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Local Government, Traditional Authorities and Land Tenure Reform in KwaZulu-Natal, South Africa

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INTRODUCTION

This paper focuses on the issue of governance and democracy in the rural areas of South Africa, particularly the communal areas of KwaZulu-Natal, through the lens of land tenure reform, which is argued to be a crucial ingredient of the democratisation and development of the most underdeveloped regions of the country.

Under the direction of the constitution, local government in South Africa is intended to represent the government sphere that is closest to people and most capable of negotiating development via representatives who are elected and accountable. Yet in many rural areas in KwaZulu-Natal, unelected traditional authorities or *AmaKhosi* are more prevalent and influential than elected structures. They retain a powerful development function as they remain the medium through which rights to land are mediated and resources allocated.

This state of ambiguity has resulted in an overlap between roles that are performed by traditional authorities and those assigned to councillors. These overlapping competencies have created conflict, as new systems have replaced or complicated older ones, creating duplicated development structures. These structures are underpinned by laws stating that land allocation lies with traditional authorities, which overlap with newer legislation that give local government the power to set and administer land development objectives. These contradictory processes have occurred within a broad context of chronic insecurity of tenure in traditional authority areas.

In the period 1998 to 1999, a Land Rights Bill attempted to resolve this issue. It endeavoured to provide support structures to practically enforce existing land rights that existed on the ground and to underpin people's choices in rural areas about the types of land tenure they wanted and the types of institutions they chose to govern these. Whatever institution was chosen, the Bill intended to create a framework of certainty around minimum rights in order to encourage social and economic development.

Shortly after the second national democratic election in 1999 this Bill was withdrawn. Powerful lobbying by traditional authorities and overtures of unity between the governing African National Congress (ANC) and the *AmaKhosi*-aligned Inkatha Freedom Party (IFP), led government to retract the Bill. Since then uncertainty has remained around land rights, an issue that has stalled development and created conflict in many situations. This is despite a Constitutional obligation for national government to implement tenure reform, especially in the deep rural areas of South Africa.

This paper sets out to explore the relationship between local government and traditional authorities by evaluating the context of land rights in rural KwaZulu-Natal and by tracing the development of the Land Rights Bill and its perceived impact on rural communities. It is argued that the resolution of land tenure issues in the rural areas of KwaZulu-Natal would significantly improve effective rural governance and resultant socio-economic development. This is because:

1. Uncertainty about land rights increases the tensions between local government and traditional authorities;
2. This uncertainty also continues to be an underlying cause of poverty and rural conflict and is the most serious disincentive to individual households, to entrepreneurs and to government to invest in development.

The Land Rights Bill was the first genuine attempt to address these issues. It intended to allow rural communities to have a choice about their tenure arrangements and resultant governing structures, be they hereditary or elected. The draft legislation also provided a framework within which local

institutions and communities could develop their own solutions to seemingly intractable disputes over land. It is therefore argued that the government should revisit these processes and the principles contained within the Land Rights Bill, not only to meet its constitutional obligation for tenure reform but also to evaluate valuable lessons, which could help unravel the tensions between governance structures in rural areas.

THE LEGAL UNCERTAINTIES: LAND & RURAL GOVERNANCE

A myriad of existing laws applies to rural local government. The apartheid government has passed these, the former homeland governments, by the new provinces under the democratic system and by the new national government. A broad evaluation of this legislation indicates immediate inconsistencies between them in terms of land use, local government and customary law, as many functions are ascribed to traditional leaders and local government (Oomen, 2000).

Despite the intention for local government to take the helm in rural governance after the local government elections of December 2000, traditional authorities have continued to exert considerable power throughout the rural areas of KwaZulu-Natal. This is clearly reflected by the powerful relationship between the provincial ruling party, the Inkatha Freedom Party (IFP), and traditional authorities and further indicated by the rapid development of tribal courts throughout the province in the past year. In addition, local government remains the weakest sphere of government in South Africa due to considerable capacity constraints and a prevailing culture of dependence on central and provincial government.

