

Kinship and Access to Land in the Eastern Cape: Implications for Land Tenure Reform

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Abstract

A focus on institutional norms and rules gives an incomplete picture of rural land tenure; building an account of local practice from specific cases reveals nuances and variations that are otherwise elusive. Following the latter approach, the paper describes so-called “communal” tenure in southern Hobeni, a community in Xhosa District, in the Transkei region of the Eastern Cape Province. A practice-based approach reveals significant variations in tenure practices, related to the kinship composition of local neighbourhoods. In areas where a few families are numerically predominant, agnatic kinship is the primary means for access to land. In areas that are diverse in their kin composition, other ties (for example, friendship, church membership, common employment, etc.) are used as a basis for access to land. The demographic variation underlying these practices appears to be widespread in communities in the Eastern Cape and beyond, suggesting considerable diversity within the workings of “communal” tenure. These variations reinforce the need for tenure reform to be responsive to local conditions, and for any new land tenure institutions to be downwardly accountable to those who inhabit, use, and make decisions regarding access to land.

Introduction

South Africa’s Communal Land Rights Act (Act 11 of 2004), like previous policy statements on tenure policy (for example, South African Department of Land Affairs, 1997) calls for the creation of new landholding institutions based on a “rights enquiry” and “the adoption of community rules on tenure” (Cousins, 2004). The notion that a system of land tenure can be described by a set of rules has a long heritage, dating back at least to colonial efforts to construct a system of “indirect rule” based on “customary law,” and echoed in more contemporary concerns for the enumeration of “design principles” for

the creation of institutions to manage common property (for example, Ostrom, 1990).

Critics have made it clear that rule-focused descriptions are an inadequate guide to tenure. In a recent volume on natural resource management in southern Africa, Peters draws on a long line of anthropological reflection (for example, Barth, 1981; Bourdieu, 1977) to argue that while one cannot ignore rules and norms, framing an account predominantly in these terms gives an incomplete picture of how institutions shape land and natural resource use (Peters, 2002).

In this paper, I describe communal tenure in southern Hobeni, a community in Xhora District, in the Transkei region of the Eastern Cape Province, showing connections between local social organisation and land tenure that are not evident from a narrow focus on rules. In this respect, I depart from the literature on tenure in the Transkei region, which has generally focussed on rules and regulations in relation to 1) the structural relationships between the administration's system of land allocation, the Bantu Authorities system, and labour migration, and 2) the feasibility of issuing individual titles to land.²

In contrast, I focus on tenure in practice, giving attention to the fact that land is always socially and spatially situated. I draw on an interactional concept of "access," focussed on the "ease or difficulty of acquiring rights in particular areas" (Reyna and Downs, 1988: 12), to illuminate practices and variations that would be hidden in a normative account. My field method focussed on developing an account from a series of cases, rather than collecting a set of rules, focussing on individual biographies and the histories of particular land parcels. Because a particular piece of land is always located in space, actors' social positions and the spatial locations of the land they seek are significant; access depends on who is looking for land, and where they are looking for land.

In Hobeni, although a few interviews can quickly reveal a basic set of rules regarding land tenure, a practice-based approach reveals significant variations in tenure practices, related to the kinship composition of local neighbourhoods. In areas where a few families are numerically predominant, agnatic kinship is the primary means for access to land. In areas that are diverse in their kin composition, other ties (for example, friendship, church membership, common employment, etc.) are used as a basis for access to land.

I then show that the demographic variation underlying these practices appears to be widespread in communities in the Eastern Cape and beyond, suggesting considerable diversity within the workings of “communal” tenure. I offer a set of hypotheses regarding the likelihood that similar variations exist in other communities.

Finally, I discuss the implications of these variations for land tenure reform in Hobeni and elsewhere, drawing on my own analysis and critical comments on the Land Rights Bill prepared by the Dwesa-Cwebe Land Trust in November 2003. I do not argue that tenure reform should aim to encompass every possible local institutional variation; rather I argue for a flexible approach grounded in local accountability. The variations I describe exist precisely because local residents control access to land in their neighbourhoods. This diversity highlights the need for tenure reform to be responsive to local conditions, and for any new land tenure institutions to be downwardly accountable to those who inhabit, use, and make decisions regarding access to land.

The Setting

Hobeni is one of seven communities involved in the successful land claim on the Dwesa-Cwebe Nature Reserves. This paper focuses on land tenure in the areas *outside* the reserve, which were not part of the land claim. The land claim process, however, has affected the situation described here. First, because several of the traditional leaders in the area initially opposed the land claim, their standing in the area was diminished. Second, the land claim process led to the selection of Dwesa-Cwebe as a pilot area for land tenure reform. In 1996, prior to the July 2001 resolution of the land claim, the Department of Land Affairs and the Village Planner (a non-governmental organisation), held workshops that led to the creation of Communal Property Associations (CPAs) in the seven claimant communities. It was expected that the CPAs would be registered at the resolution of the land claim. As of November 2003, the Hobeni CPA still had not been registered, largely because of disputes over the applicability of the CPA legislation versus the Communal Land Rights Act (Robin Palmer, pers. comm.; André Terblanche, pers. comm.), leading to concerns that the delays in registration have deterred tourism investment in the land outside the Nature Reserves (Dwesa-Cwebe Community Consultation, 2003).

