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Exclusion through defined membership in
people centred natural resources
management: Who defines?

by Alfons Wabahe Mosimane and Karl Mutani Aribeb



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**Centre for Applied Social Sciences
and
Programme for Land and Agrarian Studies**

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Who defines?**

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Abstract

This paper investigates how community-based natural resource management (CBNRM) has determined membership to rights over forestry and wildlife resources in Botswana, Namibia and Zimbabwe. The legal frameworks in these countries emphasise geographic location, which can be referred to as a 'community of place', with the residents determining membership. While recognising the limitations highlighted by CBNRM critics, it must be acknowledged that authority and boundary ('area of jurisdiction') are equally important. Any poorly defined link between authority and boundary would invite criticism, and would be seen as an essential flaw in any common property regime. Membership of wildlife and forest management regimes in Botswana, Namibia and Zimbabwe is based on geographic location and residence, the latter being based on social elements such as kinship and marriage, cultural affiliation and social networks.

1 Introduction

The people-centred approach in southern Africa can be regarded as an initiative aimed at creating collective community-based natural resources management (CBNRM) without the ‘tragedies’ referred to in common property literature. The approaches adopted in different southern African countries differ in focus as a result of the legal frameworks governing the collective management of natural resources in the countries in question (Rihoy 1995). The respective emphases range from disbursement of economic benefits and the development of local-level resource management mechanisms, to ecological concerns and social and cultural issues. Lessons and experiences recorded in common property literature call for the clear demarcation of boundaries and definitions of those individuals and households with the right to access collectively managed natural resources (Murphree & Hulme 1999; Ostrom 1990). The CBNRM legal frameworks in the various countries are essentially responses to this call.

This paper focuses on responses to definitions of individuals and households, also referred to as members, with rights. It attempts to disentangle the respective roles of the legal frameworks and the various customary and non-customary factors at play in Botswana, Namibia and Zimbabwe, in the determination of membership of individuals from access to and benefits from collectively managed forest and wildlife resources. The information used in this paper is based on a review of legal documents, including policies and legislation relating to natural resources in Botswana, Namibia and Zimbabwe.

A key concern of this paper is that of ‘natural resource tenure’, the policy and legal instruments in place, which determine social and institutional relationships regarding access to and management of natural resources. Murombedzi (1990) argues that if they are to be meaningful, rights to natural resources should be exclusive and enforceable. Firstly, the holder of such rights over resources should be in a position to exclude others from accessing and benefiting from the resources in question. Secondly, the holder should have the ability to enforce such exclusion in the long term (Murphree 1996). Thirdly, according to Murphree, the rights should be based on as few conditions as possible. In other words, the extent of limitations attached to rights is in inverse proportion to their strength. This means that the fewer the limitations, the stronger they are likely to be, and vice versa. The authority vested in individuals is what makes it possible for the holders of rights to decide how to manage the natural resources, and whom to exclude. The right of exclusion is primarily enacted through the operational rules of access, which are collectively decided and determine the criteria which individuals must satisfy in order to have access to forest and wildlife resources.

2 Background to property rights systems in southern Africa

Property rights systems in southern Africa stem directly from the social engineering policies of the colonial past. This has been the case in two of the countries under discussion, namely Namibia and Zimbabwe. Botswana, by virtue of having been a British protectorate rather than a colony, has experienced a different historical evolution, and was not subject to massive settlement by white settler farmers of European descent. As a result, white farmers in Botswana have acquired only 5.5% of the land in freehold ownership (Rihoy et al. 1999). Botswana has also succeeded in preserving customary tenure systems, with about 71% of the land today being classified as tribal land, which is regulated by the Tribal Land Act of 1968 (Rihoy et al. 1999).

In Namibia and Zimbabwe, on the other hand, remnants of the colonial administrative formations continue to influence the patterns of proprietary rights over land and natural resource management. These policies and practices gave preference to freehold and state proprietary systems, to the detriment of centuries-old indigenous and customary systems. Fundamental differences that consequently emerged between communal and freehold property rights regimes have been adequately researched and documented. For example, Murphree (1996) sums up these differences by referring to a crucial correlation that exists between the strength of property rights and the type of land tenure, asserting that the strength of rights of ownership over land is determined by the time-frame of ownership and the scope of the conditions to which such ownership is subject. Therefore, 'the longer their sanctioned duration, the stronger the rights will be' (Murphree 1996:6). If this measure is applied to the three types of property rights commonly found in southern Africa, namely state, private and commons, it becomes quite clear that state and freehold property rights systems have been dominant for over a hundred years.