The creation of municipalities and corresponding local government legislation sought to address these constraints. The Municipal Structures Act, 117 of 1998, presides over these processes. In terms of this law, elected councillors, including rural areas, rule every part of South Africa. The Act takes all public powers conferred on traditional leaders and gives them to municipal structures as part of giving democratic powers to all South Africans. Section 81 of the Act provides for traditional authorities' participation in local authorities but not a right to vote on matters. Their position as *ex-officio* members of elected councils allows them advisory functions, which are perceived to be insubordinate to elected councils.

In addition, each council is expected to develop local land use plans as a key component of the Integrated Development Plans (IDPs) described in the Municipal Systems Act, 23 of 2000. These plans are intended to outline the activities to be undertaken to create a single and consolidated municipal administration under which traditional authorities would fall. The draft White Paper on Spatial Planning and Land Use Management reinforces this approach and draws heavily on the concept of IDPs, as it attempts to rationalise the existing plethora of planning laws into one national system. This approach underpins local government as being responsible for formulating the planning frameworks on which all the decisions on land development should be based. Although local authorities are obliged to consult with all relevant residents and stakeholders in civil society, and the draft Land Use Management Bill of 2001 explicitly charges that traditional authorities may participate in council proceedings around land use, decision making lies firmly with elected councils.

Many traditional authorities accept elected councillors, especially as they realise that they do not possess the means to ensure development in their areas because they lack enforcement instruments and financial capacity. However, many traditional authorities also argue that their role is still central in rural areas and that they want to be respected and acknowledged as legitimate community leaders.

Central to this concern is that they will no longer be empowered to allocate land, which is the key to the power they wield in rural areas. This is the power granted to them under the *apartheid* government, which gave them control over most of the 13 percent of land in South Africa reserved for Africans under the homeland or *bantustan* system. They want to continue to hold this land in trust in order to keep land within their communities. Traditional authorities generally play the following land administration functions:

- Allocation of land for residential purposes;
- Allocation of land for agricultural purposes;
- Custodians of the land through rehabilitation and the prevention of soil erosion, veld fires and overstocking.

Traditional authorities made submissions on this matter to President Mbeki but were infuriated when the Municipal Structures Second Amendment Bill, tabled in Parliament in 2000, included a clause extending powers to them to "attend to funeral matters", "rain-making" and "wood-gathering" (Xako, 2001). Traditional leaders were pacified with promises of renewed consultation and suspended their threats to boycott the December local government elections on an understanding that government would attend to their matters once Parliament reopened. In June 2001, however, the government launched a process intended to address the legitimacy of a large number of traditional leaders who obtained their positions as favours from the *apartheid* government (Paton, 2001). Rather than seeing this process as enabling deposed leaders to be reinstated and to accelerate transformation so as to achieve full legitimacy and acceptability for the institution, many traditional authorities saw this as an intention to marginalise them completely.

The political rivalry between the IFP and ANC was a further compounding issue in the debate around rural local government in KwaZulu-Natal. This rivalry took the form of violent conflict in the province before the first democratic elections in 1994. Since then there has been a simmering conflict between the two parties with occasional outbursts of violence interspersed with overtures towards amalgamation. Threats of violence have often been utilised by both parties during more recent interactions around various contentious issues.

POLITICAL IMPASSE

This complex situation has led to recent threats to sabotage and undermine local government by traditional authorities in KwaZulu-Natal, which has led to increased confusion, uncertainty and vulnerability of rural communities. As a result, elected councillors have had real difficulty in working in some rural areas, as they need the co-operation of *AmaKhosi* to make local government work effectively. In May 2001, several councillors stopped work, arguing that the impasse made it impossible for them to work in areas controlled by traditional authorities.

