



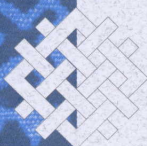
WORKING PAPER SERIES

ENVIRONMENTAL GOVERNANCE IN AFRICA

**Local Governance, Power and Natural Resources:
A Perspective from the Rural Areas of
South Africa's former Bantustans**

by

Lungisile Ntsebeza
March 2003



WORLD RESOURCES INSTITUTE

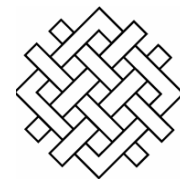
Institutions and Governance Program

**ENVIRONMENTAL GOVERNANCE IN AFRICA
WORKING PAPERS: WP #14**

**Local Governance, Power and Natural Resources:
A Perspective from the Rural Areas of
South Africa's former Bantustans**

by

Lungisile Ntsebeza
March 2003



EDITOR
Jesse Ribot
COPY EDITOR
Florence Daviet

World Resources Institute
10 G Street, NE
Washington DC 20002
www.wri.org

ABSTRACT

This paper focuses on the institutional arrangements that have been put in place to give effect to decentralization and its impact on natural resource management in the rural areas of Transkei region of the Eastern Cape, South Africa. In particular, the paper will pay attention to the local actors who hold powers over natural resources, the kinds of powers they hold, the degree of community participation and accountability relations and mechanisms of accountability to which these actors are subject. For purposes of this paper, the “natural resource” management issue will be investigated primarily through a focus on land issues. Within this context, the role of traditional authorities (chiefs of various ranks) will be assessed. The focus on land illuminates problems that are on the horizon for other natural resources, such as forests, wildlife and fisheries, because these latter resources are to be managed through similar structures to those being constructed and contested in the land policy area.

TABLE OF CONTENTS

ABSTRACT	ii
ACKNOWLEDGMENTS	iv
INTRODUCTION	1
DENCentralization: THEORETICAL AND CONCEPTUAL CONSIDERATIONS	3
POLICY ON RURAL GOVERNMENT AND LAND ADMINISTRATION	5
Rural Local Government Policy and Legislation	5
LAND ALLOCATION IN THE RURAL AREAS OF THE FORMER BANTUSTANS DURING THE APARTHEID PERIOD	9
ATTEMPTS TO ESTABLISH POLICY AND LEGISLATION ON LAND ALLOCATION IN THE POST-1994 PERIOD	9
Reasons for the Delay	16
<i>Traditional Authorities resist Democratic Decentralization</i>	13
<i>The Ambivalent Position of the Government</i>	15
Concrete Practice: The Case Studies of the Tshezi and Xhalanga Tribal Authorities	16
<i>The Tshezi Case Study</i>	16
<i>The Xhalanga Case Study</i>	21
THE PERFORMANCE OF RURAL COUNCILORS	32
The IDP in the Xhalanga District	33
<i>Traditional Authorities in the Xhalanga IDP</i>	34
<i>Assesment of the IDP in Xhalanga</i>	35
CONCLUSION	38
REFERENCES	40
ABOUT THE AUTHOR	44
ABOUT THE SERIES	45

ACKNOWLEDGEMENTS

The list of academics, researchers, and activists who gave me support is too long to include here. However, I would like to thank the Institute for International Studies at the University of California, Berkeley, for their Research Fellowship on 2001. Substantial parts of this paper were written during this period.

ACRONYMS

ANC	African National Congress
CONTRALESA	Congress of Traditional Leaders in South Africa
CPA	Communal Property Association
DLA	Department of Land Affairs
EMRA	Emnxe Residents Association
IDP	Integrated Development Projects
SDI	Spatial Development Initiatives
TCPA	Tshezi Communal Property Association

INTRODUCTION

One of the aims of decentralization is to increase public participation in local decision-making. The claim is that public participation coupled with locally accountable representatives with real public powers will increase efficiency and equity in the use of public resources (Agrawal and Ribot 1999). Although not using the same terminology, South Africa has, since the advent of democracy in 1994, embarked on its own version of decentralization. For example, with regard to Local Government, section 40(1) of the Constitution of the Republic of South Africa establishes three “spheres of government which are distinctive, interdependent and interrelated,” to wit, national, provincial and local government. The local sphere of government, in terms of Section 151(1), “consists of municipalities, which must be established for the whole of the territory of the Republic.” Section 151(4) states, “The national or a provincial government may not compromise or impede a municipality’s ability or right to exercise its powers or perform its function.”

The South African constitution and White Paper on Local Government define post-1994 local government as “developmental” local government, involving integrated development planning. This requires municipalities to co-ordinate all development activities within their areas of jurisdiction (Pycroft 1998:151). “Developmental” local government seeks not only to democratize local government by introducing the notion of elected representatives even in rural areas, but also to transform local governance with a new focus on improving the standard of living and quality of life of previously disadvantaged sectors of the community (Pycroft 1998:155). In addition, “developmental” local government requires that citizens should actively participate in development initiatives in their areas (see section 152(1)(e) of the Constitution; also, African National Congress 1994:2-3; Ntsebeza 1999, 2000, 2001). In many ways, the notion of a “developmental” local government meets one of the aims of decentralization, the increase public participation in local decision-making, which leads to increased efficiency and equity.

