

2 Contextual Perspectives

This section presents five brief descriptive passages by way of providing the reader contextual perspective for the present study. These are: an introduction to concepts of tribal authorities and tribal land tenure as they function in tribal areas of South Africa; a summary of South Africa's Land Reform Programme; a description of the incidence and nature of poverty in South Africa; a brief discussion of livelihoods in rural KwaZulu-Natal; and a summary of the HIV/AIDS situation in South Africa.

2.1 Tribal authorities and tribal land tenure

Within tribal authority areas, traditional authorities perform various judicial functions under customary law, dispute resolution, and land allocation and administration. These authorities are therefore central to the institutional environment in traditional rural areas and many of them hold statutory positions on the Regional Councils. The term "traditional authorities", or its correct *isiZulu* term, *AmaKhosi*, is used throughout this study as an encompassing term to indicate "chiefs" of various ranks. It is used to refer to people, and not structures. Tribal authorities were structures established by the Bantu Authorities Act, 68 of 1951, and are composed of traditional authorities, being the "chief", headmen or *izinduna*, from the constituent tribal wards, appointed councillors, usually one from each ward, and a tribal secretary. The extent to which "chiefs" can be regarded as "traditional" is a highly disputed issue.

Under tribal land tenure the individual male household head receives individual allotments of land for residential and arable purposes from the *Inkosi*, with all grazing shared as commonage. The general concepts of land tenure and the problem of population pressure apply to all the tribal authority areas in the study. Land available to a tribe is allocated firstly on the basis of "citizenship", kinship or the length of time a person has lived in an area, and thereafter on the basis of considerations of equity. However, the process of allocation varies from place to place according to local practice. There are no set rules for land use but land is tended to be set aside for farming, for grazing, which is mostly communal, and for dwellings. If a person is allocated land for farming, and does not use it for about three years, the land is repossessed by the *Inkosi* on the advice of the *induna*, and allocated to someone else. These rules have become difficult to enforce with overcrowding and overstocking with the result that *AmaKhosi* spend more time resolving disputes than in land management.

2.2 Land problems and land reform in South Africa

The first post-apartheid, democratically-elected government of 1994 inherited a country with a starkly dualistic agricultural sector and a corresponding land dispensation characterised by racially skewed land holdings and racially distinct tenure regimes. Most rural land accessed by blacks consisted and still consists of holdings within the former 'homelands' which is held in terms of communal tenure under tribal authorities, and collectively comprised only about 13% of the country's land area. As of 1994, homeland land administration systems were in an advanced

state of disarray, and confusion reigned as to the proper role of traditional leaders. By contrast, the vast majority of the 67% of the land area comprising the commercial agricultural sector was held under freehold by about 60 000 white commercial farmers. Administrative infrastructure for the recognition of land rights in former 'white' South Africa includes a well-functioning Registrar of Deeds and a highly accurate cadastre maintained by the Office of the Surveyor General.

In order to address the myriad inequities and other problems besetting the land sector, from 1994 the Department of Land Affairs initiated a legislative reform as well as introduced South Africa's Land Reform Programme. The legislative reform had numerous aims, including reconciling the diverse legislative regimes that governed land administration in former homeland areas, protecting resident farm workers against arbitrary eviction, and providing a legal framework to enable various aspects of land reform.

The land reform programme itself consists of three main parts:

- Tenure reform seeks to improve the clarity and robustness of tenure rights, mainly for residents of former homeland areas, who comprise roughly 34% of South Africa's population, but sometimes also those living in informal settlements in urban and peri-urban areas. The major activity of the government's approach in respect of tenure reform is the rationalisation of existing legislation and the introduction of new key pieces of legislation, such as the Interim Protection of Informal Land Rights Act 31 of 1996, which protects those with informal land rights (e.g. in communal areas and on State land) against removal pending further investigation, and the Extension of Security of Tenure Act 62 of 1997, which seeks to protect resident farm workers from arbitrary eviction. The flagship piece of tenure reform legislation was meant to have been the Land Rights Bill. It aims to introduce a decision-making framework and an infrastructure to enable residents of communal areas to apply for stronger forms of tenure security according to their own preferences, but in a manner that respects the wishes of the broader community. The drafting process for the Bill started in 1997, was halted in 1999, and then restarted and rechristened in 2001 as the draft Communal Land Rights Bill. The present draft bill is expected to be released for public comment in mid-2002.
- Land restitution, as mandated by the Constitution, seeks to restore land to those who were forcefully removed from it, provided the dispossession can be proven and occurred no earlier than June 19, 1913. However, in cases where the restoration of the exact piece of land is not feasible, alternative land or cash compensation is contemplated. The entity responsible for restitution is the Commission on Restitution of Land Rights, which is accountable to the Minister of Agriculture and Land Affairs. The Department of Land Affairs carries the cost of buying out the land from present owners. Expropriation has generally not been used to settle restitution claims, though when it is, compensation is made to the expropriatee in the manner broadly prescribed by section 25(3) of the Constitution, i.e. the so-called 'property clause'. Originally, the closing date for the lodging of claims was April 1998, but this was extended until December 1998. In total, almost 69,000 claims have been registered, of which 28% are rural and 72% are urban. 'A