At the time of my fieldwork in 1998-1999, the CPA had no role in land management. The CPA committee had grown out of a committee that

had been elected with a mandate to execute the land claim, not to get involved in village land management, and its members were following this closely.³

The local district government likewise had no role in land tenure; land administration had been a longstanding weakness of the Xhora district administration. Betterment policy was only incompletely instituted in the 1980s, and the state's involvement in land administration effectively collapsed after the Holomisa coup in 1987 (Fay, Palmer and Timmermans, 2002b). While some people in Hobeni had state-issued landholding certificates, these dated from the early 1980s or before, and were incomplete and unreflective of current landholding.

Despite (and perhaps because of) the absence of official intervention in tenure, this is an area where agricultural use of communal land is thriving, in contrast to the negative assessment of agriculture in the Transkei that predominates in the literature (see McAllister, 2001: 66-69 for a review). Local residents cultivate gardens adjoining their homesteads and—unlike many residents of the former homelands—have not abandoned cultivation in distant fields. They also use land for residential homestead sites and grazing. The area also diverges in simple statistical terms from the tendency for women to lose land rights as competition over land increases; in a 1998 survey, the same proportion of male-headed and female-headed homesteads had access to a residential site, garden and field.

Divergent Land Tenure Practices and Neighbourhood Composition

Despite a shared set of rules concerning access to land, two divergent patterns of practices related to land are evident in southern Hobeni. In some neighbourhoods,⁴ outsiders have generally been successful in requesting new residential and garden sites, relying on a range of social ties. In others, land is almost exclusively available to the kin of existing residents.

These patterns correspond with variations in the kinship composition of local neighbourhoods. While three⁵ (of six) neighbourhoods are characterised by diverse groups of agnatic kin (that is, neighbourhoods where few families have links to common male ancestors), three consist primarily of one or two agnatic groups. These demographic variations have contributed to the emergence of different tenure practices within a common normative system: residents of diverse areas tend to be more accepting of outside

applicants for land, while residents of “agnatically dense”⁶ areas tend to reserve land for their kin. In diverse areas, people seeking land mobilise ties other than agnatic kinship (for example, affinal and cognatic kin ties, church membership, employment, patron-client relationships, and healer-initiate/client relationships). In these areas, local residents often allow outsiders without agnatic ties to settle. In agnatically dense areas, however, kin ties are a virtual necessity for access to land; most land is occupied by, and allocated to, members of a few long-established local families.

The ethnographic literature on Cape Nguni peoples depicts neighbourhoods as typically diverse in their kin composition, but Southern Hobeni and nearby areas contrast with this characterisation. Hammond-Tooke summarises the picture of a typical Cape Nguni neighbourhood. It contained a diverse mix of “agnatic clusters,”⁷ with none holding a clear majority: “80 per cent of such agnatic clusters are made up of six homesteads or less. A cluster of twenty agnatic relatives is decidedly exceptional” (Hammond-Tooke, 1985a: 315). In southern Hobeni, three neighbourhoods (Mhlanganisweni, Velelo and MaVundleni) clearly fit the model presented by Hammond-Tooke: no agnatic cluster has a clear majority. However, the other three (MaBambeni, KwaDingata, and KuBhula) have a more dense concentration of a few agnatic groups: more than two-thirds⁸ of the homesteads can trace their origins to one or two ancestors. These are the most extreme cases of a local settlement pattern that is also found in other areas of Hobeni and in nearby Cwebe.

The origins of this twofold pattern in the social composition of neighbourhoods appear to lie in economic differentiation dating from roughly the 1880s to the 1930s.⁹ The first decades of the twentieth century in particular were a time of relative prosperity, enabled by the combination of migrant labour, cash cropping, investment in livestock under favourable ecological conditions, and the absence of direct state intervention in agriculture (McAllister, 1992; Beinart, 1992).¹⁰

In Hobeni, this prosperity was not evenly distributed, leading to long-term demographic consequences that shaped the differences between neighbourhoods. Polygyny was common among some local families, but not all, around the end of the nineteenth century. This practice was both a consequence and cause of differentiation: polygyny required extensive cattle

holdings for bridewealth payments, but it also brought in women's labour and a claim for additional arable land, enabling increased production.

Nearly all of the residents of the agnatically dense neighbourhoods (KwaDingata, MaBambeni and KuBhula) trace their descent to a few wealthy polygynists whose children were born in these years. These ancestors were able to accumulate enough cattle to marry as many as seven wives. Their lives overlapped with the early years of labour migration, and the period when production of crops for the market was most widespread. With access to labour and land, they were able to accumulate sufficient cattle to marry additional wives. In each case, the polygynous marriages of a few apical ancestors nearly a hundred years ago have led to the numerical dominance of a few extended families within the neighbourhood. In the following generation, few of their sons were able to marry more than one wife; however, localised networks of kin continued to constitute a resource for gaining access to land.

In contrast, in the three neighbourhoods with diverse composition (Mhlanganisweni, Velelo and MaVundleni), polygyny was uncommon ca. 1880-1930. None of the remembered ancestors here had more than two wives, and only a handful had two. These families' histories suggest that they were worse off than the polygynists in neighbouring areas. Many were members of Gcaleka Chief Sarhili's defeated army; they had travelled from Gatyana and settled locally after the 1877-78 frontier war. Many initially settled in Cwebe Forest, but were forcibly removed as the Forest Department asserted its control between 1893 and 1936 (Fay, Palmer and Timmermans, 2002a). It seems unlikely that these men chose to forego polygyny because of opposition to the practice, given their origins in culturally conservative Gcaleka communities; rather, it appears that the impoverishing effects of military defeat and forced removals a generation later left them unable to afford large-scale polygyny.