This situation is largely indicative of the very slender institutional base from which local government is being built within rural areas. A major problem with many district councils is the lack of sectoral skills, which makes it difficult for them to engage with policy areas for which they are responsible. Newly empowered local authorities will only reach their mandate of providing better services and greater social justice if they are supported by substantial resources, substantial devolved powers and accountability mechanisms to ensure that bureaucrats would answer to elected representatives and these representatives in turn accountable to voters (Manor, 2001:4). In reality, provincial and national government will not be in a position to support these institutions financially and most local bodies have weak income bases due to insufficient industry or business to provide the tax base. This is particularly true in the rural hinterland of KwaZulu-Natal.

It is within this context that the issue of land tenure reform in rural areas becomes an important issue. As indicated above, a major part of the impasse in rural governance hinges upon the lack of clarity about who can dispose of land in some rural areas and the reciprocal power this implies. The use, management, control over, and rights to land lie at the heart of rural development. This has obvious connotations for power relations within the existing political system, which is based on the historical context of the region. It is imperative to understand questions of rights to land and natural resources, the tenure system controlling those rights, and the policies which enable (or constrain) secure access to land as a source of livelihood for rural people.

THE ISSUE OF LAND TENURE REFORM

Land tenure is the institutional arrangement under which a person gains access to land. This largely determines, amongst other things, what crops can be grown, the period one can till a particular piece of land, the rights over the fruits of labour and the ability to undertake long term improvements on the land (Benneh, 1987). A useful definition of land tenure is the terms and conditions, on which land is held, used and transacted (Adams, Sibanda & Turner, 1999:1). South Africa has a dual system of land tenure in which traditional or communal tenure lies alongside individual title.

In traditional areas, customary land management has often been derided as obstructing development because of an inherent insecurity of land rights. Detractors of customary tenure have argued that it provides no incentives for land investments and no basis for credit or for market allocations of land to the most efficient users. This underpins a belief that agricultural growth requires the conversion of kinship-based systems of customary tenure to formal systems of individual title.

An alternative perspective, however, indicates that customary land tenure systems, which are part of the broader social framework, often protect poor and vulnerable community members. Land has a social function as it is a common resource and has benefits and characteristics that enable society to limit the absolute nature of the individual's ownership (Cross, 1991; Marcus, Eales & Wildschut, 1996:176). Indigenous institutions, as understood and practised by rural people themselves, do not normally recognise individual ownership: land is regarded as a common socio-economic asset, administered by the lawful authority in the form of a "chief", in consultation with the tribal council, for the benefit of the entire tribe or community. The concept of land ownership, as opposed to land usage, was therefore alien to Africans during the colonial period. Africans understood land as being given into their stewardship by their ancestors: "Land belongs to a vast family of which many are dead, few are living and countless numbers are still unborn" (Lambert, 1995:72).

Despite these arguments for the benefits of customary tenure, a generalised depiction of this institution that idealises traditional African systems of land holding should be tempered by an understanding of its historical and contemporary realities. For instance, the Tenure Reform Directorate at the national Department of Land Affairs acknowledged a persistent demand to abolish the state's "feudal" ownership on the former *bantustans* (Claasens, 1999:4). This "feudal" relationship stems from *apartheid* and colonial systems of indirect rule.

APARTHEID-ERA LAND LAW IN KWAZULU-NATAL

Under *apartheid* laws, land was provided on limited permits subject to administrative discretion. In recent years, areas such as the former KwaZulu *bantustan* faced the virtual collapse of the Permission to Occupy (PTO) system, a lack of clarity about the status of rights to land which was nominally state owned, and the breakdown of the enforcement and administrative processes. The legislation that generally guided *bantustan* administration emanated from the Black Areas Land

Regulations, Proclamation R 188 of 1969. These regulations operated on the basis of individuals obtaining a PTO from the tribal authority with comment on the permit subsequently being obtained from various officials of government departments (MXA, 1998:105). A complex system of governance based on land evolved around the PTO system.

