pursuance of the objective of extending the project to arable fields, in 2006, the Water Research Commission (WRC) invited Umhlaba Consulting Group to submit a solicited proposal to develop a land register for three (3) selected villages (Potsane, Feloane and Gladstone) in Thaba Nchu in the Free State Province, which fall under the jurisdiction of the Motheo District Municipality and Mangaung Local Municipality. The proposed development of a land register was in support of the 5 year rainwater harvesting and conservation research project.

1.2 Objectives

The main objective of this assignment was to develop a land register for all arable land that has high potential (as determined by the soil survey), for the use of infield rain water harvesting (IRWH) in the villages of Potsane, Feloane and Gladstone.

The primary objectives of creating a land register are as follows:

- To provide accurate information and clarity on land sizes, land rights on all arable fields that could possibly be available for the extension of crop production, preferably with the IRWH technique.
- To provide a tool that will be understood by community members in support of local land administration systems.

Secondary objectives of the assignment were to:

- Support the land owners and community members in developing a set of rules for local land management and administration in support of local land exchange agreements (leases and share cropping arrangements) between community members.
- Provide the land owners and the community with a framework that can be used for land use planning as well as for planning of agricultural production.
- Create a framework that could be used in facilitating the transfer of land between those who have land rights, but who are not farming and potential lessors or sharecroppers (as shown in figure 1 below). This would potentially create opportunities for access to land for smallholders or result in more successful farmers consolidating smaller land units into more viable economic units, where these indicate economic viability.

It was envisaged that the basis for success of the system was that a locally agreed system of land administration would be developed in consultation with land rights holders, various members of the community and other land administration organisations.

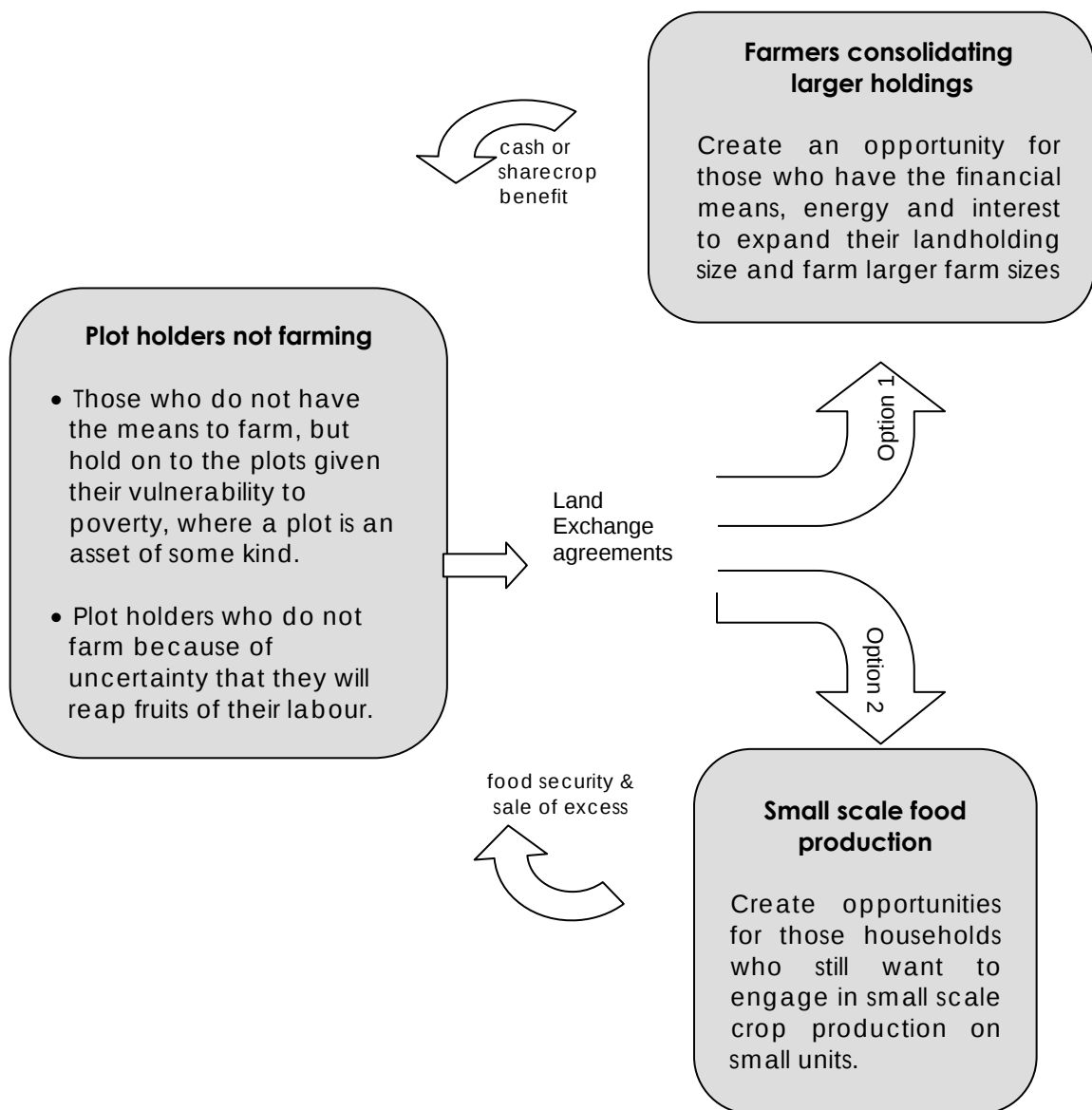


Figure 1: Schematic representation of the possible land exchanges among community members

CHAPTER 2

PROCESSES FOR THE DEVELOPMENT OF A LAND REGISTER AND THE RULES

2.1 Outline of the process

The assignment was carried out in four phases:

- 1 Initial consultation with statutory bodies,
- 2 Initial consultation with the community,
- 3 Tachy Survey and creation of a land register and
- 4 Final consultation and development of rules.

The first phase was preceded by a reconnaissance field visit to the proposed project site for a briefing by the WRC on 18 October 2006, which was used to gather information which would later be used to formulate the project proposal. Both the WRC and the University of Free State (UFS) participated in the reconnaissance field visit.

The project facilitation team was constituted by Umhlaba Consulting and Mompoti Baiphethi (a PhD student at the University of Free State) who directed all the phases. In addition to facilitation, Mompoti also provided critical services of translation between Tswana and English. Nonceba Mdibe, then a student at the University of Free State and Nhlonipo Nhlabatsi of Agricultural Research Council (ARC), at Glen also took part in the community consultative processes. It was critical that all the parties (Umhlaba, UFS and ARC) are present to ensure that communities do not view the land register development process as a separate process from the 5 year research project. The facilitation used observation and participatory methods throughout the study and also conducted a review of relevant literature.

2.2 Phase 1: Initial Consultation with statutory bodies

The first phase of the project was intended to be a broad based consultation process with key statutory bodies, including District Municipality, Local Municipality, Department of Agriculture (DoA), Department of Land Affairs (DLA) and the Local Municipality, etc.

This component of the consultation process was intended to;

- Inform statutory bodies of the scope of the process, expected outputs, possible implications, and support required from various organisations.
- Identify possible synergies with other government programmes or initiatives. The DLA was to be shown how the process supports a land rights enquiry process that is envisaged in the Communal Land Rights Act (CLARA).
- Develop an understanding of roles and responsibilities of other government organisations in terms of either directing or supporting the process.

The first statutory body that was consulted was the Department of Agriculture on 23 April 2007 in Thaba Nchu, represented Mr Dan Makena (Deputy Director) and Mr Lesala Lehloho (Extension officer).

The second statutory body that the facilitation team met was the District Land Reform Office in the Department of Land Affairs in Bloemfontein on 7 May 2007, with Mathebe Mokone (Planner).

The third meeting held by the facilitation team was with the representatives of the University of Free State's Department of Agricultural Economics and the Agricultural Research Council with a view to ensure that Umhlaba's process is understood clearly as a complementing the work on the 5 year research project.

The project facilitation team made various attempts to hold a meeting with the Local Economic Development (LED) officers of both the District and Local Municipalities. Both meetings never materialised, and the final response was that Umhlaba was referred to the Department of Agriculture. It is not clear how both the Local Municipality and the District Municipality understood the project.

2.3 Phase 2: Initial Consultation with the communities

A broad-based community consultation process was initiated starting with a meeting of Barolong Tribal Authority council on 7th May 2007. After the meeting with traditional leaders a further series of community meetings were arranged through the respective village headmen. The overall thrust of the consultative meetings with community members at a village was about informing the communities about the purpose of the assignment, scope of the process, expected outputs, and discussing possible implications.

The first consultative meeting in Potsane took place on the 8th of May, while that of Feloane, took place on the 20th June 2007. The consultative meetings in Gladstone took place over two days, the 20th and 21st June 2007. On the 20th, a meeting was held between the headman and the facilitation team, facilitated by one IRWH farmer Mr Molatodi. The headman was also in attendance of the Tribal Council and was aware of the objective of the project. For this phase the discussions focused on gathering information on how the land administration system was functioning and on getting local level support for the process.

The consultative process managed to provide all the stakeholders with the necessary project information, resulting in a significant buy-in from those in attendance, particularly the farmers who had already participated in the IRWH project. The various meetings threw light on the history and current state of land tenure and land administration in the three villages and that is discussed in detail in Section 4 of the report. Based on the overwhelming support given to the project, the next phase of surveying the fields was started.

2.4 Phase 3: Tachy survey and creation of land register

The process of conducting tachy-numerical survey¹ the arable fields started on 18 June 2007.

- A set of aerial photography together with soil survey data (mapped soilscape data) was obtained from UFS in electronic format, as well as in hard copies. The data was captured onto Umhlaba's GIS system. Due to the quality of the photography attempts were made to source alternative aerial photography from the Surveyor General (SG). The photography from SG was not used in the end, because the images were not geo-referenced.
- A local unemployed female youth with grade 12, Kelebogile Modise, was identified with the assistance of Mompoti Baiphethi and ARC, as a prospective trainee in operating a GPS. Since she did not have basic computer literacy skills, prior to the start of the tachy survey, she was provided with basic theoretical and operational skills in operating the GPS and downloading data. She was mentored by a more experienced operator for the duration of the survey process. After two days, she was confident and able to operate the GPS on her own, even though there were some minor challenges. The newly

¹ Rapid location of points using a Geographical Positioning System (GPS).

acquired skills would be useful when the land register process is rolled out to the rest of the villages.