The significance of polygyny and resultant large local kin networks in the late nineteenth century was amplified by changes in later years. Land became scarcer, and out-migration became less feasible, and inter-household cooperation became more important. While men occasionally moved far from their natal homesteads in earlier generations (cf. Peires, 1981), by the early twentieth century changes in the political economy made people more likely to seek sites near their natal neighbourhoods. Annexation and the 1913 and 1936 Land Acts made it impossible for people to seek sites outside the Transkei, while population growth led to increasing perceptions of land

scarcity. Homestead sizes declined as young men established their own homesteads at a younger age (cf. Beinart, 1982; McAllister, 1992). This trend, together with increasing poverty, made it less feasible for homesteads to rely exclusively on their own traction or labour resources; they grew more dependent on inter-household cooperation, particularly neighbourhood work parties and genealogically-organised ploughing companies (cf. Heron, 1989). This need to collaborate in production undoubtedly also affected decisions about post-marital residence, encouraging people to seek sites in their natal areas in order to be able to work with familiar neighbours and kin.

While direct evidence of past practices is unavailable, it appears that representation of close kin at meetings concerning land allocation became critical for access to sites and fields. Areas which were largely homogeneous in kin composition in the past have tended to remain or become more so, because members of the founding families requested sites there successfully, while outsiders have been reluctant to do so. As one woman said of the agnatically dense areas in 1998, “a person from [another clan] will not try to live there—he will be like a goat that is among sheep.”

Outsiders did settle in southern Hobeni, however. Hobeni is unusual in the former Transkei in that for most of the twentieth century, there have been employment opportunities available locally, at Cwebe Forest from the 1890s (later Cwebe Nature Reserve), white-owned holiday cottages located inside the forest from ca. 1900, and at the Haven Hotel from ca. 1922. These jobs were rarely filled by people from the local area, however (cf. Fay and Palmer, 2000). Instead, outsiders would take the jobs, and in some cases settle in the diverse neighbourhoods along the road leading into the forest.

The presence of these tourism facilities thus shaped the spatial configuration of southern Hobeni in ways that reinforced the existing forms of social differentiation, making two of the agnatically dense areas potentially less appealing to applicants for land. The wagon-track leading to the Haven was upgraded, eventually making it the exclusive corridor for public transport and the site of a primary school and shop. As a result, two of the agnatically dense areas, KwaDingata and KuBhula have become relatively isolated. These areas are 30-45 minutes walk from the road, although their isolation is offset to a degree by fields that are often much larger than those of homesteads in the neighbourhoods adjacent to the road.

In short, spatial aspects that are likely to discourage or encourage outsiders seeking land have come to overlap with historically-rooted agnatic density and diversity in Hobeni. The result is a situation where agnatic

kinship has become more important for access to land in some areas, and less important in others.

Access to Land in Southern Hobeni

The two patterns of tenure practices that I have described are evident, to varying degrees, in four sets of practices which people in Hobeni use to secure access to land: inheritance, new allocation, subdivision, and relocation.

Inheritance

About one in five homesteads in Hobeni acquired their residential sites, and one in six their fields, through inheritance. Under the old administrative regulations, inheritance was limited to the wife of a deceased male or if she were deceased, the eldest son. Otherwise, land should theoretically revert to the control of the headman for reallocation.

In practice, a wider variety of primarily agnatic kin make successful claims to land based on inheritance, in both the agnatically dense and diverse neighbourhoods. If a couple dies without a son, for example, the husband's brother's son may have a viable claim to inherit. Such claims are generally supported by subheadmen and the neighbourhood residents who attend meetings at the subheadman's place. Local residents generally consider it legitimate to claim land belonging to deceased kin other than their parents if there are no lineal heirs. Local practices also accommodate some women's claims to land; while local rules would forbid women from inheriting, in practice women occasionally do, particularly if they have no living brothers.

While inheritance has contributed to the differentiation between agnatically dense and diverse neighbourhoods, it is clearly not the only cause. Only 29 per cent of the sites in the areas dominated by one or two agnatic groups in my survey sample were inherited—a higher proportion than in the sample as a whole, but not sufficient to explain the existence of two types of neighbourhoods.

Allocation of New Land

The majority of homesteads in southern Hobeni acquired their land through new allocation and/or subdivision of existing parcels. When asked how one can get land, people in Hobeni described an apparently straight-forward set of rules: the headman administers (*ukulawula*) land, and land is available upon

request from the headman. Such statements, however, summarise a more complicated process of allocation and a more subtle view of the headman's role.

Hobeni residents frequently questioned the right of the headman either to collect fees or to grant outsiders permission to settle in the area; some refused the headman's more lavish requests for "gifts," or deferred their payment to an indefinite future. They pointed out a recent case where they had successfully refused an applicant who had been offered a site by the headman.¹¹ Instead, Hobeni residents insist that an applicant must approach the neighbours in the area where he or she wants land, then approach the subheadman. Once an applicant made a request for land to the subheadman, the subheadman would organise an open meeting of all residents of the neighbourhood to reach a consensus on the acceptability of the applicant and the site.

The most important aspect of "allocation" is thus a local matter. To have any expectation of receiving a specific site, a prospective applicant for a site or field would need to gain the support of his or her future neighbours prior to speaking to the subheadman. As one man explained, "the first thing you must do is to go to the people around the place and ask for their permission—then you need to think about how to get the sheep and the money for the headman."