claim', however, is not a uniform entity: urban claims are typically for single households whereas rural claims tend to represent more than one household, and often whole communities. The pace of resolving claims has improved considerably in the last few years. Notwithstanding well-publicised discontent at its inadequate pace, restitution is a relative success story for the land reform programme. Most provinces appear to be on schedule to complete the validation phase by mid-2002, and some provinces even expect to have completed settling all claims by 2003. The problem remains, however, in laggard provinces such as Mpumalanga, Northern Province and KwaZulu-Natal. These have large numbers of outstanding rural claims, and yet are key agricultural provinces whose production environment is inhibited by the slow progress made in addressing those claims.

- Land redistribution is the process according to which people apply for grants towards the purchase of land for farming and/or settlement. The original redistribution programme initiated by Land Affairs in 1995 was based on a flat grant of R16,000 per household (that is, on a par with the housing grant) for the acquisition of land and start-up capital. Initially, the primary aim of the programme – as well as the rationale for the small size of the grant – was to cater for the need for secure residential tenure as well as land with which to contribute to one's own sustenance. Although still inadequate, the pace of delivery accelerated rapidly between 1995 and March 1999. Over the period, roughly 60,000 households were allocated grants for land acquisition, of which 20,000 benefited in the 1998/1999 financial year alone. Altogether, around 650,000 hectares were approved for redistribution by March 1999, representing less than one percent of the country's commercial farmland. Apart from insufficient delivery, as of 1999 the Department of Land Affairs was beginning to come to grips with the variable quality of its redistribution projects. Attention focused on the fact that groups were too large, that project plans often called for group farming which frequently proved unstable, and that the programme did not easily accommodate those aspiring to farm commercially. Upon taking over the land portfolio in June 1999, Minister Thoko Didiza called for a sweeping review of the redistribution programme. The essence of her call was that the programme should be broadened to cater for those aspiring to become full-time, medium-scale commercial farmers, and should build more on synergies between Land Affairs and Agriculture. The new redistribution programme, called Land Redistribution for Agricultural Development (LRAD), was launched in late 2001.

For the purposes of this study, arguably it is the tenure reform component of the land reform programme that is of greatest relevance. This is because tenure reform directly affects more people than either redistribution or restitution, and because the fact that work on the draft Communal Land Rights Bill is on-going means that there is possibly still a window to influence the draft bill in light of current findings. However, the issues raised by HIV/AIDS in respect of land issues are also of relevance to redistribution and restitution, as is evidenced from the case studies from Muden which involved a community that benefited under the redistribution programme.

2.3 Poverty in South Africa

Although South Africa is one of the most developed countries in the Southern African Development Community (SADC), it is also well known for its high level of poverty and inequalities. It has the highest level of inequality in the region and the second highest in the world behind Brazil. This high level of inequality is the product of past policies that discriminated against the majority of the population.

Based on a per adult equivalent poverty line of R352 per month, in 1995 61% of Africans were poor, 38% of coloureds, 5% of Indians, and 1% of whites.¹ Although the data are old and the percentages have likely changed in the meantime, the stark racial differentiation certainly still obtains. There is also a strong geographical dimension to the incidence of poverty. Based on the same data set, 72% of all poor people (those below the poverty line) reside in rural areas, and 71% of all rural people are poor. By most measures, the poorest provinces are those encompassing the most populous former homeland areas, namely KwaZulu-Natal, Northern Province, and Eastern Cape.