- The arable allotments were surveyed with active participation of villagers under the guidance of an experienced GPS technician, who took overall responsibility for operating the GPS and training of the local assistant. Each villager was always watched by other land owners as he or she walked around the perimeter of each field. A sub-metre accuracy GPS was used set to pick up coordinates at one (1) metre intervals. The process was designed such that the GPS was carried by the owner of each land parcel (where the land owner was available), by walking over the boundaries of each land parcel.
- Because it was not always possible to have all land owners in the fields, other members of the community who had knowledge of the land boundaries helped carry the GPS along land boundaries. Shape files of the surveyed fields were first saved to the GPS and at the end of each day downloaded to a computer to enable identification of overlapping boundaries. No conflicts of boundaries were picked up.
- All electronic data was processed in Umhlaba offices, with each land parcel allocated to a particular owner and each parcel assigned a unique number and size recorded. Land registers of each of the three villages were produced, overlaid with the soil survey data. Names of land owners were recorded on each land register, next to a corresponding land parcel number.

In August 2007 a presentation of the draft land registers was made to the research team, to consider the following;

- Provide a report back from the land register development process to the broader team.
- To consider the implications of the land registers. This should include issues such as appropriateness of the current land sizes, layout of land parcels, and how to take the process forward etc.
- Alignment of the research and the land register development process.
- Consideration of rolling out of the next phase of the process.
- Brainstorming some of the basic land administration requirements that should be factored into the community workshops.
- Some initial discussions of options of possible institutional arrangements.

Based on the outcome of these discussions, Umhlaba proceeded with phase four discussions.

- After A0 size copies of the registers had been produced, the first drafts of the land registers were presented to the three villages for confirmation of data and possible correction. During this consultation process, initial ideas on the set of rules were also solicited.

2.5 Phase 4: Final consultation and development of rules

A detailed survey (research) was conducted between 7 and 11 January 2008 wherein a semi-structured questionnaire was administered among land owners in the villages of Feloane, Potsane and Gladstone. The purpose of the visits was threefold. Firstly, the visits were aimed at making a presentation of the draft land registers (Figure 2) and to solicit input and corrections to the register from each village. Secondly, a draft set of rules based on input received from initial consultation was presented by the team to the villages for discussion with a view to determine applicability of the draft rules to each village and the possible improvements of the rules.

Input made from the village meetings was evaluated by the team, looking at legal as well as practical implications before incorporation into the rules. Finally, a short survey was carried out using a questionnaire to further understand how the villagers perceived various land exchange arrangements and how these new arrangements could be administered. Detailed results of the survey are in Chapter 6 of this report.

CHAPTER 3

RESULTS OF THE INITIAL CONSULTATIVE MEETINGS

3.1 Issues from the initial meeting with Department of Agriculture²

- The area used to be historically administered by the former Bophuthatswana homeland government. There was no indication of where land records from the homeland administration were. Mr Makena noted that the Department of Agriculture was aware that PTOs were issued for landholdings in the 3 villages, but his office did not have a copy the PTO registers.
- There was agreement with the Department that the proposed land register would focus on high potential soils. He was of the opinion that the proposed land register would benefit the Department of Agriculture in its own planning for infrastructure development. The Department of Agriculture would like to have copies of the land registers overlaid on the soil survey map.
- The Department pointed out that it was involved in various projects in the communal areas, including livestock improvement, drought relief, etc. Mr Makena further indicated support for the initiative and pointed out that his office would do anything to support the process.

3.2 Issues from the meeting with the Department of Land Affairs³

- Ms Makoene suggested that any agreements reached with the communities should be reduced to writing and signed, warning that in their experience some of the community stakeholders had a tendency of changing their positions based on politics of the area.
- Ms Makoene pointed out that there were a number of challenges that the DLA was faced with in respect of implementation of CLARA . Firstly DLA was engaged in a process of developing regulations. Secondly, there was general lack of clarity within the Department of how the tenure reform process would unfold in many of these situations. Thirdly, CLARA was facing constitutional challenges. However, based on information provided, the DLA did not see any contradiction between the current policies and the proposed land register process.

² Meeting held on 23 April 2007

³ Meeting held on 7 May 2007.

- The DLA warned that the process of creating a land register should as much as possible avoid creating any new rights, but should assist in creating clarity, for the purposes of promoting agricultural production. Any new rights created should be as a result of due processes by the rights holders. In this process the facilitators should avoid undermining security of tenure provided in existing policies.

3.3 Issues from the meeting with University of Free State's Department of Agricultural Economics and the Agricultural Research Council

- The facilitation role of Mompoti Baiphethi in the projects was discussed, in the context of him being partly with the Human Sciences Research Council in Johannesburg. Travel costs from Pretoria to Bloemfontein on a regular basis were identified as a challenge that needed to be managed.
- The University promised to make available aerial photography and the soils analysis data in electronic format to Umhlaba.
- All the parties agreed that there was no point in surveying areas with low and medium potential soils, as this is only likely to raise hopes unnecessarily. It was suggested that the inclusion of medium potential soils in the project would potentially increase land that would potentially be removed from grazing and therefore spark resistance from livestock owners. A concern was raised that the project should not change current land use radically towards cultivation, as this was likely to be opposed by livestock owners.

3.4 Issues arising from the initial consultative meeting with Barolong Tribal Authority

While the project facilitation team initially wanted to make arrangements to meet the Chief first, it happened that the tribal council was in session. Therefore, the team was allowed to make a presentation to the full sitting of the tribal council. The council comprises of all the village headmen and it sits on a weekly basis. Unfortunately the Chief was not in attendance on the day of the presentation. The facilitation team was given an opportunity to address the council with the understanding that the Chief was to be briefed later and that the presentation was to be kept on record in the council's minutes.

The team explained the objectives of the exercise and an example of a land register was presented to the council. In response to the question on why the assignment was limited only to the three villages, it was explained to the council that, while it

would be ideal to perform the exercise on the whole area, the current project would only be piloting it on three villages mainly because these villages already have their soils surveys completed. It was also made clear that once the register is in place, the communities would decide how best to utilize it in either reviving or recreating their land administration system. In addition, the team noted that it required support from the Tribal Authority as they are a critical player in local land administration in their area. In that regard, the tribal council's approval would be followed up with further consultations with the selected villages.

The following questions and comments were made;

- The headmen wanted reassurance that the land register will not conflict with the current system of administering land as currently understood by the traditional leaders.
- Another question was what other direct benefits will stem from their participation in the exercise for their communities. It was explained that the efficacy of the exercise will be dependent on the communities establishing and enforcing rules and regulations that are agreed on.
- There was a concern that while some headmen have succeeded in fencing lands within their jurisdiction, the fences get quickly vandalised. This reflected lack of confidence in the policing aspects of land administration.
- In the end, the council gave its full endorsement of the assignment with the understanding that similar consultative meetings should be arranged at a village level.

3.5 Potsane initial consultative meeting

Attendance of the community in Potsane was considered poor (about 30 in attendance), and mainly dominated by the IRWH farmers. This, however, could be expected since the farmers are the ones who are more interested to start cropping their communal fields. But the team explained to the gathering that the exercise was meant for all members of the community (land owners, landless and livestock owners).

The meeting started off by establishing how many people in attendance 'owned' crop fields. While the majority of those who attended had arable fields, there were some who did not have any. The participants argued that most of the allotments have been lying fallow for a considerable period of time, mainly due to the unfavourable climatic

conditions as well as poor access to implements and technologies. They further pointed out that it is impossible to grow any crops because most of the land is not fenced, due mainly to vandalism. However, the team tried to echo that once the communities have a set of rules that are agreed upon, it can be possible to still grow crops even though there are no perimeter fences. The participants warned that while it would be possible to have local rules, livestock from other villages would still pose a major challenge.

On the question of growing crops without perimeter fences, the residents acknowledged it is possible but it would be difficult to control livestock (and thus get appropriate compensation) from the adjoining villages. The desire to be assisted with fencing as well as machinery to expand the IRWH to the fields came very strongly. The team did acknowledge the difficulties that the community faces as regards land administration. Among them is the collapse or lack of clarity on the role of the tribal authority in land administration. This has resulted in most arable land being used as grazing even though it was meant for crop production. However, the participants were optimistic that they can be able to agree on establishing new rules or resuscitating others. The meeting ended with the team encouraging the attendants to spread word in the village of the impending exercise and request their cooperation.

3.6 Feloane initial consultative meeting

Attendance was quite good compared to that of Potsane, with about 60 people initially, and numbers growing during the course of the meeting. The purpose of the exercise was explained to the community. The questions that emanated from the discussions with the community included:

- Who owns the land?
- Why is the exercise important/how will it assist the community?
- Is the exercise going to provide any material benefits/inducements to those involved in the community?
- Is it just right for people (outsiders) to do research without consulting with the village/village leadership? (This was in reference to the soils investigations)
- Who is going to use the land?
- Are there any people who have been identified to benefit directly from the exercise?
- Is the project going to assist with fences?

- Who will be responsible for land?
- The community also wanted to know if the exercise is aimed at specific members of the community.

The community representatives were assured that the team acknowledges the existing land ownership patterns and the exercise will at the very least strengthen that, in as far as everyone will know exactly where and how big their allotment is. It was explained that the land register process will only help create clarity as well as start a dialogue between land owners and those who do not have arable land. It was explained that the exercise could facilitate an engagement between those who have land but cannot use it with those who do not have land but interested in crop production.

The facilitation team made it very clear to the community that there would not be any direct/immediate material benefits but the results of the exercise might be helpful for future request of material assistance, e.g. from government. It was explained that while the exercise stems primarily from the IRWH farmers in the area, the final outcome will benefit the broader community. The exercise, primarily aims to take stock of available land, who owns it and perhaps start discussions around the resuscitation of crop farming in the communal croplands.

As for the fences, the exercise in and of itself will not be able to assist with fencing but it may assist in efforts to source assistance in that regard. It was also explained that the exercise is not going to do any new allocation of land but will facilitate land exchange agreements between various community members.

3.7 Gladstone initial consultative meeting

The attendance of the consultative meeting in Gladstone was considered not to be satisfactory, with approximately 60 participants. This was due to a combination of factors, which include the extremely cold weather, the feedlot meeting in the nearby village and the fact that it was the day of prayers for women's church groups in the key church denominations. Also of significant importance was a memorial service that was to be held that same afternoon for a deceased community member. The headman, on behalf of the community, apologised for the poor attendance.