Note that there are moments in this process which are not determined by rules or norms. First, an applicant must decide where he or she wants to request a site or field. Second, the residents of the neighbourhood and the subheadman must decide whether the applicant is acceptable. Although there is a commonly accepted set of procedures for how land allocation should take place, these do not specify the outcomes of decisions about requesting or granting access to land. These meetings allow the social composition of neighbourhoods to come into play. Whether potential applicants request land, and how they are received depends on whether a neighbourhood consists of a network of closely related, co-resident agnates, or a group of diverse families, many of whom are relative newcomers.

Local land allocation practices also allow women to request and receive their own sites. Several women had returned from their own marriages and successfully acquired residential sites with gardens, and in some cases fields, among their natal families.

Subdivision of Holdings

A third means of access to land is subdivision of land by individual homestead heads or local extended families. Technically forbidden under the administrative regulations that governed tenure in the Transkei, subdivision is nevertheless widespread. People who subdivide their fields or residential sites for family members (male and female) state that it is not necessary to consult with the headman or subheadman prior to doing so, and assume that traditional authorities will not challenge their claims.

Like allocation, this practice is also shaped by the differences between agnatically-diverse and dense neighbourhoods. For members of the dominant agnatic groups, land that would not be available to outsiders is nonetheless available through subdivision. One resident of KuBhula first stated that nobody had received residential sites in the area recently, but he then qualified his statement: “there are people who have got sites recently, but they aren’t from outside; they’ve received them from their family’s land.”

As a result of these practices, members of these families have a better chance of getting a better piece of land than outsiders or residents in the more diverse areas. While residents of the diverse areas complain about a scarcity of sites, in the agnatically dense areas, people feel relatively confident about their future prospects for access to land: they say that there is no land shortage and that their children could get new residential sites. My household survey revealed that roughly one in three homesteads in these areas was recently established, compared to one in eight elsewhere. Moreover, the plots that are available in these areas are often larger; since outsiders have generally not settled in KwaDingata and KuBhula, there is more land available per homestead.

Voluntary and Involuntary Resettlement

A fourth means by which people have gained access to particular pieces of residential or agricultural land is relocation. Like many areas in the former homelands, the southern Transkei coast was subjected to betterment policies, involving forced villagisation and the reorganisation of land use.¹² In much of Xhora District, including Hobeni, planning for betterment villagisation began around 1981, and people were moving by 1983-84. Active enforcement was short-lived, though, ending with the 1987 military coup in the Transkei. Many people who had been ordered to move never did. Moreover, the state did not take control of the allocation of new land or the re-allocation of land from which people were removed.

Under betterment, two of the six neighbourhoods (Velelo and MaVundleni) in southern Hobeni were forcibly moved into a “village,” while people were also moved within a third neighbourhood (Mhlanganisweni). The newly created village was comprised of two pre-existing neighbourhoods (Mhlanganisweni and MaBambeni), creating tensions between newcomers and first comers. The prior residents of the betterment village had lost portions of their residential sites and gardens, which were subdivided to create sites for removed homesteads.¹³ They tolerated the presence of removed people out of necessity, but many saw the loss of land to newcomers as an injustice. In two other neighbourhoods (KuBhula and KwaDingata), people were ordered to move but resisted successfully until the administration gave up on enforcement, and never moved.

The distinction between agnatically diverse and dense neighbourhoods corresponds with the pattern of removals and resistance during forced villagisation in the 1980s. The three neighbourhoods from which people were removed (Mhlanganisweni, Velelo and MaVundleni) are diverse in their kin composition. In contrast, the two neighbourhoods where people successfully resisted betterment, KuBhula and KwaDingata, are of the “agnatically dense” type. Residents of these areas did not mention kinship with their neighbours as a basis for their refusal to move; most stated simply that they refused to move when told to relocate, or began building at their new sites, to give the appearance of compliance without actually moving.

The kinship composition of the neighbourhoods appears to have influenced the decisions of the few people from KwaDingata and KuBhula who did leave these areas. In most (five of seven) cases of removals from these areas, the homestead heads who moved were not members of the dominant agnatic groups;¹⁴ it appears that their claims to land were more fragile and easily abandoned.

In 1993, people who had been forcibly removed into the betterment village comprised of Mhlanganisweni and MaBambeni began to return to their former residential sites in 1993. Since then, many removed people have been building at and returning to their old sites, without seeking the permission of the headman or subheadmen.¹⁵

The reversal of villagisation began with the voluntary return of a few relatively well-off homesteads. Over time, however, removed people have faced pressure from their neighbours. In 1999, a man who had recently returned to MaVundleni explained that the first people to move back ‘went on

their own, they left on their own, they weren't chased.' He continued, 'we were staying together well up there. [But] it started getting bad when people said "the Trust is over"; they began to intimidate us. They said they wanted to plough.'

These pressures have been particularly acute in the agnatically dense half of the resettlement area (MaBambeni), where 26 of the 35 removed homesteads which I was able to trace had returned.¹⁶ In contrast, in the more diverse portion of the resettlement area (Mhlanganisweni), removed families have faced less pressure to move; only four of the 28 homesteads removed into or within the neighbourhood had returned to their original sites in 1998.