The right to own private property, for example, has been well codified through laws, and has even been entrenched in the constitutions of countries such as Namibia and South Africa. At the same time, states have appropriated to themselves ownership of all other resources not owned under freehold tenure. This state ownership, which has been declared in a blanket fashion and mostly without any clear policy guidelines or directives, includes communal use areas and the resources found there. These communal use areas, identified by group or collective rights of access to natural resources, were neglected for the best part of the 20th century because of this policy inertia.

Against this background, Ostrom (1990) argues that customary resource management regimes throughout sub-Saharan Africa lost their built-in regulatory mechanisms and authority because they were undermined by colonial and post-independence policies. It would also be fair to argue that current people-centred approaches in southern Africa are indeed seeking to reverse the erosion of customary systems and rights regimes initiated by colonial governments and subsequently perpetuated by post-colonial governments. Without exception – and this includes Botswana – all people-centred approaches have had to deal with the issue of what should be deemed the appropriate management institution for natural resources in communal use areas. While contextual differences are fully appreciated, distinct strands of thought pertaining to new conservation strategies can be isolated.

Murphree and Hulme (1999) argue that there is a marked departure from the state-coerced separation of proximate natural resource users from the natural resources, and that the new approach effectively seeks to make communal area dwellers a locus of conservation 'imaginings'. They argue that these imaginings manifest themselves in a number of ways. On the one hand, there are the fairly radical approaches that devolve a full package of management responsibility and property rights to the lowest level of community organisations (as in Namibia for example). In these cases, community-level management institutions are established and empowered to receive and hold proprietary rights and to manage common resources. On the other hand communities are merely perceived as neighbours, as for example in the 'parks and neighbours' approaches identified by Rihoy (1995).

3 Membership and common property resources

The Merriam-Webster Online Dictionary (www.m-w.com) defines membership as ‘a group of people associated by some common tie or occupation and regarded as an entity, the whole’. A member, then, is an individual belonging to a larger group. Three elements can be distinguished: an individual, a clearly distinguishable larger group (the whole) and a common tie. The issue of a common tie is crucial, as it is the basis of exclusion, and serves as an attraction for outsiders who desire to belong to the group. Additionally, it drives the definition of the ground rules of the group, and serves as the basis for the dispensing of sanctions and rewards, and for the determination of benefits to which eligible members are entitled. This definition of membership is consistent with the group dynamics that characterise common property natural resources management.

Several design principles have been proposed to make common property regimes, as distinct from ‘open access’ scenarios, successful. The recognition of the rights, roles and responsibilities of individuals and emphasis on their membership of the resource user community are essential for distinguishing between the user community and outsiders. Design principles for successful natural resources management include clear definitions of the limits placed on the use of forest and/or wildlife resources, and clearly defined individuals or households with the right to harvest such resources (Constanza & Folke 1996).

Murphree (1993) identifies five principles for successful common property resource management (CPRM), two of which are relevant to this paper. The first is that ‘the unit of proprietorship must be the unit of production, management and benefit’. This emphasises ownership as being central to the success of CBNRM regimes. The principle is basically that a group of common property resource managers should be able to identify themselves as the owners of the resources they manage, and that this ownership must be recognised by neighbouring communities and all other decision-making institutions. Turner (1996) asserts that this principle implies that members of the management unit should have unambiguous powers to exclude non-members. The second is that ‘the unit of proprietorship should be as small as practically possible, within ecological and socio-political constraints’. The need for as small a size of unit as is practical could be interpreted as emphasising close relationships between the members of units of proprietorship. The members should ideally know each other and meet often to discuss issues related to resources management, be able to exert peer pressure on one another, and recognise themselves as part of an established local institution.

A review of the literature suggests that legal recognition of communal resource use rights, including the right to use forest and wildlife resources, is key to the successful prevention of exclusion under communal property regimes. Where communities do not have the right to exclude others from using wildlife and forest resources, there is the distinct possibility that such resources will become ‘open access’ resources, where individuals may increase their personal benefits from the resources at the expense of the broader community (Bromley & Cernea 1989; Jones 1995).