The purpose of the project was explained by the facilitation team. From the meeting, the following issues came out:

1. The facilitation team was informed that there are currently three large parcels of land for crop production; however, one patch has already been allocated to the IRWH farmers to use in their up scaling project. The first piece of land has not been used for a long time, the second piece of land was used by the former village agricultural cooperative (Ntshinoga project as shown later in the land register), and the third was cropped as individual family units. The meeting pointed out that community still knew who members of the cooperative were, as well as those who surrendered their individual arable field to the cooperative.
2. The facilitation team was informed that over the years, the village had grown in size with new households coming from outside the community. The new community members do not currently have cropland allotments. In the same light all the 'old' households in the community have specific allotments and the headman, with the assistance of his 'village council' (*bontate ba lekgotla*) can help identify each household's allotment in the communal crop lands.
3. As in other villages, the issue of perimeter fences and agricultural implements was raised as a major constraint to crop production. As a result most of the croplands had been turned into pasture. Whenever the issue of implements were mentioned, it was clear that the participants had conventional tillage in mind, rather than IRWH.
4. There was also an agreement that there has been a collapse in the administration of land, which was historically partially done by the Justice Department, the tribal authority and the Department of Agriculture.

At the end of the meeting, the headman promised to encourage the community to participate in the tachy survey that was scheduled for the following week.

CHAPTER 4

LAND TENURE AND ADMINISTRATION

4.1 Conceptual definition of land tenure

Land tenure commonly refers to the terms in which land is held, or the rights and obligations of the holder of the land. Alternatively it can be understood as an individual's or group's perception of his/her/its rights to a piece of land on a continual basis (free from imposition or interference from outside sources) and the entitlement to reap the benefits of labour or capital invested in the land. Definitions of land tenure have three components, namely breadth, duration and assurance (Adams, Sibanda & Turner, 1999).

- Breadth refers to the quantity or bundle of rights held. One holds with complete assurance all rights embodied in his or her tenure including the right to forbid others from exercising the rights in question.
- Duration is the length of time that a given right is legally valid. The horizon is sufficiently long enough to enable the holder to recoup with confidence the full income stream generated by his/her investment. This has implications for short term inputs versus long term capital investments.
- Assurance implies that the rights and duration are known and held in certainty.

The rights associated with land tenure are:

- Use rights – the rights of a holder to utilise the land.
- Transfer rights – the rights of a holder to transfer their rights to someone else by means of sale, mortgage, leasing, renting or bequeath.
- Exclusion rights – the rights of a holder to exclude others from claiming use access or transfer rights.
- Enforcement rights – legal, institutional and administrative provisions which guarantee rights (Feder and Feeny, 1991).

4.2 Permission to Occupy (PTO)

A PTO, as practiced in the South African context, is a permit for occupation of an unregistered state or trust land for a specific purpose. All of the PTO systems, used in trust land and the former homeland areas, were variants of Proclamation R188 legislation. These systems were founded on the notion of land being held in Trust by government. Government was in all situations the owner of the land, the developer

and the administrator of land, meaning that there was no distinction between ownership and governance.

PTOs were issued for either residential and/or arable allotments. Unlike freehold title, a PTO is a land right which is attached to a person, not to a parcel of land. A PTO was issued to a community member who was a head of household (i.e. black, male and married), and passed from one generation to another through the male line. The *de facto* situation in Thaba Nchu suggests that the patrilinear principle has not strictly been practised. It was free, issued for life, not transferable, and not usable for financial security.

The residential PTOs relate to a household stand of between 40 and 50 square metres, some of the older families (in a locality) were also allocated arable allotments of varying sizes, ranging between 0.5 and 12 ha. Up until around 1992 the system of PTOs was administered consistently in Thaba Nchu, by Agricor in association with the Department of Agriculture. As part of its role, Agricor maintained the PTO register.

However, the numbers of households that have been allocated residential stands has increased over the years, thereby resulting in a situation where ***a number of the residents do not have rights to arable allotments***. The problem is further compounded by a lack of a local land market which has led to a situation where ***land rights to arable allotments are tied to the original families allocated*** even though most of the rights holders may and/or are no longer interested in crop production.

The allocation of a PTO required recognition of community membership by the Tribal Authority, demarcation of the site, recording in the land register and the issuing of PTO by the Agricor, with the magistrate playing a coordinating function. This procedure for tenure was later linked administratively to tax collection and 'betterment' planning. In 1994 most of Agricor's staff was taken over by the Department of Agriculture and the land administration functions were taken over by Agri-Eco. The major deterioration of the system started around this time, when Agri-Eco lost control of land allocation (Department of Land Affairs, 1998).

While this is the case, the Minister of Land Affairs has not delegated the authority to administer the relevant legislation either to her own department or the province. Consequently no valid PTOs have been issued since 1994, although the rights they represent still exist.

The cadastral plan over which the three villages are situated suggests that the **villages were established over a pre-existing cadastre** of what used to be commercial agricultural farms. While village members have knowledge of what must have been the envisaged village boundaries, these do not correspond to the underlying farm cadastral information. This is an overarching challenge which would ideally be resolved through broader land tenure reform processes that would be spearheaded by the Department of Land Affairs. At the time of conducting this assignment there was very little legal basis that could support the process, however consideration was taken to avoid breaking existing legislation and policy.

The present tenure situation in Thaba Nchu is the outcome of a complex interplay between history as outlined below and a suite of post-1994 land reform laws and procedures which have only been partially implemented. The post 1994 battery of legislation includes:

- Interim Protection of Informal Land Rights Act (IPILRA) 31 of 1996.
- Restitution of Land Rights Act 22 of 1994.
- Communal Property Association Act, Number 11 of 2004.
- Communal Land Rights Act 11 of 2004.

Taking into consideration the definition of land tenure and the current situation in Thaba Nchu, far reaching implications arise. Among these are:

- The legal status of PTOs is in serious doubt and a matter of serious debate. While many regard PTOs as an insecure form of tenure, the *de jure* situation in Thaba Nchu is that land rights holders believe that their rights are secure. Put differently PTOs can be classified as 'putative rights', which can be defined as an unlawful land tenure right, believed by the holder thereof, in good faith, to be lawfully held (Sibanda, 2008).
- Legally the PTO cannot be transferred, by means of sale mortgage, lease, rental or bequethal. In the light of this condition, the introduction of a land exchange system over the PTO does pose legal challenges. After more than 10 years into the new political dispensation, government still has to take a firm stance on what it would do with the PTOs.

4.3 History of Land Administration

Westaway (1996) suggests that understanding the relationship between land tenure and land administration is to overcome a major conceptual hurdle, because land

administration means different things to different people. The Green Paper (Department of Land Affairs, 1996) defines it as “the functions involved in regulating systems of land use planning, control and development, land transfer and land tenure.” A much more useful way of conceptualising land administration is that it is a list of functions that make a given land tenure operational. Land administration provides mechanism for allocating, regulating, sustaining and enforcing rights and responsibilities concerning land” (Westaway, 1996).

Alberts *et al.* (1955) cited by Westaway breaks land administration into the following categories of functions, juridical, regulatory, fiscal and enforcement;

- juridical function entails allocation of rights to land, delimitation of parcels, adjudication and registration (recording of rights).
- regulatory functions comprise land use controls (all regulations).
- fiscal functions are used to meet a range of economic and social objectives (e.g. revenue collection).
- enforcement functions enforce responsibilities and regulations.

In 1996, the Department of Justice, which historically played a critical coordinating role in the land administration process, was removed from this function. This, combined with a lack of clarity of the role of traditional leadership (who historically played a largely maintenance and enforcement function) resulted in the current state of collapse of land administration. Local civic association started to fill the land allocation vacuum, albeit without much success. The current situation is that there is confusion of who is responsible for which elements of land administration between traditional leadership, Department of Agriculture, Provincial Department of Housing and the Department of Agriculture. Current policy allocates the land use planning function as a local government responsibility. Alongside this the Chiefs and the Tribal Authority structures continue to be perceived to have an important role in the allocation of land albeit outside the framework of the law. In a sense, clarity is needed in respect of roles of traditional structures in planning and land administration.

The three villages which are subject of this report fall under the jurisdiction of Moroka chieftancy, which exercises governance through a tribal council. The tribal council is constituted by headmen, with one responsible for and representing each administrative area (village). Parallel to the traditional system, the villages are under

the jurisdiction of a local municipality which interacts with local communities through a ward committee system.

In an attempt to temporarily address the insecurity and vulnerability of land rights holders in the former homelands and former South African Development Trust (SADT) areas, the Interim Protection of Informal Land Rights Act, 1996 (Act No. 31 of 1996) (IPILRA), was promulgated in 1996. Until the Communal Land Rights Act is implemented, IPILRA provides the primary framework for regulating development decisions in these areas. This Act provides protection against deprivation of informal land rights to land and ensures that any processes of land use change happen only with the consent of the rights holder. This means that no person or sphere of government (national, provincial or local) can disregard the views and concerns of communities, groups or individuals who have underlying historical or common law rights to land which is registered as state land (Mayende, 2001). The effect of this legislation is that where land is being developed or transacted, the people with informal rights to the land must be treated as land owners.

The Communal Land Rights Act (CLARA) No 11 of 2004 communicates the Department of Land Affairs' intent to secure tenure rights for the people living on the land by divesting the state of all ownership (Mayende, 2001). It seeks to provide for legal security of tenure by transferring communal land to communities or by awarding comparable redress (Sibanda, 2008). CLARA is unfortunately on hold for a number of reasons, which include lack of an organisational structure which does not lend itself to an efficient and effective implementation of CLARA. DLA also needs regulations to be in place before the act could be effectively and efficiently rolled out. Alongside this, CLARA is facing legal challenge by the Legal Resources Centre (LRC) on the grounds of unconstitutionality and the trial is set for October 2008. CLARA is expected to be rolled out around August/September 2009.

4.4 The land register

Figures 2, 3, and 4 present the various land registers from each village. And below each figure are some of the major issues that arose in the development of the register. The green shaded area represents the high potential arable land and the yellow are boundaries of the allotments and on the left top corner are the owners of the demarcated allotments.