Similar patterns appear in MaBambeni and Mhlanganisweni residents' approaches to the land left behind by people who have returned to their pre-betterment sites. In MaBambeni, where a few agnatic clusters make up most of the population, long-term residents have generally successfully reclaimed land from people who have left. In contrast, in the diverse neighbourhood of Mhlanganisweni the subheadman and residents have disputed the rights of former owners to claim land rather than allow it to be reallocated. Although there are only four cases from which to generalise, people here have been more willing to allow land to be reallocated; they complain of a shortage of new residential sites and have aimed to accommodate applicants for sites rather than let sites revert to their former owners. In two of the four cases the land was reallocated to a new owner rather than being reclaimed by the previous owner; the other two were too small, damp, and steeply sloped to be desirable, and were left disused.

Regional Implications

In southern Hobeni, there are clearly significant variations in tenure practices, related to the kinship composition of local neighbourhoods, evident in inheritance, allocation and subdivision of land, and in differential responses to betterment villagisation. Is this community simply a unique case, or might similar patterns exist elsewhere in the Eastern Cape and beyond? This question can be broken in two parts: first, are there similar sociodemographic variations in the kin composition of settlements, and second, do these correspond with land tenure practices?

Evidence for Agnatic Density in the Regional Literature

As I noted above, the existence in southern Hobeni of several cases where

large agnatic groups reside in a single neighbourhood contradicts the conventional understanding of the relationship of social organisation, descent, and territory in Cape Nguni societies. Although it does not assess their significance, the existing literature does in fact provide numerous examples of agnatic concentration, and hence the potential for informal influence over access to land.

In the 1980s, Hammond-Tooke published a series of articles (1984, 1985a and 1985b) on agnatic kinship in Cape Nguni society. He explicitly argued that co-resident agnates did not own or hold authority over land, drawing attention instead to the relationship of service or allegiance (*khonza*)¹⁷ between homestead heads and headmen (for example, 1984: 83). Reviewing the regional literature, he summarised the kinship composition of settlements: “80 per cent of...agnatic clusters are made up of six homesteads or less. A cluster of twenty agnatic relatives is decidedly exceptional” (Hammond-Tooke, 1985a: 315).

In a longer work, I analysed the neighbourhood composition described in a number of ethnographic sources on the Eastern Cape, to see whether the pattern of agnatic concentration found in Hobeni had parallels elsewhere (Fay, 2003; texts considered were Hammond-Tooke, 1984; Kuckertz, 1990; Hunter, 1936; Holt, 1969; de Wet and McAllister, 1983, and de Wet, 1985). These sources included information on seventeen neighbourhoods, and revealed some pockets of concentrated kin: five had a single clan comprising more than half of their homesteads and nine had a single clan comprising more than 20 per cent of their homesteads.¹⁸

Similar neighbourhoods to the “agnatically dense” homesteads described in the case study of southern Hobeni above are found in the northern part of Hobeni and in neighboring Cwebe. The land registers of Hobeni and Cwebe compiled by the Village Planner for the Department of Land Affairs in 1997¹⁹ cover nineteen neighbourhoods in the two areas; they reveal that 85 per cent of local clan groups have six or fewer homesteads, comparable to Hammond-Tooke’s 80 per cent. However, in four of the nineteen cases a single clan made up the majority of homesteads in a neighbourhood (compared to five of seventeen in the literature reviewed above). In fifteen of the nineteen cases, a single clan made up more than 20 per cent of the homesteads (compared to nine of seventeen above).

This brief review of the regional literature, together with the cases presented above, suggest that Hammond-Tooke’s formulation of the social

composition of Cape Nguni neighbourhoods is incomplete. Instead, one can identify instead two different types, representing endpoints on a continuum. The more common one is the agnatically diverse type in which no clan or agnatic group has a clear majority. The less common type, found in roughly one in four neighbourhoods, is one where the majority of homesteads are affiliated with only one or two clans, and in which large agnatic groups are common.

The Potential for Agnatic Influence Elsewhere

The presence of neighbourhoods dominated by one or two agnatic clusters throughout the region implies at least the sociodemographic potential for patterns of *de facto* control of land allocation by kin. Similar patterns have been described elsewhere in sub-Saharan Africa. Reviewing the regional literature, Shipton has argued that “lineage principles, particularly patriliney, often become more important, not less, in local land matters as densities rise or as governments attempt to transform tenure” (Shipton, 1989: 10; Shipton, 1984; cf. Platteau, 1996).

In South Africa, similar cases appear in the literature on the Eastern Cape and KwaZulu-Natal. In the years before betterment in Keiskammahoek, *de facto* family control over land was evident. The tenure volume of the Keiskammahoek Rural Survey, particularly the sections on freehold and quitrent, describes growing agnatic influence over land and practices which clearly vary from the legal model of these tenure types (Mills and Wilson, 1952; cf. Wilson 1971).

Preston-Whyte and Sibisi (1975) described *de facto* control of land by localised agnatic groups in KwaZulu-Natal’s Valley of a Thousand Hills, providing evidence for similar practices from the 1930s and 1960s. More recently, Hornby has described similar practices in Ekuthuleni, where families reallocate and subdivide land, bringing in traditional authorities to approve the allocation once the details have been agreed upon locally (2000a: 314).

These cases suggest that situations where groups of kin have *de facto* control of land within communal tenure systems may be widespread. On the whole, the topic has been under researched; as I noted in the introduction, research on tenure has seldom focussed on the details of local practices. Moreover, networks of kin do not have a neat organisational footprint or formal institutional structure, and have been largely ignored despite the turn to institutionalist approaches to the study of common property. In the following

paragraphs, I set out some preliminary hypotheses regarding the relationships between kinship and communal tenure.