After the 1994 general elections, the *Ingonyama* Trust Act was gazetted largely to reinforce the control of land allocation in KwaZulu-Natal and to supplement the existing PTO system. This Act resulted from an agreement between the Inkatha Freedom Party and the ruling National Party 24 hours before the general election so as to secure IFP participation. Essentially, almost 40 percent of KwaZulu-Natal, on which two-thirds of the province's population lived, were vested in the *Ingonyama* Trust, whose only trustee was the Zulu monarch King Zwelithini. The IFP defended this deal as "he continuation of an indigenous political system where power to allocate land was vested in the chiefs under the trusteeship of the king" (Walker, 1994:355).

The 1994 Act was seen by national government as a stumbling block to development, as it prevented people from obtaining bank loans or the national housing subsidy because they did not possess private ownership and registered tide. A long process of negotiation around the *Ingonyama* Act resulted in a final amendment being gazetted in 1998 that ensured that the King remained guardian of tribal land and that provision was made for the alienation of land. The new Act created the KwaZulu *Ingonyama* Trust as a corporate body to be administered for "the benefit, material welfare and social well-being of tribes and communities" as contemplated in the KwaZulu *AmaKhosi* and *Ziphakanyiswa* Act, 9 of 1990 (section 2(2)). The Act in effect transferred the specific lands from the trusteeship of the King to the *Ingonyama* Trust Board.

The Board was not meant to replace the King as the sole trustee but was mandated to find options around delegating land-related problems to relevant government departments. Despite the creation of the Land Board, the tensions around land allocation and administration continued to exist at the local level. These tensions were partly caused because the Board remained an unknown entity to most A*makhosi* and was not completely functional. This tension was accentuated by the complex and unstructured nature of legislation governing the former *bantustans*, much of which had yet to be replaced.

These former systems of administration have largely continued to function under their own momentum, even where they have lost their competency to perform these tasks (McIntosh & Vaughan, 1999:9). With the deterioration of formal PTO systems and escalating population, traditional leaders faced increasing pressures not to enforce many of the traditional rules of land use. The consequences included the increasing allocation of arable land for residential purposes, an increase in disputes arising from livestock overstocking, and the invasion of cattle onto arable land held by commercial and traditional farmers. A loss of records, confusion about laws and unauthorised issuing of PTOs by officials contributed to a chaotic land administration system and threatened a general breakdown in rural governance (DLA, 1999: 7; MXA, 1998:106).

As a result of this lack of clarity about the status of land rights, some of the newly elected provincial and local governments failed to recognise underlying land rights. Many proceeded with projects which "assume the land as *terra nullius* belonging to the state and that the people living on the land have no rights or say in the developments" (Claasens, 1999:3). These disputes often jeopardised development projects as traditional leaders complained that local government initiatives undermined pre-existing land rights, and local governments complained that traditional leaders acted as "gatekeepers" and stopped projects because it undermined their authority (DLA, 1998; Sosibo, 1998; 1999). These disputes often overlooked the rights and views of those that actually occupied the land.

DEMANDS FOR TENURE REFORM

As a result of this increasingly chaotic system, persistent demands were heard from communities under *AmaKhosi* in KwaZulu-Natal that the Department of Land Affairs (DLA) transfer the land they occupied to them for direct ownership (Provincial Legislature, 1998:1498; Financial Mail, 13 March 1998). In addition, the private sector and the development community insisted on firm, enforceable legal arrangements that allowed them to provide infrastructure on a secure basis without exposure to unforeseen risks and unpredictable interventions.