4.4.1 Potsane

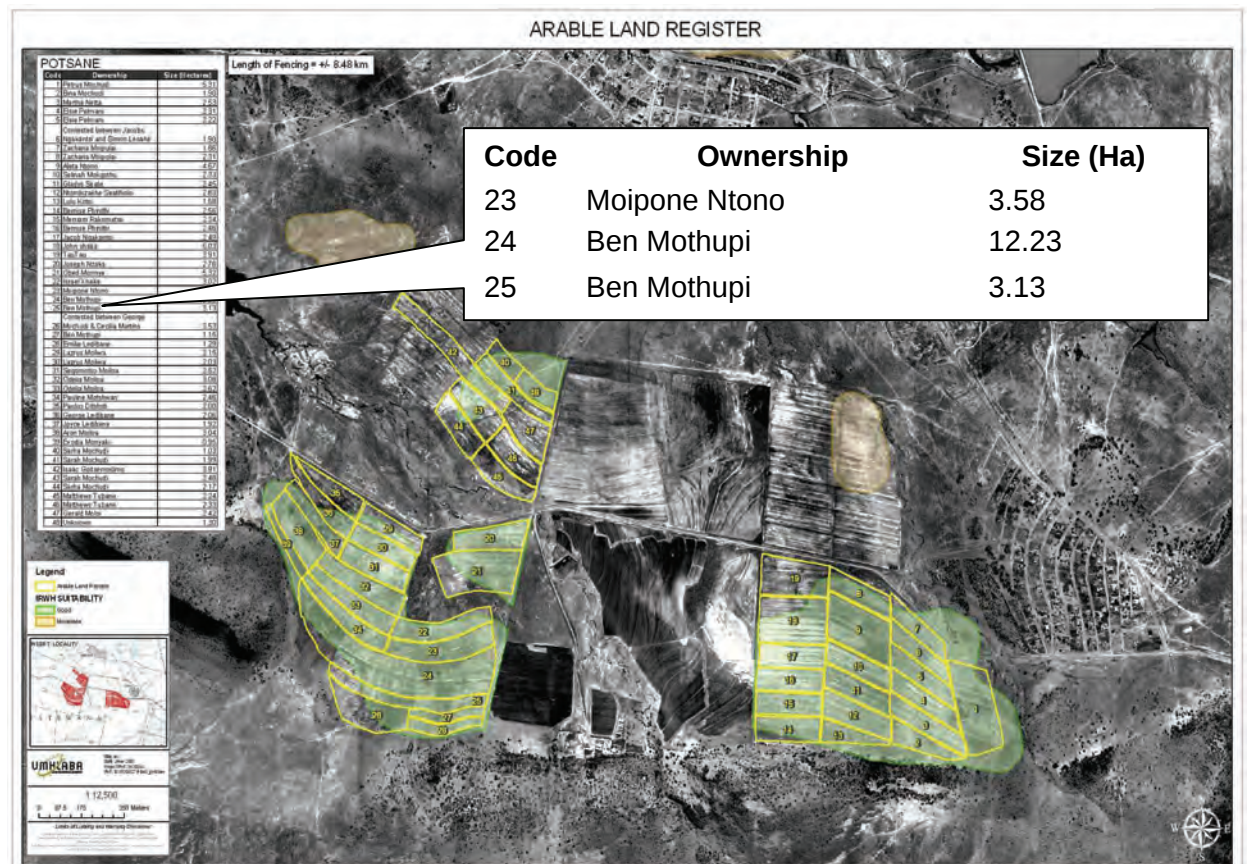


Figure 2: High potential arable land register in Potsane⁴

Issues arising from Potsane are:

- High potential land expands beyond demarcated land parcels. A decision needs to be taken on how this is to be handled.
- Some land parcels straddle between high and medium potential soils.

⁴ See Annexure 1 for a detailed map

4.4.2 Feloane

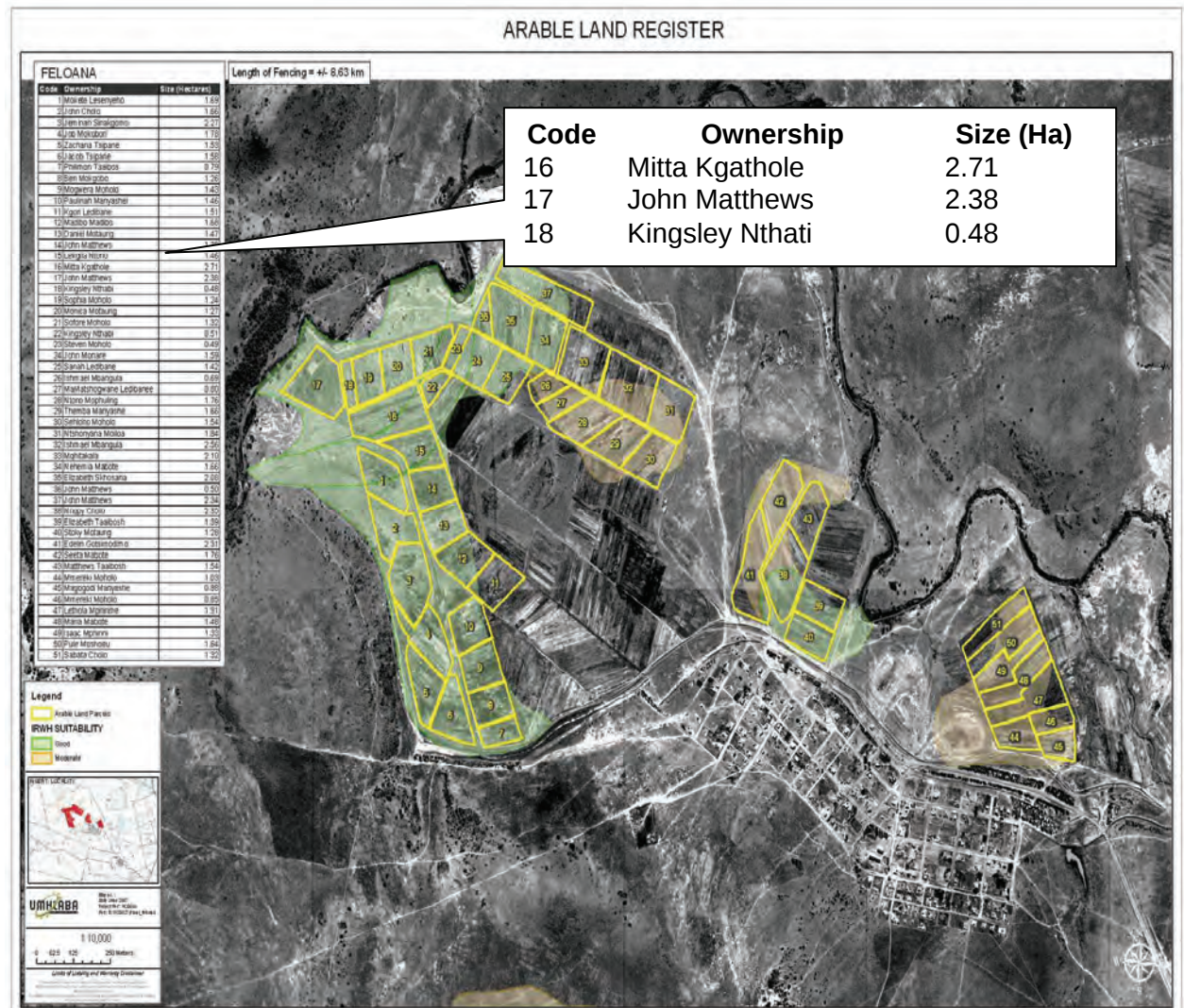


Figure 3: High potential arable land register in Feloane⁵

Issues arising:

- High potential land expands beyond demarcated arable land parcels. A decision needs to be taken by a future land administration body on how this is to be handled. This would entail the possibility of changing land use.
- Some land parcels straddle between medium and low potential soils. Individuals who are in this situation would need to make decision on what they include the medium and low potential areas under land that would be fenced.

⁵ See also annexure 2 for a detailed map

4.4.3 Gladstone

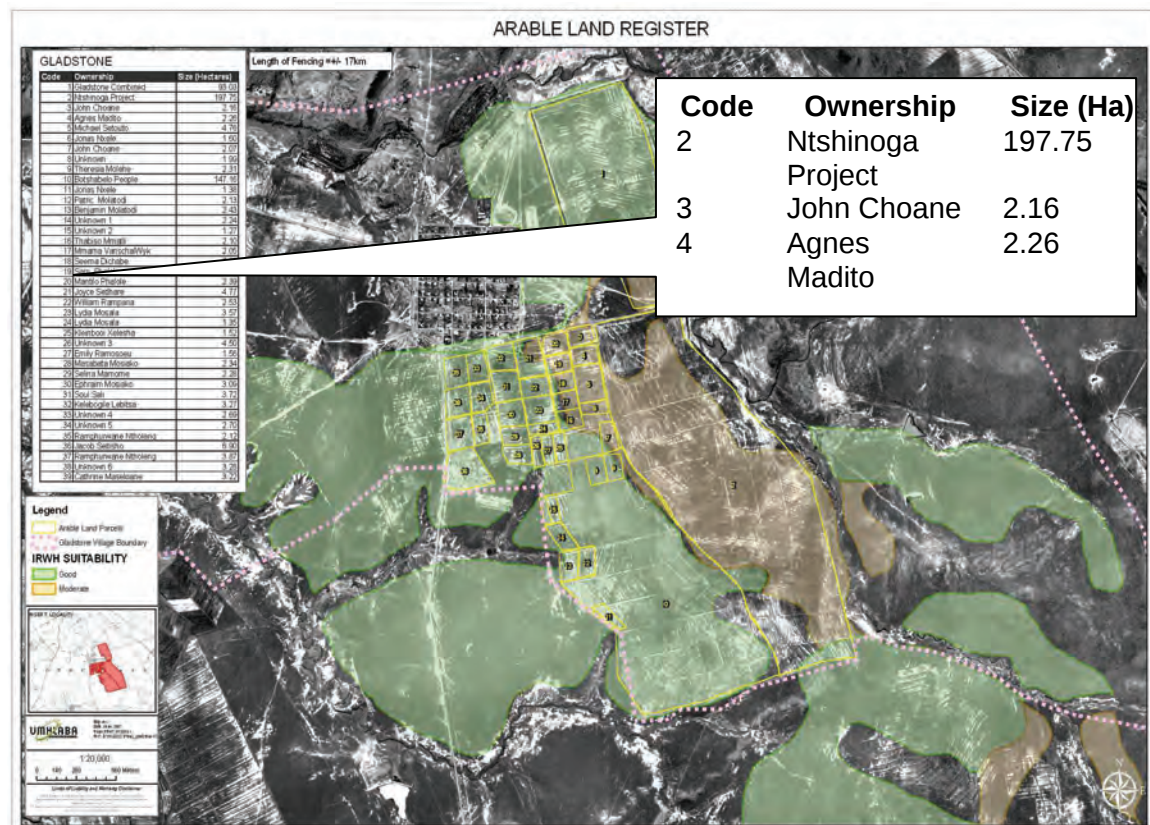


Figure 4: High potential arable land register in Gladstone⁶

Issues arising from the register:

- Land parcel 1 and 2 are arable lands that have been allocated to groups. Individuals who had PTOs to these lands have either left Gladstone or have given up their rights. A number of land owners in parcel 10 left the village for Botshabelo. In these cases land reverts back to the community. No formalities were observed when these rights were transferred. This history needs to be understood as it has a bearing on the new direction.
- As there is plenty of high potential land, a decision needs to be taken on which areas should be reserved for cultivation. A community resolution would need to be taken in terms of IPILRA to effect this change. .