Several other conditions besides co-resident agnatic networks appear necessary for these networks to be an important resource for access to land. First, agnatic influence could only come into play where administrative intervention and forced removals have not removed control over land from local people. In many betterment areas, for example, the state successfully took control of land administration and eliminated the role of neighbourhood meetings in the allocation of land (for example, Speigel, 1988; De Wet, 1985). Where locally-based decision-making about land allocation no longer exists, the influence of kinship seems less likely.

Second, the significance of kinship depends on the weakness or absence of countervailing justifications for granting access to land. In many areas, there is evidence that other ideologies have taken the place of descent. Preston-Whyte and Sibisi recount how Christians were chastised for allowing unrelated fellow believers to settle on communal land in favour of their own kin and the kin of local residents (1975: 306-307). More recently, in many areas, civic organisations and other structures linked to political struggles have taken over land administration, often connecting with local inter-generational conflicts (cf. Turner, 1999).

Finally, agnatic influence only seems likely where demand for land is moderate enough that it actually is feasible to exclude outsiders and/or to prevent them from subdividing land they have received. At Preston-Whyte and Sibisi's research site in KwaZulu-Natal, agnatic control of land was declining in the face of increasing demand for residential land. The area's proximity to employment centres "[made] it virtually impossible to stem the flood of outsiders who wish to settle in the area" (Preston-Whyte and Sibisi, 1975: 307). Moreover, outsiders who had been granted land were subdividing their allocations themselves. Under these conditions, "the established descent groups [might] be overwhelmed by non-agnates and their strength and cohesion ultimately affected" (*ibid*: 308).²⁰ Indeed, this seems to be the case in the diverse areas of southern Hobeni, where the first settlers were soon outnumbered, and they never developed the kinship-based influence over land allocation evident in the agnatically dense areas.

Local Variations and Land Tenure Reform

The legal status of tenure in Hobeni is expected to change with the registration of the Hobeni Communal Property Association as part of the finalisation of the Dwesa-Cwebe land claim, although there are questions as to whether the Communal Property Associations Act or the Communal Land Rights Act (CLRA) will ultimately apply. While the CLRA was signed into law in July 2004, it remains controversial and is likely to face constitutional challenges (Cousins, 2004). I consider here the implications of the situation I have described for tenure reform, in the light of debates over the CPA model and the Communal Land Rights Act.

Variations in neighbourhood land tenure practices highlight a fundamental ambiguity in the CLRA. As Cousins puts it, in South African communal tenure systems, different ‘levels of social and/or political organisation constitute different “communities,” nested one within the other. To which level of “community” will the title be transferred when the Bill is implemented?’ (Cousins, 2003: 5.1.1). The neighbourhoods I have described in southern Hobeni, with varying social composition and land tenure practices, are nested within a number of larger structures; neighbourhoods themselves have not been considered as legal “communities” in local tenure reform proposals.

The CPA model as locally implemented has accommodated some variations between communities. When the CPAs at Dwesa-Cwebe were set up in 1996, through a series of public meetings, local residents defined their “communities” at the level of Administrative Areas (that is, the area under a headman, encompassing multiple neighbourhoods) in Hobeni and Cwebe and as clusters of neighbourhoods within Administrative Areas in the five Dwesa communities. These definitions have both allowed those who occupy and use land to define the boundaries of community and to determine whether and how traditional leaders may be involved in land allocation and administration. Hobeni residents explicitly requested that the headman be included as an *ex officio* member at the time that the CPA constitution was being set up, but with equal standing to the other members, to ensure accountability and prevent the possibility of autocratic decision-making or abuses. This stands in contrast to some of the Dwesa communities, which explicitly excluded the headmen from involvement in land affairs.

More recently, given the delay in registration of the CPAs, Dwesa-Cwebe representatives have expressed a concern that under the Land Rights Act, these definitions of “community” might be superseded by legal “communities” defined even more remotely from local practices, at the

administrative level of the old Tribal Authorities; they describe concerns that “the Mvelini T/A [Tribal Authority] and Guse T/A will become the Land Administration Committee in our area” (Dwesa-Cwebe Community Consultation, 2003: 2).

Here as elsewhere, definitions of “community” are often tied up with the position of traditional leaders, whose legitimacy and accountability varies widely. In this respect, the CPA model (as it has been implemented at Dwesa-Cwebe) has allowed those who occupy and use communal land be the ones to determine the definition and the role (if any) that traditional leaders might have in land administration.

Nevertheless, one must ask whether the CPA model can both withstand the arguments of its critics and accommodate variations *within* communities like those I have described above. Critics have assailed CPA constitutions for their inaccessible legal language (for example, Cousins and Hornby, 2000: 8). While this critique might apply to the Hobeni CPA constitution, the document adequately describes local understandings of key issues: definitions of a household and types of land, membership in the local community (inhering as a birthright or available upon application and approval), and a prohibition on sale without the consent of the general membership of the CPA.

Most importantly, the document insists that the CPA committee may not act without a popular mandate.²¹ This is significant for the legitimacy of the committee, but it also enables it to accommodate local variations in tenurial practices. While the text itself is probably only familiar to a handful of people in Hobeni, the principle that the CPA is in the service of the community is widely acknowledged. When I discussed their possible future roles with the CPA committee members, they explained that they could take no role in land administration until the registration of the CPA (still pending in November 2003), and had no specific plans for changes. Their intentions were to work through the subheadmen and neighbourhood structures, following existing tenure practices, and to include the headman as an *ex officio* member of the CPA committee. In effect, there would remain a situation where primary decision-making remains with those who occupy and use the land: neighbourhoods organised under subheadmen. This explicit emphasis on downward accountability suggests that, by working through vibrant existing local institutions, the CPA will be able to accommodate local variations in tenure practices, at least with respect to local use and allocation.