A reasonable proxy for income poverty is child under-nutrition. Around 23% of children under 6 are stunted, indicating a protracted period of under-nutrition.² The most seriously affected children are those in rural areas whose mothers have relatively little education. Anemia and marginal vitamin A status affect between 20% and 30% of young children. Also, the infant mortality rate is 8 to 10 times higher for blacks than for whites. According to the Department of Health, approximately 14 million South Africans are vulnerable to food insecurity. The minimum recommended dietary intake will require a minimum of R286.5 per person per month (Bonti-Ankomah, 1999). With a household size of 5, this will imply a minimum monthly food expenditure of R1432.5 per month. However, 50% of all households in the country have incomes of less than R1200/month.

The way in which data are captured in Stats SA's main annual survey, i.e. the October Household Survey, is not comparable to that for the Income and Expenditure Survey of 1995, upon which the headcount measures reported above are based. For that reason, it is not possible to state trends in the headcount measure of income poverty since 1995.³ However, the direction of the trend is not difficult to guess, given the close relationship between poverty and unemployment. For example, among those who were below the poverty line in 1995, the unemployment rate was 55%, whereas among those above the poverty line, the unemployment rate was 14%.⁴ In terms

¹ J. May, I. Woolard, and S. Klasen, 2000, "The Nature and Measurement of Poverty and Inequality", in J. May, ed., *Poverty and Inequality in South Africa: Meeting the Challenge*, Cape Town: David Philip. Data for the headcount measures are from the Income and Expenditure Survey of Stats SA.

² N. Steyn, 2000, "A South African Perspective on Preschool Nutrition", *South African Journal of Clinical Nutrition*, Vol. 13, No. 1.

³ It soon will be, however, as the next Income and Expenditure Survey is due to be released in late 2002.

⁴ J. May *et al.*, *op. cit.*

of formal sector employment, in the 5 years since 1996 there has been a contraction of more than 800 000 jobs, or about 5% of the workforce. While there has been a countervailing increase in informal sector employment, it is well known that these jobs are much less remunerative on average.⁵ The implication is that, most likely, the prevalence of income poverty has worsened over the past half decade.

By the standards of middle income countries, an excessive number of South Africans live in shacks without access to potable water, sanitation facilities, electricity or telephones. According to the 1999 October Household Survey, about 12.3% of all South Africans and 16% of the African population live in shacks in informal settlements. Comparison of these figures to the 1996 figures of 11.7% and 13.7% indicates that a higher percentage of the population than before, are currently living in shacks. This is most likely on account of influxes of ex-farmworkers and other rural dwellers to urban and peri-urban areas, as well as informal settlements around rural towns.

South Africa's health services are relatively well funded, but provide poor coverage despite the shift of emphasis towards primary health care. Services remain inaccessible to a large number of poor people due to distance, inappropriate facilities and medicine costs. According to the 1998 October Household Surveys, 41% of households has to travel 5 km or more to the nearest medical service.

Other aspects of quality of life may be less tangible, but no less important to the experience of poverty or non-poverty. The Speak Out on Poverty Hearings sponsored by the South African NGO Coalition (SANGOCO) in 1998, evoked many of the experiential aspects of poverty, including exposure to crime and violence, a sense of vulnerability and powerlessness, disrespect from government officials (e.g. those responsible for pension payouts), etc. Similarly with the South African Participatory Poverty Appraisal (SA-PPA), which vividly portrayed the relationship of poverty to hopelessness, social isolation, and family fragmentation.⁶

2.4 Livelihoods in Rural KwaZulu-Natal

Turning now to the specific case of rural KwaZulu-Natal, we offer a few glimpses of livelihoods and livelihoods strategies there. About half of the African population of KwaZulu-Natal lives in rural areas, some 4.6 million individuals as of 1999. Of these, about 43% were 14 years old or younger, and 7% 60 years or older.

According to the narrow definition of unemployment, which presumes one is actively seeking work, the unemployment rate in 1999 among rural Africans 15 years and older was 48%, versus 41% in urban areas. Using rather the broad definition of unemployment, which includes those not actively seeking work (i.e. presumed to be 'discouraged' job seekers), the figures are 51% and

⁵ G. Kingdon and J. Knight, 2000, "The Incidence of Unemployment in South Africa", TIPS Conference "2000 Annual Forum".