⁶ See also annexure 3 for a detailed map

CHAPTER 5

RESULTS OF THE SECOND SET OF CONSULTATIVE MEETINGS

5.1 Introduction

All the three villages participated in the process and accepted the land register as a good starting point for a locally based land administration system. In very broad terms all the three villages proposed a village level land administrative structure that is constituted by the headman (as a representative of the tribal authority), local politicians (ward committee representative) and one or two elected community members elected at a public gathering. At a higher level (multi-village level) the village land administration structures would have representation of the Department of Agriculture, Department of Land Affairs and the Local Municipality. In general, the communities would like to see the initial establishment of the local land administration bodies as soon as possible such that these bodies can further the development of locally based land administration systems.

5.2 Second consultative meeting in Feloane

The meeting in Feloane took place on 8 January 2008 in the community hall. The meeting was chaired by the village headman who introduced the facilitation team and the purpose of the meeting as explained to him by the team. The facilitation team presented and explained the draft land register to the community. This was done by presenting AO size plan of the draft register, showing list of land owners, spatial location of field, field dimensions and size of each field. The second part of the meeting presented the draft framework of rules for facilitating land exchanges and the management thereof.

- While the spatial locations and sizes were accepted as correct in all instances, there were a few spelling errors which were corrected, for amendment by Umhlaba before the final register was developed.
- A suggestion was made to the effect that the village land committee should be responsible for the day to day administration of land in the community. The village land committee should comprise of the headman, a representative from the ward committee and some individual community members who will be elected into the committee by the community. There was also a suggestion of putting in place a government oversight role for this committee by involving the Department of Agriculture and the Department of Land affairs. There was also a second suggestion from the meeting that the current village development

committee (headman's council) be given this responsibility for land administration, however this was not accepted by the meeting on the grounds that the committee already has a lot of responsibilities and a body strictly focusing on the specific issue was seen as more appropriate.

- The option of creation of a local land committee was attractive to the village members. It was further suggested that the committee should include individual members who would be elected by the community at a community meeting or representatives of existing land based production groupings. The community stressed that they would like to be given guidelines and training on implementation of local land administration system. On practical grounds, the facilitation team felt that it was not going to be possible to have outside stakeholders participating in village level land administration structures. Representation of the proposed government departments was seen to be more appropriate at a level higher than the village structure.
- While the community agreed that they can continue growing crops without any fences, it was noted that this may not be practical because some of the livestock owners no longer herded their livestock.
- The challenge of livestock movement from neighbouring villages was raised as a major concern. The greatest concern in respect of adjoining communities is that they will not necessarily be bound by local rules.
- It was proposed that in cases where the livestock belongs to a fellow community member, the owner of the field should drive the livestock to the headman and report the incidence. It was proposed that compensation should be discussed at this level and if there is disagreement, the aggrieved party will then drive the animals to a pound which located in Thaba Nchu. There was a view that there might also be a need to reintroduce the system of rangers and stock pound. The facilitation team pointed out that while the pound system may have worked in the past, there were no systems and resources to support it under the current dispensation. In the past there were government paid rangers, who are not in place any more in government structure. The question of enforcement of payment of compensation remained a challenge.
- A suggestion was made that any meaningful revitalization of the cropping of the fields should be preceded by fencing. Fencing was seen more as a mechanism of reducing policing burden from the farmers.

5.3 Second consultative meeting in Potsane

The meeting took place on 9th January 2008. The meeting was structured in the same way as that of Feloane held the previous day.

- The community made minor corrections to the land register and endorsed it as a true reflection of reality. However, there were a few ownership disputes, particularly in relation to land parcels 6, 26 and 48. The facilitation team noted the issues, not with the view to resolving them but just to note them such that once the land-related organisations have been established, they can resolve these issues amicably.
- The concept of a village or local land committee as proposed by the Feloane was accepted and the individual members will be elected at a village level.
- The challenges of cropping of arable lands without fences were also raised very strongly. There was a view that the ranger and pound system could be reintroduced by government. However, fencing the fields is seen as a good starting point for restarting crop production in the fields. The meeting suggested that as a strategy to avoid theft of fencing, land owners who have land fenced in should take collective ownership of the fence. Each group of land owners would then put in place a system of guarding the fence from theft.
- The meeting also indicated that they had already made an application to the department of agriculture for fencing of the fields and are currently waiting for a response from the department.
- It was noted that most of land owners in Potsane who are not using their fields have already made them available for use by the IRWH farmers for free but would welcome any improvements to their agreements.

5.4 Second consultative meeting in Gladstone

In Gladstone, the meeting with the community took place on 10th January 2008. Compared to other villages, the turn out was not satisfactory. However, the meeting proceeded as in the other two villages.

- An important distinguishing feature to note in regards to Gladstone is that it has a higher proportion of high potential land that is not tied to families than the other two villages. This anomaly arises from the fact that a lot of high potential land falls outside demarcated arable lands. This is further complicated by the fact that, formally allocated arable fields have been abandoned, because a

number of former land owners had left the village and settled in Botshabelo Township.

- In addition, a significant proportion of land owners had at some point cropped their fields as one large tract under the auspices of the Ntshinoga Project. This assumes that the pre-existing rights were nullified, but on collapse of the project, there was no local structure to administer the land.
- There seemed to be consensus among the villagers that families with residential rights should also be given the rights to the crop fields corresponding to that particular parcel. This did not prove practical because the land parcel boundaries were not known.
- The community endorsed and accepted the land register as an important development and made a few minor technical corrections. The other important issue that was raised is that some people used the opportunity to challenge the unfair allocations, in that some households appeared to have larger tracts of land than they were supposed to. This was however identified as an issue which a future land administration body would need to investigate. As in other communities, the team felt that it was not immediately in a position to correct these as they will fall within the ambit of the local land committee.
- In terms of the regulations that will govern land administration and utilization, the meeting agreed with the proposed rules and structures that will be responsible for managing land administration.
- A major concern raised by the meeting was the absence of fences which posed a challenge of crop damage by livestock. It was reported that the community has already put in an application for fencing of the fields and that they anticipate the resuscitation of crop farming once that has been done. The idea will be to try and encourage a large proportion of land owners to start cropping their fields, so as to minimise risk theft and vandalism.
- The issue of the reintroduction of the rangers system was also proposed, even though the community was not aware what the position of government on the issue was. There are indications that this may not be an option that government will be too keen to reintroduce, thus calling for communities to devise other creative and effective ways of policing their fields.

5.5 Second consultative meeting with the Department of Agriculture (Motheo District Director)

- While there may be livestock pounds in existence, the system was no longer operational. The Department no longer had rangers in their staff structure.
- The Department of Agriculture expressed support for the initiative and was keen to see the soils survey process (soilscape) extended to the rest of the district. The District Director requested electronic as well as hard copies of the land register.
- The Department of Agriculture had some budgets, which could be directed to the 3 villages as part of the broader implementation of the IRWH programme. Details of how this would happen would need to be discussed with University of Free State and the ARC.

CHAPTER 6

RESULTS OF A SURVEY OF LAND RIGHTS HOLDERS IN THE SELECTED VILLAGES

6.1 Introduction

In January 2008 a semi-structured questionnaire was designed and administered on land rights holders that appeared on the land register. At a broad level, the purpose of the survey was to establish a range of perceptions among land rights holders in the Potsane, Feloane and Gladstone. More specifically the main purpose of the survey was to establish the following:

- To establish the degree of overlap of land ownership with livestock ownership and the implications thereof.
- To establish the extent of current use of household gardens by arable land owners.
- To establish the degree of interest to extend cultivation to arable fields among land owners, and therefore the potential for availability of land for transfer to others households.
- To establish the preferred terms for possible land exchange agreements.

The survey was conducted parallel to a broader consultative process with land owners, during which land owners were presented with the results of the tachy-numerical survey. Firstly, the land owners were given an opportunity to confirm, dispute or amend data that appeared on the plans and secondly, the land owners were presented with the draft rules and proposed organisations for comment. Thirdly, these sessions were used to broadly explain the concepts of land exchange and land administration. The questionnaires were then administered to individual households at their residences.

6.2 Sampling and sample size

While initially the idea was to administer the questionnaire on all the registered land owners, some could not be reached at the time of the survey. The ultimate sample size for the survey was seventy-nine (79), from a possible hundred and eight (108) and all the respondents were families which had rights to arable field and appeared on the land register. From the 79 respondents, 27 (34.2%) were from Potsane, 18 (22.8%) were from Gladstone and the rest 34 (43%) were from Feloane. This sample

was taken to be well representative of the whole as in all villages at least half (50%) of the possible respondents were interviewed.

6.3 Productive use of land

According to Figure 5, 83.5% (66) of the households grow crops, e.g. maize, vegetables, fruits, etc. This means that the majority of the arable allotment owners were at the time of the survey engaged in some form of crop production, in their homestead food gardens; among the surveyed households, approximately 82.3% had some crops in their homestead food garden. This is in line with earlier studies in the study area (Kundhlande *et al.*, 2004; Botha *et al.*, 2007; Mabanda, 2007; Baiphethi *et al.*, 2007) which observed that crop production in the croplands has not been practiced for a long time. The commonly cited reasons for not producing on arable crop fields include some of the following: lack of appropriate technologies, poor yields from dry land production, lack of machinery, absence of perimeter fences on the crop fields, etc.