Nevertheless, it appears that tensions may arise between the interests of neighbourhoods and agnatic groups on one hand and the CPA on the other, in the context of proposed and planned development in the area (cf. Palmer, Timmermans and Fay, 2002). Some tensions were evident between the CPA and local agnatic groups in two instances in 1999 where CPA committee members suggested that land be made available for development projects. Both involved efforts to site development projects (an irrigation system and a road) on land that was claimed as belonging to particular families. As one CPA member put it, they were told that “we elected the committee to get us access to the forest, not to use our land.”

These incidents suggest the possibility that the prospect of investment may provoke collective claims to land by groups of kin, as opposed to entire communities. Glazier’s study (1985) of land rights adjudication in Kenya has demonstrated how increasing competition and land titling contributed to the emergence of elaborate claims to descent and lineage ownership of land among people with formerly shallow genealogical reckoning. There is certainly the sociodemographic and ideological potential for similar transformations in southern Hobeni and elsewhere.

Whether landholding institutions are defined at the level of the Administrative Area (as in Hobeni CPA) or at higher levels (for example, at the level of the old Tribal Authorities), tensions between local groups of kin and more broadly-defined “communities” seem likely if projects are sited in areas that have been under the *de facto* control of a few families for generations. The simplest solution would be to site projects in areas that are recognized commonage; such an approach might strengthen the land rights of kin groups even as it marginalises them from investment opportunities. Alternatively, if their *de facto* rights are not to be ignored, benefit-sharing schemes will need to be crafted that accommodate familial and community interests.

Whether the CPA or an alternative structure created under the CLRA is ultimately put in place in Hobeni and similar areas is a question which, unfortunately, may be determined more by national political considerations than local conditions. Whatever the outcome, it is imperative that it maintain a situation where primary decision-making remains with those who inhabit and use the land – neighbourhood members and subheadmen – and that those who approve their decisions remain downwardly accountable.

Finally, given the downward accountability and flexibility of existing local institutions, there are a few areas where cautious intervention might

improve tenure security. Two areas of local practice which contradict anachronistic homeland-era regulations on land tenure are inheritance by extended families and subdivision of land. Formalising procedures for public and legal recognition of these transactions might limit potential conflicts in these areas.

Tenure reform might also contribute to land-based livelihoods by facilitating borrowing and lending of land. Unlike many other areas of the Eastern Cape, borrowing and lending of land is very rare in Hobeni, despite ²² the presence of disused land. Transactions that exist are primarily limited to close kin, again suggesting the relative security of land rights embedded in agnatic networks. The main reason for the absence of borrowing and lending of land, according to local residents, is the concern that after a borrower invests in clearing, ploughing, and/or fencing a disused piece of land, the owner would reclaim it and their work will be in vain. In part, this uncertainty results from the fact that borrowing of land (like *nqoma*, the borrowing of livestock) is generally a private transaction. By promoting a mechanism whereby such transactions could be witnessed or approved by a subheadman, neighbourhood members and possibly members of the CPA committee or other legal structure, it might be possible for the minority of homesteads who are able to produce a surplus to expand their production further. Similar measures have appeared effective in an experimental program in KwaZulu-Natal (Fenwick and Lyne, 1999: 143). Demand for borrowed land may be limited to one in ten homesteads, but bringing more land under cultivation will also redistribute wealth to worse-off residents through increased demand for work parties and hired labour.

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Notes

1

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The paper draws on roughly sixteen months of ethnographic fieldwork conducted between April 1998 and October 1999 as well as archival research in the Umtata and Cape Town archive depots. The fieldwork included a household survey, covering 80 randomly selected households (of 223) in southern Hobeni, as well as participant observation, card sorts, transect walks, life histories, plot histories and other participatory research methods.

2

The former body of work has drawn attention to the way the administrative system entrenched the power of chiefs and headmen, and prevented land accumulation and the development of viable commercial agriculture (for example, Hendricks, 1990; Haines, 1984; Segar, 1989; Ntsebeza, 2001). The latter body of work concerns proposals for conversion to individual freehold tenure, generally based on the investment incentives supposedly associated with individual title and secure property

rights (cf. Cross and Haines, 1988). This debate has been largely superseded in South Africa by proposals for tenure reform since 1996 that have rejected freehold in favour of more flexible systems. Moll (1985) presents a strong case against conversion to freehold in the Transkei; see also Platteau (1996) and Shipton (1989) for critiques of titling based on reviews of the literature on the rest of sub-Saharan Africa.

3

On the origins of the CPAs at Dwesa-Cwebe, see Palmer *et al.* (2002).

4

By “neighbourhoods,” I refer to the clusters of homesteads under a subheadman. These groups, known in Xhosa as *isixeko* or *isiphaluka*, are variously referred to in the literature as “neighbourhoods,” “sublocalities,” “village sections,” and “subwards.” I have chosen to use the English term “neighbourhood” because its connotations suggest the cooperation and frequent interaction among the members of these groups.