It is evident from the foregoing that the idealised goal of effective common property regimes is to replace the government-centred management and allocation of wildlife and forest resources, with local community structures consisting of managing groups with fixed memberships, that allocate access to well-defined and delimited resources through specified procedures (Turner 1999). This is illustrated by the case studies from Botswana, Namibia and Zimbabwe that follow.

4 Evidence from case studies

Membership issues are discussed from the perspective of experiences from Botswana, Zimbabwe and Namibia.

In Botswana, the government passed the Wildlife Conservation and National Parks Act in 1992, with the explicit goal of enabling communities living on what are called 'non-gazetted lands' to play a greater role in managing their natural resources and to benefit directly from them. This legislative reform marked the official adoption of what has become known as the Botswana Natural Resources Management Programme (BNRMP) (USAID 1994). In terms of the BNRMP arrangements, the entire country (excluding protected areas and other proclaimed lands) has been divided into controlled hunting areas (CHAs) and wildlife management areas (WMAs), which have been zoned for various types of wildlife use (USAID 1993). Communities living in these areas are eligible to apply for tourism leases and wildlife quotas from the Department of Wildlife Services (DoWS). Such communities are required to conform to a few requirements in order to qualify for the leases.

The Botswana community-based natural resources management policy (DoWS 2004) seeks to clarify the natural resources rights that may be delegated to communities, including rights of management, use and access, and the steps required for communities to be accorded such rights. Although the policy has several objectives, this paper focuses on the objectives that pertain to issues of rights, access and exclusion.

The policy explicitly states that all citizens have an equal interest in open access property, and that no identifiable individual or group enjoys primary access or management privileges to the exclusion of others. Regarding access to resources in community property regimes, however, the policy states that primary interest may be held by an identifiable community in its entirety, and that such a community enjoys primary access rights and is entitled to associated benefits. The difference between the two property regimes in the policy lies in the entitlements citizens can enjoy. Representative and accountable legal entities (RALEs), for example community trusts, can be classified as community property regimes. Examples of RALEs are the Chobe Enclave, the Shankuyu Community Trust, the Xai Xai Community Trust and the Boro/ Standidibe Community Trust (Rihoy et al. 1999). Members of the trusts qualify to enjoy access rights and benefits derived from the management of forest and wildlife resources within the trusts' defined geographic locations. If a trust has been accorded exclusive use rights, non-members can, in theory at least, be excluded from enjoying such rights. Such exclusion might be difficult to effect, however, and establishing whether or not it occurs in practice would require further investigation. Communities are legally entitled to sublease their rights to private operators, and to retain the revenue that accrues. The statutory bodies managing these arrangements are the Land Boards, which manage tourism leases, and the DoWS, which administers wildlife quotas.

We turn now to the situation in Zimbabwe. Here, a review of wildlife management policies and legislation undertaken by the Department of National Parks and Wildlife Management (DNPWM) resulted in an amendment to the Parks and Wildlife Act of 1982 (Thomas 1995a). This amendment made provision for the DNPWM to confer 'appropriate authority status' (Thomas, 1995b:12) on rural district councils (RDCs) with communal lands within their boundaries, and gave rise to the Communal Area Management Programme for Indigenous Resources (Campfire).¹ This conferment of appropriate authority status constituted a legal devolvement by central government of the right to manage and derive benefits from wildlife resources in Zimbabwe's communal areas (Hasler 1995).

The RDCs are essentially structures of local government with a statutory mandate to co-ordinate development in the areas under their control. They were considered to be the appropriate bodies in which to vest the authority to manage communal lands, on the grounds that their members are democratically elected inhabitants of the districts, who would therefore be best placed to represent

the interests of inhabitants at the district level. Under the Campfire programme, 36 of the 52 RDCs in Zimbabwe have been accorded appropriate authority status (Rihoy et al. 1999).

Campfire made use of existing decentralised local government institutions as units of management. Although the RDCs receive and hold authority, benefits that accrue from wildlife are distributed according to wards. Critical questions have been raised about the suitability of local government institutions as units for wildlife management, as the areas under their control have been demarcated primarily on the basis of demographic considerations, rather than wildlife management considerations (Murombedzi 1991).