Entrepreneurial farmers on communal land demanded the title to areas that they currently cultivated. Many of the 45 000 small-scale cane growers on tribal authority land in KwaZulu-Natal, producing about 20 million tons of cane each season, were reported as wanting individual title of their land (Business Day, 4 November 1999). At the second annual congress of the KwaZulu-Natal Agricultural Union, KwaNalu, a number of small-scale farmers raised concerns about the difficulties of farming in *AmaKhosi* areas (KwaNalu, 1999:6). This was due to overlapping rights to land, an emphasis on livestock, which strayed onto cropping areas, and "happy-go-lucky citizen inhabitants who normally [treated] good farming land as second time-share to be visited for either the Easter or Christmas holidays" (KwaNalu, 1999:6). These farmers requested an urgent tenure reform in communal areas.

There have also been cases throughout South Africa where areas of communal land have been handed over by tribal authorities to developers and private interests in deals that have no legal basis and that alienate the interests of local people (Cross, 1995:23). There is currently an investigation into the construction of holiday houses on properties allocated by traditional authorities in the Transkei region. There were reports that government initiated investment projects in Spatial Development Initiatives were delayed as a result of legal clarity over land rights (Mahlati, 1999). A recent study confirmed that without the resolution of land tenure and land restitution at the Wild Coast SDI there was little chance of attracting investment, nor of enhancing the livelihoods of impoverished rural communities (Kepe, Ntsebeza & Pithers, 2001). In the absence of over-arching tenure legislation, the delays in these projects have had to be resolved through time-consuming, case-by-case investigation and negotiated agreement (Adams, Cousins & Manona, 1999:15).

Another powerful argument for tenure reform in communal areas emanates from women requesting stronger individual rights in order to be able to access housing finance and because of human rights abuses by some traditional leaders (Hargreaves & Meer, 1999:20; Cross, 1998:6; DLA, 1998:3; Meer, 1997a:9).

These features lead to the conclusion that insecurity of tenure in the communal areas is real and widespread. Adams, Cousins and Manona (1999:11) have characterised tenure insecurity in these areas as comprising:

- A relatively small number of high profile cases where tensions or conflict have emerged or development is clearly stalled; these are now increasing in number as local level development planning begins;
- A chronic low-profile condition in which lack of certainty and weak legal status constrains the land-based livelihoods of the majority.

Adams, Cousins and Manona concluded that the "legacy of severe land pressure and land-related conflict, unsurpassed elsewhere in Africa", had grown in severity since the disbanding of the *apartheid* system of land administration (1999:1). It remained clear, however, that any proposals around remedying the situation would be a contested and controversial issue.

ATTEMPTS AT TENURE REFORM, 1997-2000

The debate around property rights and tenure has understandably been an important feature of the negotiations leading up to the adoption of South Africa's Constitution in 1996. The Department of Land Affairs was compelled by the Constitution to resolve the issue of tenure, as required by Section 25:

> (6) A person or community whose tenure of land is legally insecure as the result of past racially discriminatory laws or practices is entitled, to the extent provided by an Act of Parliament, either to tenure which is legally secure or to comparable redress.
> (9) Parliament must enact the legislation referred to in subsection (6).

Thus mandated, the land policy contained two principles concerning tenure reform. The first stated that tenure rights should be confirmed as legally enforceable rights to land; the other that "new tenure systems and laws should be brought in line with reality as it exists on the ground and in practice" (Claasens, 1999:5). This clause essentially stemmed from recognition of the colonial denial that indigenous systems of land rights constituted property rights. It had proven difficult to meet the directives of the land policy as it involved reconciling Roman Dutch property law and African customary law.

With unfolding experience, the Tenure Directorate in Pretoria began to rethink whether land transfers did not in fact cause more disputes and problems than they were likely to solve (Claasens, 1999:10). This led to an attempt to create legally enforceable rights to land, which addressed the dispute dilemma of land reform, particularly redistribution, by shifting the focus to the introduction of statutory rights introduced on mass scale by the enactment of law.