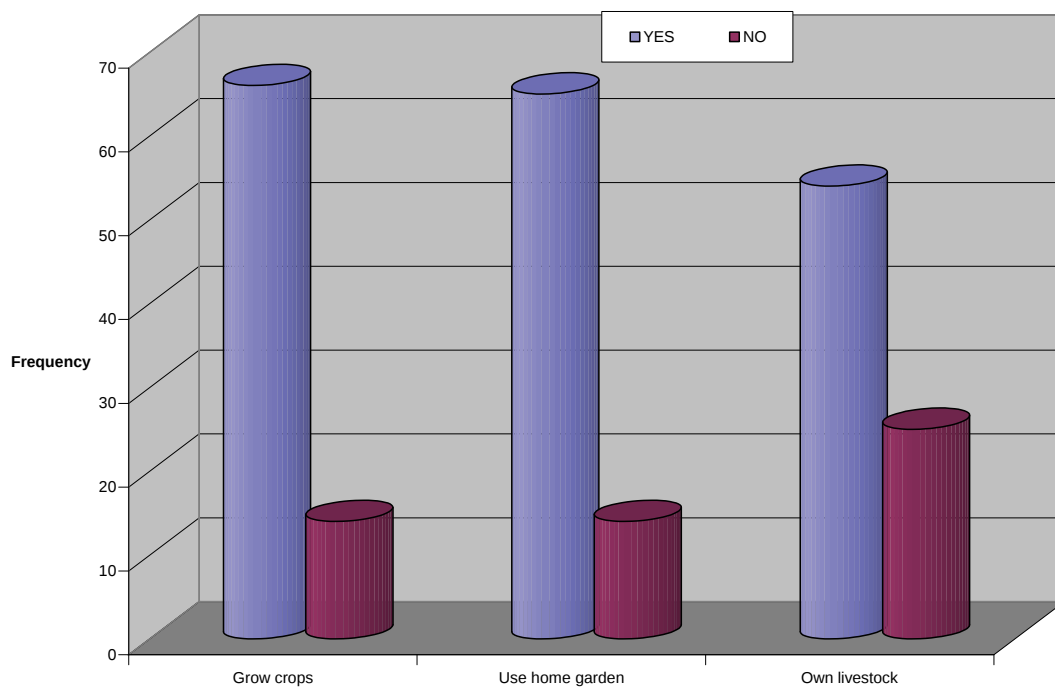


Figure 5: Agricultural production among respondent households in Potsane, Gladstone and Feloane, January 2008

In addition to crop production, a substantial proportion of land owners have livestock (68.4%) commonly cattle, sheep and horses. From the sample, 25 (31.6%) land owners did not own any livestock. Figure 6 shows the ownership patterns of the livestock among the respondents. According to figure 6, livestock ownership is heavily skewed with only a few households owning more than ten heads of each specific types of livestock. The size of the herds also varied among the three types of livestock.

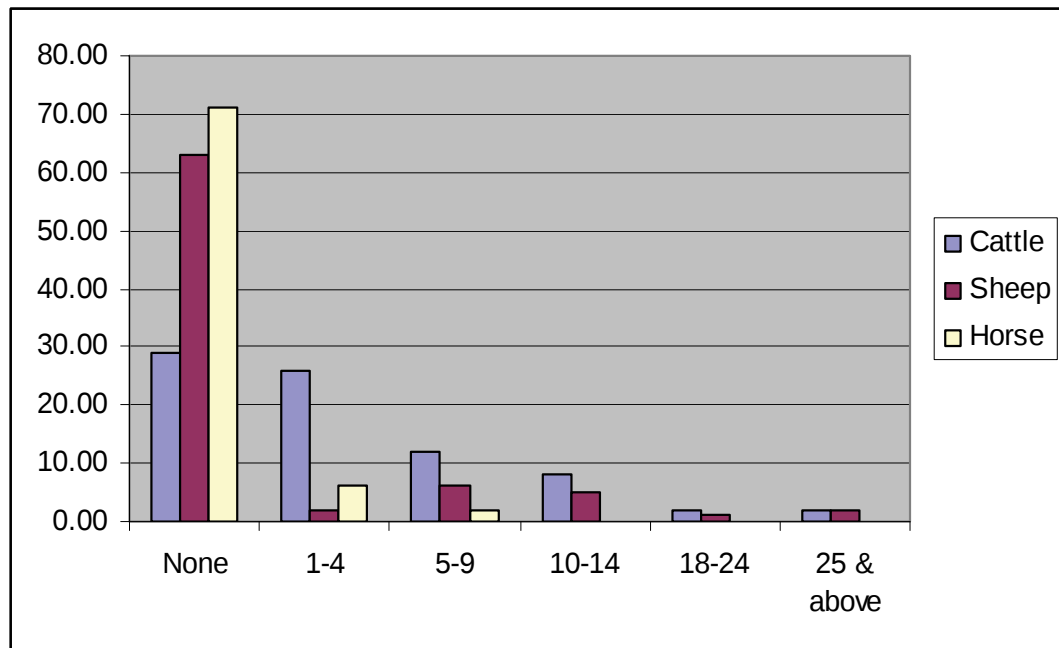


Figure 6: Patterns of livestock ownership in the selected villages, January 2008

According to figure 6 above, 29 (36.7%) respondents reported that they did not have any cattle, this proportion increases with horses (89.9%) and sheep (79.7%). It seems cattle are the most common (perhaps most important) type of livestock as the majority of households did own some cattle. The majority of the cattle owners (76%) have between 1 and 9 cattle, from this group the majority own between 1 and 4 cattle (52%). For the rest of the cattle owners (24%), the herds are larger than 10 cattle.

While the majority of the land holding households own cattle, only small proportion (20.3%) own sheep and only 10.1% own a horse. From Figure 6, as is to be expected, the sheep numbers are larger than the cattle and horses. According to the respondents and in line with the land tenure regime, the livestock is grazed on communal grazing lands which at the time of the survey was over commons and the arable fields, partly because farmers are not using the arable fields and also partly because of the absence of parameter fences.

Given that the land ownership largely overlaps with livestock ownership, it can be assumed that those land owners who also own livestock, are not likely to put up resistance to control mechanisms. One possible control mechanism could involve livestock owning households setting up herding groups and sharing costs. By the same token, it could be expected that those livestock owners who do not own arable allotments, could present some level of resistance. Given the open access grazing system, control of livestock from other villages would pose a serious challenge. Bringing grazing rules and controls to 3 villages is not going to be easy, if other villages are not part of the agreements.

6.4 Interest in extending cultivation (IRWH) to the arable lands

The next set of questions was aimed at establishing if land owners would be interested in extending IRWH to the crop fields and what constraints there could be to realizing that. According to Table 1 below, 73% would be interested to extend their crop production from homestead gardens to the crop fields. Only 27% of respondents were not interested in extending production to crop fields. The main reason listed was due to the unavailability of resources (labour and finance). Labour availability was a major constraint among the elderly land owners.

Table 1: Interest in extending crop production to the arable fields, January 2008.

Extend to arable fields	Frequency (N)	Proportion (%)
Yes	58	73.4
No	21	26.6
Total	79	100

Several constraints to the cultivation of crop fields were identified; these were lack of fencing, labour shortage, lack of finance, skill shortage, and lack of markets. From Table 2, the most common and important constraint to the cultivation of crop fields is the absence of fences. Sixty-six percent (66%) of the respondents identified lack of fencing as a major constraint to cultivating the crop fields. The absence of fences means that crops are not protected from animals and theft.

Table 2: The major constraints to cultivation of arable fields in Potsane, Feloane and Gladstone, January 2008

Constraint	Frequency (N)	Proportion (%)
Lack of fencing	52	65.8
Labour shortage	15	19.0
Lack of finance	9	11.4
Skill shortage	1	1.3
Lack of markets	2	2.5

The second major constraint to extending crop production was reported to be shortage of labour which was cited by 19% of the respondents. Therefore, labour shortage and the absence of fences are two most common constraints that farmers perceived. This observation, mostly absence of fences, is consistent with other studies in the area (Botha *et al.*, 2003; Baiphethi *et al.*, 2004; Mabannda, 2007). The shortage of labour is also an important constraint since the establishment of IRWH system is labour intensive, assuming the farmers want to use the technique in the crop fields.

However, while there was a significant desire to extend cropping to the arable fields, it was indirectly established that most farmers do not envisage using the IRWH techniques in the crop fields, as they see it not feasible based on the labour resources available to households (Blignaut and Sibande, 2007). Farmers thought of cultivation in the arable fields within the confines of conventional tillage practices (what they know from the past) rather than from the framework of the newly acquired technique.



Figure 7: Photograph depicting IRWH supplemented by irrigation.

The picture above was taken on 18 October 2006, on the day of the reconnaissance field visit, from one household that participates in the IRWH project. The picture shows a garden laid out using the IRWH technique supported by hose pipe bringing in water from the domestic water supply. During the course of this assignment, the facilitation team observed many people engaging in this practice of supplementing IRWH with the domestic supply water, but the extent of use of supplementary irrigation was not determined. This possibly partially explains why many farmers do not associate extension of IRWH system to the arable fields, because the supplementary water would not be available in the arable fields. This perception might just be in people's minds or could be based on fact. Whether this is fact or fiction, it will need to be addressed. While widespread, the extent of this practice as

well as the extent of water used to support IRWH is unknown, and would require a separate study to quantify. This partially explains why IRWH techniques are not associated with arable fields.

Lack of finance to acquire inputs was the third important constraint (11.4%) to the expansion of production to crop fields, followed by a lack of markets (2.6%) and finally lack of skills (1.3%). It is strange that, households that have successfully used the IRWH techniques, still considered skill as a constraint to expanding to the crop fields. In other studies among households currently employing IRWH (e.g. Mabannya, 2007), lack of markets featured prominently as a constraint, however for the extension to larger areas, it does not. This may imply that it is not an important consideration in the decision to expand production. However, this is to be expected since the majority of the farmers commonly produce primarily to feed the household, and only the surplus is sold.

6.5 Interest in land exchange arrangements

In addition to establishing the main constraints to cultivating the crop fields, land owners were also asked if they would be willing to temporarily allow other villagers (under some conditions) to cultivate their fields and the reasons for such. Furthermore, it was to test extent of land owners' willingness to participate in a 'village based land exchange market' and to determine the kinds of land exchange arrangements that farmers would most likely prefer. The study found that 68.4% (54) of the 'land owners' would allow other villagers to use their fields while the remaining 31.6% would not.

Several reasons were given for willingness and not willing to temporarily transfer arable land user rights to other villagers. Table 3 shows that six (6) different reasons were given by the respondents, even though some respondents (15) did not answer the question. Among those not willing to temporarily transfer their land use rights, the reasons given were that the household was still interested in arable production, therefore wants to use the field or they were simply afraid of losing their user rights. Among those who were willing to transfer their user rights, the main reason given was the inability of the household to cultivate the crop fields (60%). This is mainly as result of lack of finance and labour to be able to cultivate the fields. Another reason which could also be related to labour availability is that some of the land owners were too old to continue crop production in the arable fields (19%).