In Namibia, the Nature Conservation Amendment Act 5 of 1996 replaced the Nature Conservation Ordinance of 1975, which was discriminatory in that it gave commercial farmers the right to utilise wildlife on their properties, but withheld the same right from residents of communal lands. The legislation made provision for the formation of local wildlife management institutions called 'conservancies', to receive and hold wildlife management rights on behalf of the constituent communities. According to the Ministry of the Environment and Tourism (MET) (1995:6), a conservancy is 'a community or group of communities within a defined geographic area who jointly manage, conserve and utilise wildlife resources'. A conservancy is to be managed as a unit, and the members must share in the benefits from their combined management in an equitable manner. The law requires that, to be legally registered with the MET, a conservancy must have a membership register, a constitution, an elected management committee and defined geographic boundaries. The legal framework for conservancies stresses the social definition of a membership group that takes on the responsibility for managing a natural resource (Turner 1996). The boundaries of the community of resource users, and of the resources under management of the community, are socially defined. Conservancies are thus legally constituted, membership-based wildlife management institutions.

In summary, it is evident that the legal frameworks in Botswana, Namibia and Zimbabwe place emphasis on geographic location, which can be referred to as the 'community of place', and on residency as factors that determine membership. It is clear, therefore, that the 'community of place' must have boundaries of jurisdiction and authority (trusts, conservancies and RDCs) to manage the resources on behalf of the community. In all three cases, unlike the 'fenced boundaries' of parks surrounding several communities, the boundaries are social (political, traditional and community-based) and flexible, insofar as they are established through negotiation and consensus, which is most notably the case in Namibia. This means that boundaries alone cannot be used to exclude those who are not members of the wildlife management institution. Communities residing outside the boundaries, who use resources other than wildlife resources within the boundaries, will continue to do so, and any change in this pattern of usage would have to be negotiated between the 'community of place' and the 'community of use', who in most cases are non-members. The rights held by the 'community of use' are entrenched in customary and traditional modes of livelihood, and these know no boundaries.

What emerges from the foregoing discussion is the porosity, fragility and flexibility of boundaries in geographically defined regimes ('community of place'), a characteristic which CBNRM critics continue to emphasise. The porosity of boundaries is further demonstrated by Dore (2001), who cites several studies investigating the rules governing the use of non-wildlife natural resources in Zimbabwe's communal areas. For example, Lynam et al. (1996) revealed how the households from two villages in the Zambezi valley were not able to meet their needs from resources within their respective village boundaries. The study found that a large number of households had unrestricted access to and use of resources outside village and even ward boundaries.

Similarly, Mandondo (2001) found that administrative boundaries have little effect on villagers' use of natural resources. If anything, practical considerations such as 'availability, ease of access, ease of transportation and ... proximity' (Mandondo 2001:10), play a stronger role than the issue of

ownership. As a result, it can be argued that there is a profound need for further meticulous investigation, analysis and documentation of factors influencing the rules governing management, access and use rights with respect to non-wildlife resources in Zimbabwe's communal areas. The investigation could further be extended to Namibia and Botswana, where there are similar occurrences of the 'community of use' utilising resources beyond the socially constituted wildlife management boundaries.

5 Institutionalising membership

In Zimbabwe, Campfire chose RDCs for resource management as a matter of convenience, and it may be argued that the Zimbabwean programme appears to have found ready-made answers to questions relating to membership and exclusion. Residence in a village, obviously proven through accepted social parameters such as kinship and lineage, constitutes the key factor in determining an individual's entitlement to Campfire benefits. This entitlement permeates upwards to ward and district levels, as the case may be. Zimbabwean communities are therefore legally defined through political administrative boundaries, and the interests of individual resource users combine in wards. By virtue of their residing in a geographic area, communities are defined as resource users, and are therefore automatic holders of use and access rights over wildlife and forest resources within the administrative boundaries of their places of residence.