DLA policy makers embarked upon a process of developing legal and administrative reforms that would provide far-reaching tenure reform in the former *bantustans* by repealing the many, complex *apartheid* laws relating to land administration. During the period 1994 to 1999, the tenure debate moved from the transfer of land in ownership to tribes to the granting of statutory rights to people using and occupying land (Adams, Cousins & Manona, 1999:1). These debates generated policy proposals that became available to the general public in 1998. This proposed Land Rights Bill was expected to formalise current *de facto* rights of occupation, use and access exercised by people living on communal land; to allow for the democratic selection of local land management structures; and to decentralise the government institutions created to manage and administer tenure rights.

THE LAND RIGHTS BILL, 1999

The proposed legislation had two main aims. The first was to provide a blanket transfer of protective rights to people living in communal areas, based on their historical and established occupation of the land. The second was to develop a system of land administration structures based on community control. The suggested protective rights covered the rights to use, occupy and lease land, which would be vested individually but were subject to group control. People with these protected rights could not be dispossessed of those rights without their consent unless the land was expropriated and fairly compensated.

Under the proposed legal regime, there was to be clarity in the law about the rights of families to lease or sell their rights and clarity about local variations in the rules governing lease and sale (Claasens, 1999:15). Local restrictions would be imposed on the process of selling rights in communal areas in a process with greater legal certainty and flexibility than under current

conditions. The proposals indicated that people did not have the right to sell or lease the land, but the right to sell or lease their right to the land (Claasens, 1999:15).

The proposed legislation intended to evolve the system from one under which state officials or traditional authorities regulated the allocation of subservient rights to a system of land rights management in which rights holders themselves managed their own land rights. Rights were to vest in the people who occupied, used or had access to land and not in institutions such as traditional authorities or municipalities (DLA, 1998:1). Where traditional authorities were no longer "viable or supported, the proposals would enable people to appoint new structures" (DLA, 1998:3). A new form of tenure in South Africa was therefore proposed: "commonhold". This was to provide for communal ownership and use of land, for the land to be held in common by the members of the tribe or community in perpetuity and to be governed by the shared rule of the members (Sibanda, 1999:6). Four principal role players were envisaged in the new decentralised management of land rights:

1. Rights holders: a category of protected rights was to be created by the legislation. Those people with protected rights could not be dispossessed without consent, unless expropriated, and they would benefit from any compensation or payment arising from alienation of their protected rights.
2. Land rights holders' structures: where rights to be confirmed existed on a group basis, the co-owners would have a choice about the structure, which would manage their rights on a day-to-day basis. The proposals argued that the more they were organised, the more responsibility would be transferred to them.
3. Land rights board: consisting of traditional leaders, municipal councillors and respected community leaders, would be located at the magisterial district level to facilitate interaction with district government. This would achieve co-operation between the various stakeholders in the recognition and protection of land rights.
4. Land rights officer: the LRO would be a DLA employee and the representative of the Minister as the nominal owner of all state land. The officer would be located at the level of the magisterial district in the affected former *bantustan* areas ensuring ease of public access. The LRO would ensure that decisions were taken according to the law.

As the proposals would have the effect of "disentangling" overlapping rights, the provision of redress awards was deemed a necessary feature of resolving certain types of tenure disputes (Makopi, 1999:1). Comparable redress awards would provide for a mechanism for unpacking conflicting rights in overcrowded areas by the provision of extra resources, primarily vacant land. The failure to resolve these situations would likely result in a "series of negative consequences", including the continuance of intractable historical disputes about access to grazing and arable land, which occasionally flared into violence (Makopi, 1999:1). People with underlying rights might effectively have these "expropriated" as existing rights were awarded to others without redress to themselves. The DLA drafting team cautioned that the process of unpacking the overlapping rights should only be undertaken in such a way that it should not disturb the equilibrium that already existed in some communities (Makopi, 1999:8). An approach that emphasised distinctions might lead to a resurfacing of divisions that may have long been forgotten.