⁶ J. May, H. Attwood, P. Ewang, F. Lund, A. Norton, W. Wentzal, 1997, *Experience and Perceptions of Poverty in South Africa* (synthesis report for the SA-PPA), Durban: Praxis.

42%, respectively. There is no significant difference in unemployment rates if one rather limits the calculation to those who are between 20 years and 60 years old. It should be stressed however that employment is understood broadly to include various forms of self-employment.

As in other parts of the country, the problem of unemployment is not just the overall rate, but the fact that those who are unemployed are apt to remain unemployed for long spells. For example, among rural dwellers who were unemployed in 1999, 76% had never previously worked. Of those unemployed in 1999 but who had previously worked, 32% had been seeking work for more than a year, and 17% for more than three years.

Among Africans who are employed, the pattern of employment is as indicated in Table 1 below. The table disaggregates according to whether one is self-employed or works for someone else, and whether the work is in the formal or informal sector. The breakdown is shown also for urban dwellers for sake of comparison. About a quarter of all rural Africans who are working are self-employed in the informal sector, versus 13% for urban dwellers. Rural dwellers are by and large less likely to work in the formal sector, although it should be noted that 'informal employment' includes paid work as a domestic.

Table 1 – Employment patterns among Africans in KwaZulu-Natal, 1999

<i>Rural</i>		
	Formal	Informal
Self-employed	Less than 1%	27%
Work for someone else	54%	19%
<i>Urban</i>		
	Formal	Informal
Self-employed	Less than 1%	13%
Work for someone else	67%	20%

Source: OHS 1999.

What is not shown on the table is that, of rural dwellers who work for someone else in the formal sector, only 7% are employed on a seasonal or casual basis, versus 26% among those who work for someone else in the informal sector. What this suggests is that many of those unfortunate enough to have to work in the informal sector have the added disadvantage of not having secure and or regular work there. That those in the informal sector are likely to be worse off than those in the formal sector is indicated by the fact that, among rural households whose head is in the formal sector, only 20% reported not having enough money to prevent hunger in the previous year, versus 27% for households whose head is in the informal sector. Those households which have reliable and constant access to wage work are those which enjoy a decent standard of living, or reach what can be thought of as elite status in the local context (cf May, Carter & Posel, 1997).

Interestingly, among urban households whose head is in the informal sector, 37% reported not having enough money to prevent hunger in the previous year, significantly higher than for corresponding rural households. A plausible interpretation is that, notwithstanding the other hardships associated with rural life, at least rural households are more likely to be able to avoid encountering hunger through their agricultural activities. What this indicates is that access to agricultural land can perform a vital safety-net function, even though it may not serve as an actual route out of poverty. For very poor rural households, on the other hand, even the safety-net function of land may not materialize. With few exceptions, how far the poor can improve or sustain their support position by using the collection and production options that are available to them is limited by the level of resources they are able to put in. Most of the poorest households have neither good quality able-bodied labour available, nor enough cash to capitalize a significant informal business operation. Loss of children's labour time into school attendance and schoolwork is another factor which cuts back the total labour available to poor households trying to cultivate or run businesses.

An important dimension of income poverty that is receiving more and more attention, is its duration. Based on data from KwaZulu-Natal, it would appear that more than half of those households that were poor in 1998, were also poor in 1993, meaning that they are 'chronically poor'.⁷ At least for the KwaZulu-Natal data set, the incidence of chronic poverty tends to be much higher among rural households, female-headed households, households with older household heads, and those households with below-average access to arable land. Cichello *et al.* (2000) demonstrate that the experience of 'transitory' or 'episodic' poverty – i.e. households that escaped poverty between 1993 and 1998, or conversely, fell into poverty between 1993 and 1998 – is largely a function of employment transitions, in terms of a household member getting or losing a key job. In attempting to identify factors that contribute to the prospect of escaping poverty or the risk of falling into it, they conclude that: "*ceteris paribus*, males and urban residents are more likely to move out of poverty and less likely to fall into poverty", implying that women and rural dwellers are more likely to end up in poverty.

Given the importance of finding gainful employment, it is not surprising that the population is quite mobile. Often times this mobility is in the form of an individual household member who relocates to an area with better job prospects, but whole households are also known to relocate. Of those African households in KwaZulu-Natal that re-located between 1994 and 1998, almost 60% did so to seek or take up employment. As one would expect, some of this movement is rural-to-urban, but much is not. Cross *et al.* (1998) show that within KwaZulu-Natal a large and growing share of internal migration involves whole households engaged in rural-to-rural movements, typically from former homeland areas to areas around rural towns, where not only better job prospects are hoped for, but also better access services and resources (e.g. water). Cross *et al.* point out that one consequence of this greater mobility is a disruption of social networks that hitherto had served as critical safety-nets.