For the purposes of CBNRM, communities in Botswana consist of a diverse set of people with varied socio-economic interests and capabilities, sharing an interest in conservation and living within a legally defined geographic area (DoWS 2004). The policy places emphasis on the social and economic relations that exist between various individuals, households and villages, by virtue of which they are deemed to constitute a community. Lineage is a strong element of social relations and associations, and can exist between households and villages, and even beyond defined communities. However, the legally defined geographic area might minimise the relevance of lineage membership across different geographic, and resource use and management areas.

In Namibia, a conservancy is defined as 'a community or group of communities within a defined geographic area'. Individuals must apply for membership of a conservancy, and their membership must be registered. Although residence within the boundaries of a conservancy is a key factor determining eligibility for membership, the registration requirement makes conservancy membership voluntary and optional. Technically, certain residents of an area declared as a conservancy or seeking such declaration could decide not to join the conservancy. Non-registered residents of the conservancy area are not regarded as members of the local institution (conservancy). Although they may be community members by virtue of their residence within the social boundaries, and may also be resource users, they can theoretically be excluded from benefiting from and making decisions pertaining to wildlife and tourism by virtue of their not being members of the conservancy.

Clause 10 in the model conservancy constitution shows that conservancies in Namibia, like their counterparts in Botswana, realise the importance of being inclusive. However, inclusion in Namibia is subject to the condition that the individual applies for membership and is accepted by the management committee as a member. This condition places a limitation on the stated inclusive approach, as it is exclusive in nature. Customary use and management rights, decision-making powers, and ultimately the capacity to derive benefits from wildlife and forest resources can be lost if the individual fails to register himself or herself.

Membership of wildlife and forest management regimes in Botswana, Namibia and Zimbabwe is clearly based on geographic location and residence, which in turn are determined by social elements such as kinship and marriage, cultural affiliations and social networks. Further definition of membership in Botswana, Namibia and Zimbabwe is required at the community level. By-laws and criteria such as age and residence are used to determine membership, especially in Namibia and Botswana. For example, the conservancy constitution of the Sorris Sorris Conservancy in Namibia states that:

members shall be all adults over the age of 18 years [and] all heads of households who permanently reside within the boundaries of the conservancy, or who were born within the boundaries of the conservancy, but reside outside the boundaries for the purpose of full-time employment.

However, people meeting the above requirements can only become members on acceptance of their applications for membership by the management committee, on the basis of their being blood relatives of or married to existing members. This definition of what constitutes membership is almost identical in all conservancies across Namibia, with the few deviations being in matters such as sub-clauses that require members to indicate in writing that they accept membership of the conservancy, together with the rights and obligations of members as determined by the conservancy's constitution (Mosimane 2003a). These examples illustrate that membership in Namibia is – or can be – exclusive, since everyone is required to apply for membership and to be registered, and non-registration results in exclusion.

Community members at risk of being excluded in Namibia are mainly those who are illiterate, marginalised and poor. They tend to lack information about and understanding of conservancies, and to be apathetic regarding conservancy activities. If these community members are not encouraged and given support aimed at assisting them to exercise their right to participate and to take decisions regarding the management of wildlife and forest resources, they may never do so. There are also some who might have registered as a result of the initiatives of the local wildlife and forest management institution, but who do not have access to information. Their participation is limited, and they are likely to remain on the periphery of conservancy activities. Regular meetings, annual general meetings and representative structures and initiatives aimed at ensuring the participation of members have not yet yielded the desired results. The challenge, therefore, is to increase participation in decision-making and to include all community members in wildlife and forest management activities.

The Namibian case study, which can be regarded as an example of an exclusive regime, raises several other issues that conservancies need to address. For example, non-members would still enjoy the same entitlement to communal grazing, water and forest resources as conservancy members. Should the conservancy members then exclude such non-members from the benefits generated through the conservancy's activities? In at least one case that the authors have observed, the conservancy has chosen not to exclude non-members residing in the conservancy, from such benefits. The ≠Khoadi ||Hoas Conservancy in the Kunene Region experiences immense farmer-*elephant* conflicts, especially in relation to water. *Elephants* consume water that the farmers pump with diesel, which has been bought at their own expense. To assist the affected farmers, the conservancy uses its hunting income to purchase diesel in bulk, and sells it to the farmers at a highly subsidised price. It has been observed that the conservancy does not distinguish between members and non-members when selling this diesel.