5

For readers unfamiliar with anthropological jargon, agnates refer to people who are related through a male line of descent (adj. agnatic), cognates to people related through males or females, excluding relatives by marriage (adj. cognatic), and affines to people related through marriage (adj. affinal). Lineages refer to corporate groups tracing descent from a common ancestor. (<http://lucy.ukc.ac.uk/TVillage/Pages/glossary.html>).

6

I use this term as a shorthand to refer to areas in which one or two patrilineal extended families are numerically predominant.

7

Hammond-Tooke uses the term “agnatic clusters” to describe co-resident groups of agnatically related kin in preference to “lineage,” in order “to get away entirely from the terms derived from descent group theory, with their structural implications” (1984: 84).

8

Remembered genealogies in Hobeni ranged in depth from four to seven generations, about the typical range for Cape Nguni commoners (cf. Hammond-Tooke, 1984: 79, 83).

9

Southern Hobeni was settled by the ancestors of contemporary residents in the mid-19th century. See Cook (1927, 1931, 1934), Davies (1927) and Soga (1930) for discussions of population movements in the region.

10

Fay, Timmermans and Palmer (2002: 70-75) discuss the local economy in the period in question in more detail.

11

The incumbent headman in 1998 was young, and had lost much of his legitimacy for initially failing to support the land claim on the Dwesa-Cwebe Nature Reserves earlier in the decade.

12

De Wet's work (1995, 1985), based on Eastern Cape case studies, is the most comprehensive study of betterment, and places South African betterment villagisation in the context of the broader anthropological literature on resettlement. Other case studies include articles by McAllister (1989, 1992), Spiegel (1988), O'Connell (1980), short works by Yawitch (1981) and James (1983), and sections of Deliwé (1992), Hofmeyr (1993: 78-101), and Jacobs (2003). De Wet (1995: 39-67) recounts the history of betterment planning up to and including the report of the Tomlinson Commission, while Hendricks (1990) covers the history of the policies in the Transkei through the 1970s.

13

Interviews in nearby areas suggest that this was typical of the process in the district, in contrast to the complete rearrangement of existing settlement patterns found in earlier betterment cases (for example, de Wet, 1995), local planners in Xhora typically moved outsiders into already-occupied areas.

14

In 1998, homesteads from outside the dominant families made up only about 1/4 of the residents of these areas; they are clearly overrepresented among those who moved.

15

Because the state did not reallocate land after the betterment removals, these families had continued to use their former residential sites as fields.

16

These examples suggest that agnatic density in other areas of Hobeni may not only be a result of decisions about where to seek land—outsiders who settled there in the past may have left. This is difficult to confirm or disprove—it is easier to learn about residents of the area than those who might have been refused or chased out in the past.

17

Hammond-Tooke's normative focus explicitly excludes informal influence and local practice from his analysis. On the relationship of kinship and decision-making, he comments that "in the past there appears to have been greater descent-group concentration in specific areas so that wards and neighbourhoods contained a dominant core of kinsmen. In such cases it is fair to assume that there was a tendency for descent-group interests to influence policy—but if so, it remained political influence and not legitimated authority, in our terms" (Hammond-Tooke, 1975: 221).

18

People sharing a clan name (*isiduko*) are not necessarily from the same extended family; some of these sources indicate that homesteads are part of the same agnatic group, while others only indicate clan name or are ambiguous.

19

André Terblanche of the Village Planner kindly provided me with the Microsoft Access database in which the land register had been compiled, with the permission of the Hobeni and Cwebe CPA leadership. Using the land register raises several

methodological issues. First, the land registers were collected by local youth, and contain many variant spellings which had to be reconciled (for example, “Makhwemteni,” “Makhwemtseni,” “Mkhwemnte,” and “Mkhwemte” all appear representing the Khwemnta isiduko). Second, the data collection teams in many cases recorded the *isiduko* of the homestead head, often a widowed woman, so that the clans of women marrying in are often recorded rather than the clan to which the agnates of the homestead would belong. This practice, however, would skew the data against showing the correlation between clanship and residence that they in fact reveal. I also cross-checked the Hobeni land register in interviews with subheadmen (most of whom had their own written lists of the members of their neighbourhoods) and other informants.

20

The authors comment that this was a situation ripe for follow-up research; to my knowledge, this has not taken place.

21

The Hobeni CPA constitution includes the following provision, in boldface in the original: “**9.3. The committee has no right to do anything without a mandate from its members.**” While this has not (to my knowledge) been put to the test in Hobeni, an attempt by the former Cwebe CPA chair to argue for an unpopular position in favour of grazing in Cwebe Forest ultimately led to his removal from office at a general meeting of the Cwebe CPA membership.

22

Only one of the 80 homesteads in my homestead survey reported using arable land belonging to another homestead, although follow-up interviews revealed a few more cases. Sharecropping arrangements were almost completely absent and unfamiliar to many people, in contrast to many other Xhosa-speaking communities in inland areas of the Eastern Cape. Sharecropping has been a feature of land tenure in the Ciskei since at least the 1950s and probably much longer.

Just over a quarter of homesteads (22 of 80) reported having rights to land that they were not cultivating. Most cited reasons related to various aspects of poverty (lacking labour, traction, or inputs), although some said that they were allowing their land to fallow and others said that they were saving the land for children who had established their own homesteads yet. This figure is comparable to those given by Moll’s (1985) review of the literature on tenure and agricultural performance in the Ciskei and Transkei, in which he found that 1/5 or more of the area designated as agricultural land was disused. It is also comparable to the figure he provides for white-owned farms in 1976, where some 21% of cultivable land was fallow (Moll, 1985).