Table 3: Reasons for and against temporarily land exchange to other villagers in Potsane, Feloane and Gladstone, January 2008

In favour of land exchange. Reason	Frequency (N)	Percentage (%)
1. In support of land exchange agreements	54	68
Not interested in arable production.	1	2
Too old to work the fields.	8	19
Household unable to cultivate fields.	25	60
Assist those without arable fields.	8	19
Total	42	100
2. Against land exchange agreements	25	32
Interested to use the field	21	95
Afraid to lose rights to arable land	1	5
Total	22	100

The survey results show that there is generally a fair level of interest in crop production as indicated by only a few of the households (2%) reporting that they would permanently get rid of their land, because they are not interested in arable production. The argument is further strengthened by those who will not transfer their rights as they are still interested in arable production (95%). Only 5% indicated that they are afraid of losing their land rights, which could arise as a result of land exchange agreements with other households. This seems to suggest that these households do not have faith in the current land administration system and organisations.

Given the overwhelming support for temporary land exchanges, the next question sought to establish the preferred land exchange arrangement, the preferred duration for such an arrangement as well as the organisations that land owners would prefer as an administrator of the system. Furthermore, the respondents were asked the reasons for preferring a particular arrangement. Table 4 below presents the different land exchange arrangements/agreements that land owners would enter into when transferring their user rights.

Table 4: Preferred arrangements for temporary land exchange or transfer of land use rights in Potsane, Feloane and Gladstone, January 2008

Arrangement	Frequency (N)	Proportion of total sample (%)
Sale	2	3
Lease	5	6
Share-cropping	36	46
Free loan	12	15
Total	55	70

According to Table 4 above, 70% (55) of the all the respondents showed willingness to enter into one of the four land exchange arrangements. These are outright sale, lease arrangement, share-cropping and free loan. The commonly preferred

arrangements are share-cropping and free loan (46% and 15%, respectively), but share-cropping was the most preferred method for temporarily transferring user rights to another household. Selling and leasing are the least preferred (both with less than 10%). The reason for their unpopularity may be understood in the context of the land tenure system wherein land holders only hold user rights and not private ownership of the land. Furthermore, the results highlight the importance of land as an asset that households would not want to lose. This is further expressed in terms of the length of periods for which households are prepared to transfer their rights, with more than 70% of the respondents willing transfer their user rights for periods of a maximum of four years (Figure 8). Within this, the majority showed willingness to let their fields for a period of two to four years (41%) and the remaining 33% for only one to two years.

It is notable that there are those households who were willing to transact their fields for a period of more than 6 years (15%) and they are actually more than those who will only let their fields for a period of 5-6 years. This observation creates an opportunity for those who currently do not own arable land or wish to expand the sizes of lands under cultivation beyond the fields that they own.

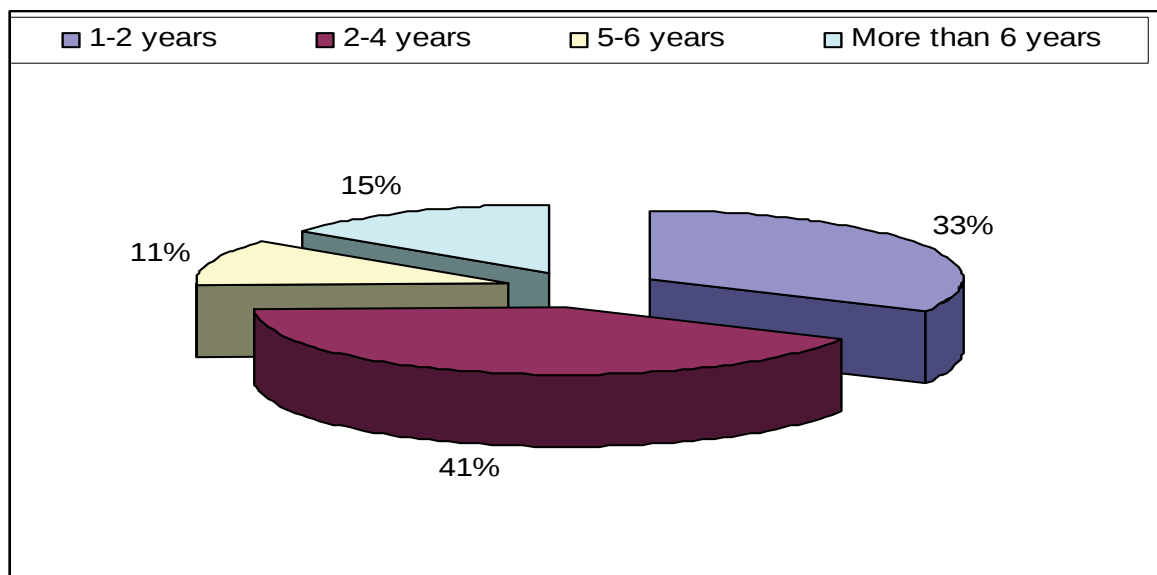


Figure 8: Periods that land owners would prefer transferring their land user rights in Potsane, Feloane and Gladstone, January 2000.

6.6 Summary

Perceptions of views expressed by land owners during this survey are not understood as cast in stone, but could change over time, depending on the circumstances of the individual households as well as a result of material conditions in the village. This means that these could be swayed in one way or another based on the configurations of the agricultural intervention. There is a sense in which some of the land owners are holding on to the land for largely speculative reasons.

The survey established a significant overlap between land ownership and livestock ownership. This means that a large degree of the land owners would be part of the rules that would govern livestock management. The biggest challenge in livestock management is the open access grazing system. The challenge lies in the individual villages' ability to control livestock from other neighbouring villages. The collapse of the pound system makes enforcement of livestock controls very difficult. Unless the rules that govern livestock are accepted beyond the three villages, livestock encroachment is likely to be a major challenge.

The survey further established that there is general willingness to extend cultivation to arable fields. However, there seems to be a perception that extension of the arable production in the arable fields is only possible with conventional methods for the majority of the respondents while there is also that desire to extend cultivation beyond the households. While the issue was not directly followed through, it is nonetheless not surprising that the majority of the respondents have premised arable production on conventional production instead of IRWH. This could be due to the fact that the IRWH technique was demonstrated in the backyard gardens and took root among the communities. So in the absence of a clear demonstration of the technique beyond the home garden, the farmers will mostly be sceptical about its efficacy beyond the tried and tested fort of the backyard garden. Notwithstanding the above, there is a need to clearly verify the perception and put in place measures to assure the farmers, through demonstrations and participatory evaluation of the technique in the crop fields. While the willingness to extend cropping to arable lands was overwhelming, it can be expected that not all of the land owners will use it. This could create opportunities for non-land owners to have access to land.

The 42% who indicated willingness to make their land available for exchange with other households presents an opportunity for those who do not have access to arable land. While the majority of those who were in support of land exchange arrangements preferred share cropping, it was clear that terms of sharecropping would need to be regulated. If the terms of either sharecropping or a lease arrangement were not favourable, these could undermine the purpose of facilitating land exchange.

CHAPTER 7

FRAMEWORK OF RULES FOR LOCAL LAND ADMINISTRATION

7.1 Principles guiding the set of rules

The set of rules outlined herein are intended to put in place an informal framework for a locally based land administration for the 3 villages, Potsane, Feloane and Gladstone. The proposed local land administration framework precludes creation of any new sets of rights, but supports clarification of already pre-existing rights. The proposed system has major limitation because it is not supported by supporting legislative mechanisms but is designed to develop a locally based consensus model in support of extension of IRWH from homestead food gardens to arable fields.

7.2 To whom the rules apply

The rules are applicable to 3 communities, Potsane, Feloane and Gladstone. The following set of rules has been discussed with land rights holders, livestock owners, community members who have no arable land and various local stakeholders.

7.3 Establishment of a local land administration body

The body that will take responsibility for monitoring the process is a local land administration committee constituted by Department of Land Affairs, Department of Agriculture, Tribal Authority representative, village headman and nominated ward committee members of the 3 villages.

The main responsibility of the local land administration committee is to

- Play an oversight role in local land use planning. Where land use change impacts on pre-existing rights, groups or individuals whose rights are affected should be consulted, in line with the Interim Protection of Informal Land Rights Act, 31 of 1996.
- To develop more rules as and when required through consultation with affected individual or groups.
- To resolve conflicts over land rights between individuals and groups.
- To facilitate the setting up of village land administration committees and delegate certain powers and functions to them.
- To ensure alignment of the functioning of the village land committees.

The overarching local land administration committee will be constituted by the following bodies, with the following responsibilities (Table 5).

Table 5: Constitution and responsibilities of the different members of the overarching local land administration committee

Parties making up the LLA	Roles
District Land Reform office of the Department of Land Affairs.	• Chairs all proceedings of the land committee. • Provides policy guidance to the land administration bodies. • Designs and continuously develops templates for recording of land rights. Supports land administration structures with training.
Department of Agriculture ⁷ (representative).	• <i>The local office of DoA shall provide planning support, extension, advice and plan for infrastructure development such as fencing.</i> • <i>Also responsible for keeping records of the LLA structure.</i> • <i>Provides secretariat services to the LLA.</i> • <i>Monitors lapsed agreements.</i> • <i>Makes available land records for inspection by the general public.</i> • <i>Maintains and updates land register and makes information available to interested parties.</i> • <i>Keeps records of individuals interested in entering into land exchange agreements.</i>
Local Chief / tribal authority representative.	• Mediates and adjudicates on matters which cut across villages. • In the event of a dispute between a right holder of one village and a live stock owner of another village the TA has jurisdiction. • Support municipality in facilitating land use planning.
Local municipality.	• Will facilitate land use planning and incorporate plans in IDP planning and budgeting processes and provides LED support.
Local headmen and ward committees of affected villages.	• Witness and records land exchange agreements in a set template. • Submit records of land exchange agreements to Tribal Authority and to the Department of Agriculture. • Witness and seals agreements at a local level.
An elected village representative.	• Witness and records land exchange agreements in a set template and submits records to TA and to the Department of Agriculture. • Witness and seals agreements at a local level.

⁷ The functions given to Agriculture are constitutionally DLA functions, which in this case could either be performed by DLA or be delegated to DoA.

7.4 Powers and functioning of the local land administration authority

7.4.1 Maintaining and updating of land registers⁸

An up-to-date copy of the land register should be available for public viewing with the local headman and the local office of the Department of Agriculture. Community members who are interested in entering into agreements are entitled to view the land register during normal office hours. The land register should provide the following:

- Spatial location of arable fields in relation to one another,
- Shape of each land parcel,
- Size of the land parcel,
- Name of PTO holder,
- Details of lease or sharecropping arrangement with duration of agreement if any.

7.4.2 Facilitation of land exchange agreements

On acquisition of information on the land register, the onus lies on the interested party (Figure 9) to approach the respective right holder with a view to negotiate a land exchange agreement. The onus lies with the party that is interested in acquiring land rights to identify land they are interested in and to negotiate with the right holder. On conclusion of the agreement the details of the agreement would be presented by both parties to the village land committee committee for endorsement and recording. The agreement should be recorded in a set format and signed by both parties to the agreement and witnessed by both the headman and the ward committee.