The issue of membership is, therefore, proving to be a challenge that must be addressed by management and decision-making structures within conservancies. An interesting question that arises relating to the debate on application for membership, is whether conservancies are required to revisit and update their membership registers, or whether having a register in the formative stages is a once-off requirement for registration as a conservancy.

Mosimane (1998; 2003a) cites communities who argue that their consent to the formation of a conservancy should be enough to guarantee them membership of the conservancy. They furthermore argue that the fact that they are resident in the conservancy, which normally follows traditional boundaries of affiliation, and that they are not disobeying the rules and regulations or by-laws of the conservancy should guarantee them membership. Another example that shows the limitations of membership through application and registration can be found in the inability of the Uukwaluudhi Conservancy to register all conservancy members. On the basis of the high population density in the area, an exemption was made in this case, and only the respective village headmen were registered, who then 'represented' the members of their villages (Hassam 2004). This exemption was, however, contrary to the established legal framework for establishing conservancies in Namibia, which illustrates the immense challenges communities face in connection with the registration of members.

Conservancies are also legally required to develop wildlife management plans to the satisfaction of the MET. Such management plans are essentially land-use zoning plans, for example, for multiple-use, exclusive wildlife and trophy hunting, tourism concessions and common grazing zones. In practice, conservancies are only able to enforce adherence to these plans by residents (members and non-members alike) through consensus and peer pressure. The right to exclude outsiders from either settling within the conservancy area or using its non-wildlife natural resources, and the ability to control inimical activities on the part of non-member residents remains outside the powers of a conservancy, and this significantly diminishes its viability. It is possible that in-migrants and non-members who are not supportive of the goals and management plans of the conservancy could effectively undermine the conservancy with impunity.

In contrast to Namibia, Botswana has the same age and residence requirements in most community trusts, but recognises the importance of inclusion. Membership is therefore automatically extended to all community members of participating villages, or it is voluntary and based on interest (Cassidy 2001). The community defines itself, and decides to be inclusive, without any policy or legal requirement to register individuals as members. Membership is therefore a consequence of residence, kinship and marriage, and is affected by cultural, social, economic and other factors within the community. Exclusion in Botswana is flexible, and is practised in the context of the existing customary rights of community members. The all-inclusive approach adopted by the community trusts reduces conflict and marginalisation of some community members in terms of access to resources, the right to be involved in management decisions, and the deriving of benefits. The acknowledgement of the customary rights held under the prevailing cultural common property regime prevents the violation of the prevailing customary regime, thus reducing conflict between the regimes.

The issues raised above highlight the challenges associated with registered or formalised membership in common property regimes. While they are only evident in the Namibian case thus far, they may present other countries with the opportunity to assess their own membership requirements and related community by-laws. This may enable them to provide solutions for the challenges faced in Namibia, and for conservancy members (and non-members) in all three countries to learn from one another.

6 Conclusion

The question of membership in CBNRM in southern Africa and people-centred approaches in general present a challenge to the definition of legal and institutional frameworks across natural resource sectors. Definition of boundaries, natural resources, institutions and communities, which are all determined through customary and other social factors, establish whom to exclude from natural resource benefits. The paper shows that in Botswana, Namibia and Zimbabwe emphasis is placed on geographic locations, which in turn illustrates the need to have boundaries of jurisdiction and authority to manage the 'community' resources. In Namibia and Zimbabwe it is clearly evident that excluding community members living outside boundaries from using resources is not possible under the CBNRM or people-centred approach. This is mainly because boundaries alone cannot be used to exclude non-members for the reason that they are established through negotiation and consensus, and therefore are also flexible.

Although non-members in all three case studies can theoretically be excluded, technically it could never be enforced. The paper recognises that customary rights of exclusion and exclusion on the basis of formalised membership will continue to co-exist at community level. Therefore, exclusion should be kept flexible and be practiced within the context of existing customary rights of community members. People-centred approaches should aim for inclusion of all community members and exclusion should only be considered as a disincentive for non-compliance with the group rights.

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Endnote

¹ According to the Zimbabwean decentralisation system, a district is the largest unit, and comprises several wards; a ward is a sub-district unit usually made up of six villages or 6 000 people, while a village, as the smallest unit, represents 100 households (Murombedzi 1991)