The proposals argued that the benefits of introducing these measures outweighed the administrative cost, and the opportunity cost of no action. The most significant economic benefits were likely to come from the stimulus to land based livelihoods in the communal areas, the economic importance of which have been consistently underestimated in the past (Cousins *et al.*, 1999). Nonetheless, these proposals had significant organisational implications for DLA, as tenure reform was a major exercise in institutional reform. DLA acknowledged the significant financial and administrative

implications of the proposals in terms of unbundling, adjudicating compensation, and conferring rights (McIntosh & Vaughan, 1999:10).

REACTION TO PROPOSALS

Although the proposals claimed to be neutral on the issue of traditional authorities, arguing that where such systems were functional and enjoyed support they would be provided with institutional backing (Claasens, 1999:22; Sibanda, 1999:5), they still raised concerns from a range of quarters. Officials from both within DLA and the NGO sector believed that the lack of consultation with key stakeholders, especially traditional authorities, created widespread resistance before the proposals were tabled (Greenberg, 1999a:38). Adams argued that "researchers and officials in government and non- government agencies had been involved in a vigorous process of policy debate", leading to the development of the tenure proposals from "numerous commissioned studies, workshops and meetings" (1999b:1). Greenberg questioned this transparency, however, stating that the proposals were "drawn up under tight control by the DLA and a few consultants" and that "NGO's were only given a chance to make a submission" when the proposals were "leaked to them" (1999a:38). DLA supposedly kept the drafting to a "small select group" as the proposals dealt with the sensitive issue of powers of traditional leaders.

The political sensitivity around traditional authorities in South Africa ensured that the ANC government was cautious about confrontation in volatile regions. Cousins aptly remarked that "it is clear that the proposed extension of democratic rights of citizens to co-owners of communal land constitutes a frontal attack on traditional authorities and it is not surprising that it is being resisted so vehemently and often physically dangerous, in the province of KwaZulu-Natal, the power base of the [IFP]" (1998:25).

Personnel within DLA were thus divided about whether such "controversial" legislation was even necessary. A DLA official was reported as arguing that "tribal tenure is the most secure form for people in rural areas" and that "DLA should [rather] concentrate on sorting out land administration and reviewing PTOs, and creating development opportunities" (Greenberg, 1999b:39). This implied that local government should be left to build its relationship with traditional leaders.

Other criticisms focused on the fact that the proposals did not address the fundamental cause of contested land rights, which was the lack of sufficient land for residence and production. The rights based approach was criticised for "freezing" the 87 percent—13 percent land allocation in South Africa without looking at the broader picture. The National Land Committee (NLC) argued that DLA should not encourage the formal registration of land holdings at this time, before the restitution and redistribution programmes had made a substantial impact on overcrowding and overlapping rights. However, the NLC conceded that the proposals tried to protect basic rights, and should therefore be supported (1999:26). They raised the issue that the proposals needed to be field-tested to assess the tension between standardisation of procedures and flexibility of design that can only be worked out by testing concrete cases.

In late 1999, Thoko Didiza, the newly appointed Minister of Land Affairs in Thabo Mbeki's cabinet who had replaced the incumbent who oversaw the drafting of the Land Rights Bill, was reported as being "highly sceptical" of the proposals (Greenberg, 1999b:39). Whether this owed to the cost of the implementation, objections from the traditional authority lobby, or the view that existing energies should rather be placed into establishing black commercial farming was not completely clear. Following the elections, the draft legislation was shelved by the Minister who instructed that new proposals be prepared to transfer state land in the former *bantustans* to "tribes" (Adams, 1999b:2; Williams & Hall, 2000).

Didiza stated that the legislation would constitute a direct challenge to the authority of the chiefs that the ANC wooed so carefully in the run up to the June 2 election (ANC News Compilation, 29 June 1999). The Minister was cautious about "creating new bureaucracies as structures already existed in these areas" in terms of traditional authorities that were entrenched. This attitude reflected a conciliatory approach adopted of the ANC government under Mbeki towards traditional authorities. It was likely that the 1999 negotiations between the IFP and ANC to ensure peaceful provincial elections influenced the decision to shelve the proposals.