⁸ The Department of Agriculture will need to make available GIS capacity and human resources for this purpose.

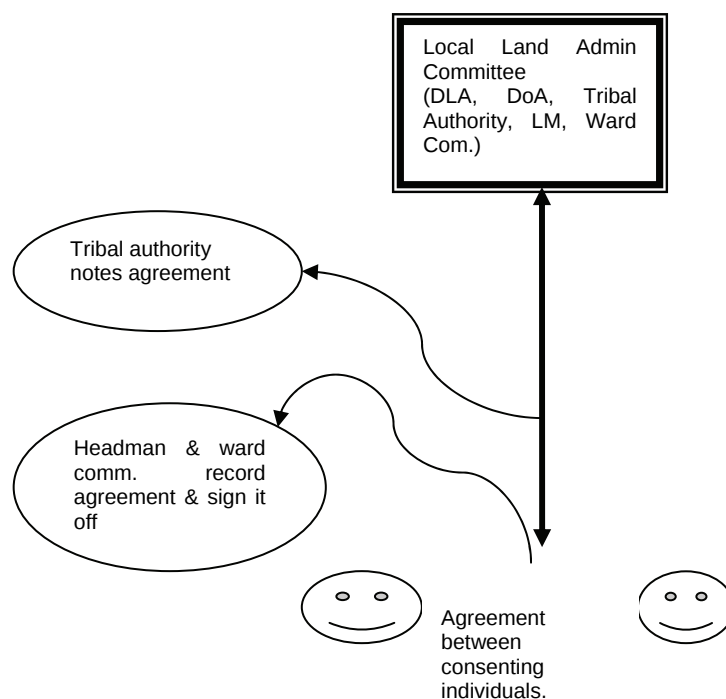


Figure 9: Schematic representation of the processes and structures involved in the land administration system

A signed copy of the agreement should be submitted by the land recipient to the local office of the Department of Agriculture for final endorsement. The headman will also be required to file the agreement with the Tribal Authority office. The Department of Agriculture will maintain records of all agreements made and make these available for public scrutiny.

The only land exchange agreements that parties can enter into are free letting of the land, lease and share cropping. In order not to pre-empt future policy changes, the land may not be sold between the parties. Agreements should be for periods above two years.

Individual households that want to register interest in acquiring land rights could register with the Department of Agriculture. The Department may from time to time facilitate land exchange agreements between those on the waiting list and those land rights holders whose land becomes available.

7.4.3 Investigation, adjudication and resolution of land conflicts

The local land committee has the power to investigate, adjudicate and facilitate resolution of land related disputes and conflicts. Where necessary this function may be delegated to the village land committee. This function is performed on demand.

7.4.4 Managing land use changes

On the grounds of sound environmental considerations such as prevention of soil erosion, the village land committee has power to temporarily make land use change decisions where it deems fit and justifiable to do so. Whenever such decisions are made, due care should be given to ensure that individuals or community are not deprived of their rights in an unfair manner. For some reason or other arable land may be reallocated to commons or vice versa. In such case of the former the individual land owner should give consent and in the case of the latter a community resolution is required.

7.4.5 Managing the development of the rules

The village land committee may make adjustments of rules, by presenting those in a properly constituted village meeting that would satisfy the requirements of IPILRA. Notice of meeting at least be one (2) weeks prior to the meeting, and an official of DLA should preside over the meeting.

7.5 Livestock control

Livestock owners commit themselves to keeping livestock off arable lands at all times through use of such measures as the group herding system. Livestock owners who fail to comply are liable to pay costs of damage to crop lands. The village land committee has jurisdiction over such cases. In instances where the livestock owner fails to comply with decisions of the village land committee, the matter would be passed on to the formal legal system (small claims court). Where damage has been caused to crops by livestock, the animals concerned should be taken to the local headman or any other delegated official of the village land committee.⁹

7.6 Fencing of arable fields

The land rights holders agree to collectively submit funding applications for fencing of arable lands through the Department of Agriculture, or any other possible sources. The ownership of the fence shall in each instance vest with the group of land owners whose lands fall within the fenced perimeter. The land owners will take responsibility for looking after the fence, and protecting it from theft. Theft cases should be handled by the village land committee or alternatively should be reported to formal legal system (police).

⁹ The system as it stands lack a clear enforcement mechanism.

7.7 Crop damage and theft

The farmers are responsible for looking after their crop, protecting it from livestock and from theft. All cases of theft should be reported to the headmen or delegated official of the village land committee. Should the accused individual not be willing to compensate the farmer, the matter should be reported to the local police.

7.8 Some of the issues that still need to be resolved

- Mechanisms for determination of quantification of compensation for livestock damage should be discussed and agreed to.
- The system largely depends of community support, with very little enforcement capacity. Over time, some enforcement mechanisms will have to be devised.
- There are allegations of Lesotho citizens who come to the area to graze their livestock, and they are not likely to abide by any local rules. This is a challenge that will require constant monitoring and consideration. This may require reporting to the police.
- The question of costs associated with running the system needs to be resolved over time. For the system to be self-sustaining it has to be self financing.
- Given that there is no legislation supporting this system, it might be a challenge binding the government departments to participate meaningfully in this process.

CHAPTER 8

TAKING THE PROCESS FORWARD

8.1 Land tenure and administration

Given the conceptual definition of land tenure and land administration provided in Chapter 4 of the report, it is clear that the old tenure system of PTOs has largely fallen apart both in terms of the legal basis of the rights and from the point of view of management of those rights. The collapse of land tenure and land administration system was an unintended consequence of the transition to democracy around 1994. While the PTO system may have collapsed, the communities still hold on to the rights associated with it, irrespective of the nature and content of those rights.

Under the current circumstances it can be expected that one cannot set up a perfect land administration to administer a collapsed tenure system. The best that the land register can do is to provide one arm of the juridical function, by providing basic land management information, i.e. delimitation of land parcels, record of holder of right, size of land parcel, suitability of land parcel for IRWH. This information system will provide important information for planning purposes. As for local rules, they will only be as good as they can be adhered to by the communities. When CLARA gets to be rolled out, the rules will be incorporated into the framework of legislation, so that they can have legal force.

The proposed local land administration structures are designed to deal with other elements of the juridical functions such as allocation of rights, recording of land exchange agreements and keeping of records. If the new proposed structures are to perform juridical functions, they have to use IPILRA procedures as a guide in making decisions.

Regulatory functions which include land use controls can be administered by the proposed land administration structures, based on agreed controls that would be evolved. Each village should develop its own set of controls, based on local planning considerations.

Fiscal functions which relate to generating revenue for maintaining the system are an issue that requires consensus between different parties (DLA, DoA, Tribal Authority and Local Municipalities). The one way they could consider is to apportion different costs to different bodies. Among the issues to be decided are;

- Staff and equipment costs for the maintenance and update of the land register.
- Transport costs to and from meetings for the local representatives.
- Costs for facilitating land use planning.

This element should be addressed in the process proposed in 8.3 below.

There is not contradiction between the proposed process of setting up a local land administration structure and development of rules and the processes envisaged in CLARA. Given that CLARA is likely to be rolled out in some unknown future, some thought needs to be given on how the Thaba Nchu informal land administration process could be dovetailed with CLARA implementation.

8.2 Building consensus on the way forward

The observation of extensive use of the domestic water supply system by some of the IRWH farmers is a factor which does not appear in previous literature. The extent to which the IRWH system is supplemented by the domestic water supply is an issue which may have been overlooked in the development and evaluation of the technique. There is a need to further understand the level and impact of supplementary irrigation on IRWH production. In the event that IRWH is found to hinge on supplementary irrigation, it would make sense to reconsider both the content as well as the direction of the project. In addition to the issue of supplementary irrigation, the farmers' insecurity about the success or possibility of IRWH in the crop fields needs to be given a more detailed attention.

Success/failure factors

- If there is consensus that the success of IRWH does not hinge on supplementary irrigation, then a decision to proceed to extend to arable field will result. A phased process of implementing the expansion should be agreed.
- In the event that the success of IRWH is linked to supplementary irrigation, alternative methods of supporting it would need to be explored, including tanks.

8.3 Building organisational relationships

Based on the outcome of the review process proposed, a broad based organisation building process should be initiated. Given that this process entails a total renewal of the land administration system, various meetings should be held between the UFS, DLA, DoA, Local Municipality, District Municipality and the Tribal Authority to agree on higher level issues. It is critical that all these organisations commit to supporting the process in very concrete terms. A code of conduct and/or memorandum of agreement should be drawn up between all these parties before communities are engaged, based on the understanding that if any of the parties does not play its role, the whole project could collapse. These higher level issues should focus on building consensus on various aspects of the project as well as to clarify roles and funding mechanisms. The various role players need to agree on how the project would be managed in future. Emanating from the high level agreement, broad-based capacity building programme should be designed to empower all the parties as a means of supporting its smooth roll out. A critical element of the capacity building process will be the development of standardised templates for capturing information and work-flow procedures.

Once the higher level structures have sufficient consensus on the way forward, the process of establishing the proposed village and local level land administration structures could be initiated. A training programme should be put in place in which all participants in these bodies would participate. The critical question is how such training gets funded, given that it is outside the ambit of CLARA.

Success/failure factors

- The DLA should agree to provide some leadership in this process.
- A MOA should be agreed to and signed by the DLA, Municipality, DoA, UFS, ARC and WRC.
- How the programme is to be managed and various components funded should be agreed.

8.4 Land use planning

Alongside the organisation building process, a participatory land use planning exercise should be conducted in all three villages, which is going to result in the determination of which areas are dedicated to grazing and which areas are dedicated to cultivation. When adopted by the municipality as part of its Integrated

Development Plan, such a plan would have some legal standing. This process could result in demarcation of new arable land parcels in areas which were previously grazing land.

Based on the agreed land use plan, the Department of Agriculture should budget for a phased fencing programme in each village, based on interest shown by groups of land owners as well as their demonstration of ability to look after the fencing. Based on success achieved each year, more arable land could be fenced in subsequent years.

Success/failure factors

- A land use plan developed with the participation of communities and adopted through a community resolution.
- DoA agreement to proceed with a phased fencing project.

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ANNEXURES

Annexure 1 : HIGH POTENTIAL ARABLE LAND REGISTER IN POTSANE

Annexure 2 : FIGURE 3: HIGH POTENTIAL ARABLE LAND REGISTER IN FELOANE

Annexure 3 : HIGH POTENTIAL ARABLE LAND REGISTER IN GLADSTONE