⁷ B. Roberts, 2000, *Chronic and Transitory Poverty in Post-Apartheid South Africa: Evidence from KwaZulu-Natal*, Working Paper No. 28, Centre for Social and Development Studies, University of Natal.

One area where this phenomenon is especially strong is in the peri-urban areas around Durban, especially those that are communal lands. The intense peri-urban demand for land almost entirely for residential purposes has had the effect of turning what had been more or less typical agricultural communities into densely settled areas with a quasi-suburban relationship to the city. That is, the majority of households support themselves mainly on the wage economy, either from inside the metro boundaries or from local jobs linked into the city. However, recently this trend is reported to have reversed to some extent as unemployment has continued to rise, and more and more households have found themselves cut off from wage income. As in other areas, land has become a more common fallback option for families losing their foothold in the cash economy.

2.5 HIV/AIDS in South Africa

The first two cases of AIDS in South Africa were diagnosed in 1982. At the end of 1995 about 9000 cases of AIDS had been reported. However estimates from projection models show that 1.8 million people were infected at that time (National Population Unit, 2000) (NPU). According to the estimates from the Department of Health, up to 3% of the total population were infected with AIDS in 1996 (NPU, 2000). The latest estimated figure on AIDS in South Africa is 4.2 million. Recent UNAIDS reports indicate that the growth rate of HIV infections in South Africa is one of the highest in the world. HIV prevalence in 1999 was 22.8%, compared to 14% three years earlier. In some provinces, e.g. KwaZulu-Natal, the prevalence rate has passed the 30% mark.

It has been estimated that by the year 2003, South Africa, Botswana and Zimbabwe will be experiencing negative population growth rates of between -0.1% and -0.3% , compared to rates of 1.1% to 2.3% without AIDS. It is also estimated that crude death rates in South Africa are 14.7 per thousand population compared to the 7.4 per thousand population they would have been without AIDS⁸. The pandemic had caused 25 000 deaths in the country by 1999.

Table 2 below reports the progression between 1998 and 2000 of prevalence rates of HIV infection according to province. The figures refer to the prevalence rates for adults, estimated on the basis of blood tests of women reporting to clinics for ante-natal care. The table indicates that the incidence of HIV infection was highest in KwaZulu-Natal for both years, though the degree of increase between 1998 and 1999 was not as great as for some other provinces.

Table 2 - Provincial HIV/AIDS Prevalence Rates (%), 1998 and 2000

Area	1998	2000
South Africa	22.8	24.5
Western Cape	5.2	8.7
Eastern Cape	15.9	20.2
Northern Cape	9.9	11.2

⁸ MAP (2000), *The Status and Trends of the HIV/AIDS Epidemics in the World*, XIII International AIDS Conference, 5-7 July, Durban South Africa.

Free State	22.8	27.9
KwaZulu-Natal	32.5	36.2
Mpumalanga	30.0	29.7
Northern Province	11.5	13.2
Gauteng	22.5	29.4
North West	21.3	22.9

Source: Department of Health, 2000.

AIDS orphans are defined by UNAIDS as children under the age of 15 who have lost their mother or both parents to AIDS. The number of AIDS orphans is set to rise as South Africa's high HIV prevalence rate among adults translates into a higher prevalence of AIDS and then AIDS deaths. UNAIDS estimates that as of the end of 1999, there were around 371 000 living AIDS orphans in South Africa (UNAIDS/WHO, 2000, p.3), while 50 000 AIDS orphans have already died, presumably from AIDS but also other causes, as HIV negative AIDS orphans have a higher-mortality rate than non-orphans. The Metropolitan Life model estimates that by 2005 there will be 920 000 AIDS orphans in South Africa, and by 2010 there will be roughly two million (reported in Whiteside and Sunter, 2000). By contrast, according to the 1996 census, the total number of motherless orphans 14 years and younger in the country was about 400 000. This figure is presumably inclusive of AIDS orphans of that time, but at any rate the number of AIDS orphans will soon account for a very large increase in the total number of orphans in the country.