In effect, Didiza brought to a halt all the work on the tenure proposals. Although public assurances were given that a new tenure framework was being developed, which would transfer land to "tribes", very little progress has been made. Sipho Sibanda, the Director of Tenure Reform at DLA, indicated at a conference in June 2001 that the Land Rights Bill would be revisited "as soon as possible" due to the growing tensions (2001). The rights-based issues of tenure reform have continued to be a source of conflict as a result of the poverty and inequality that exists in communal areas.

CONCLUSIONS: TENURE REFORM AND RURAL LOCAL GOVERNMENT

This paper has explored the debates around tenure reform and its implications for the future of traditional authorities and their relationship with local government by tracing the development of the Land Rights Bill and its perceived impact in areas of rural KwaZulu-Natal. Some of these debates have revolved around the advantages and disadvantages of communal land ownership, with a major issue being whether individual title was the solution to tenure insecurity in traditional areas. This raises the question whether the solution lay with granting title deeds to the tribe, with perpetual rights of leaseholds for individuals. What is clear is that this cannot be solely a government decision. Issues around the current land use and what people were emotionally attached to needed to be balanced against future developments needs in communal areas.

The debates around the tenure proposals have highlighted the necessity for the government to clarify its position on traditional authorities and to constructively engage with the issue of land rights. These recent developments have also indicated the importance of consultation with such sensitive issues. The lack of consultation can be defined as the central weakness of the initiative set up by the Tenure Directorate. Without a consultative and careful approach to traditional authorities, attempts to instil the current model for rural local government could follow suit. This is particularly important if rural communities are to be genuinely empowered to select their governing structures, be they hereditary of elected, and to choose the systems of land rights that define rural areas.

It is clear that traditional authorities will, in all likelihood and at least in the short term, remain important institutions with which government should constructively engage. Some traditional authorities are undeniably regarded as being legitimate by their constituencies and that not all of the problems associated with them are endemic. It is important to stress that their character and role differ from location to location. Some fit the general stereotype of old fashioned bureaucrats who control vast amounts of land and impinge discriminatory social relations on their subjects. Others provide vital patronage networks for the ANC and the IFP in the underdeveloped rural hinterland. Many others operate as powerful mechanisms for change and development for their communities.

This differentiation and the varying costs and benefits of retaining traditional authorities mean that they should not simply be legislated away. In general, rural local government remains weak in South Africa and in some cases non-existent. In these situations it seems pragmatic to provide training facilities to empower traditional authorities in order for them to compliment the intentions of elected local government. It should be recognised that there are different essential functions, which have to be fulfilled in a community. Co-ordination between these two institutions should be

encouraged in an environment of fiscal austerity. If systems of liaison and accountability could be ensured then this would be an optimal solution in current circumstances.

The proposed Land Rights Bill attempted to create such a framework within which local communities and their governing institutions could develop their own solutions to seemingly intractable disputes over land. The proposals attempted to be pragmatic and gradualist in approach and re-institutionalised indigenous land tenure arrangements where appropriate, promoted the adaptability of existing arrangements and avoided a regimental tenure model. Rights were to vest in the people who occupied, used or had access to land and not solely in institutions such as traditional authorities or municipalities. In this way, the Bill would have facilitated increased economic development in communal areas, which would contribute to promoting effective governance.

Having explored these recent developments and assessed the urgency for tenure reform in the rural areas of KwaZulu-Natal, this paper concludes that the principles contained within the Land Rights Bill should be revisited by the government as a matter of priority for rural development. Generally speaking, such a process would help facilitate effective rural local governance and meet the constitutional obligation to instigate relevant tenure reform with resultant socio-economic development in the poorest and most underdeveloped areas of South Africa.

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