Apart from local government, the post-1994 South African state attempts to extend decentralization and democratization in land ownership. A legacy of the colonial and apartheid periods is that most land in the rural areas of the former Bantustans is owned by the state and the Development Trust, and administered and managed—during the apartheid period—by tribal authorities. Although rural inhabitants are the effective owners of land, in the sense that they have lived in these areas for long periods of time, landholding based on the permit to occupy (PTO) system does not provide them with a legally secure title comparable to a freehold title. At the same time, rural inhabitants were largely excluded from the administration and management of the land. Land tenure reform aims to correct these imbalances. With regard to land administration and management, an attempt is being made to establish new democratic and accountable structures, with significant community participation. In general, the post-1994 South African State attempts to extend the principle of decentralization to the management and conservation of other natural resources such as forests, fisheries and wildlife. For example, the White Paper on Sustainable Forest Development in South Africa describes community forestry as “implemented by, or with the participation of, communities”

(Department of Water Affairs and Forestry 1997:20). With regard to the environmental management policy, the National Environmental Management Act of 1998 advocates a strong role for civil society participation in environmental governance (see also Turner and Meer 1999:12).

Against this background, this paper focuses on the institutional arrangements that have been put in place to give effect to decentralization and its impact on natural resource management in the rural areas of the Transkei region of the Eastern Cape, South Africa. In particular, the paper will pay attention to the local actors who hold power over natural resources, the kinds of powers they hold, the degree of community participation and accountability relations and mechanisms of accountability to which these actors are subject. For purposes of this paper, the “natural resource” management issue will be interrogated primarily through a focus on land. Within this context, the role of traditional authorities (chiefs of various ranks) will be assessed. The focus on land illuminates problems that are on the horizon for other natural resources, such as forests, wildlife and fisheries, because these latter resources are to be managed through similar structures to those being constructed and contested in the land-policy arena.

Before 1994, especially during the apartheid period, the functions of local government and land administration in the form of land allocation were concentrated or fused in tribal authorities. Municipalities, for example, did not exist in the rural areas. These tribal authorities were made up of officials, not elected and unaccountable, who for most of the apartheid period ruled by force (Mbeki 1984; Lodge 1983). This form of authority is best captured in Mamdani’s (1996) metaphor of a “clenched fist,” leading to what he calls a “decentralized despotism.” The image of a clenched fist depicts both the fusion of power and the coercive element of tribal authorities. The aim of the ANC led post-1994 government is to separate these powers in favor of democratically elected structures closer to rural communities. The tension, though, is that the very same government also recognizes the hereditary institution of “traditional authorities” without any clarity as to their roles, functions, and powers in “developmental” local government and land administration and management.

In this paper, I commence by providing a theoretical and conceptual context based on an outline of two key concepts that are pertinent to post-1994 rural South Africa: “democratic/political decentralization” and “decentralized despotism.” I then proceed by describing post-1994 policy and legislation on local government reform and land administration. Particular attention will be paid to constitutional requirements that emphasize democratic decision-making by those affected by decisions on local government and land administration matters. This will be followed by a brief discussion of how traditional authorities have responded to these policies and laws. Finally, the paper concludes by focusing on the dynamics on the ground, in particular, whether institutions are in place and whether they are achieving any of the objectives set out in policy and legislation.

DECENTRALIZATION: THEORETICAL AND CONCEPTUAL CONSIDERATIONS

An outline of two key concepts, “political/democratic decentralization” and “decentralized despotism” will be presented in order to put in theoretical perspective to post-1994 South Africa’s attempt to democratize rural areas whilst at the same time recognizing hereditary traditional authorities.

Mamdani’s (1996) thesis is that the colonial state in Africa was “bifurcated,” with different modes of rule for urban “citizens” and rural “subjects.” The colonial strategy of “divide and rule” took two related forms: an enforced division of Africans along ethnic lines, and an enforced division between towns and the countryside. According to Mamdani, the African was “containerized,” not as a native or indigenous African, but as a “tribes-person.” Colonialists justified “indirect rule” on the basis that “tradition” and “custom” were indigenous forms of social organization. But, they reinforced and used these identities to divide and manage rural Africans. In order to enforce their dual policy of “ethnic pluralism” and urban-rural division, colonialists, Mamdani asserts, exercised “force to an unusual degree.” In this way, colonial despotism was highly decentralized (1996:22-4).

The chief, according to Mamdani, was pivotal in the local state, the Native Authority. His authority was rooted in the fusion of various powers—judicial, legislative, executive and administrative—in his office, rather than the classic liberal democratic notion of a separation of powers. Native Authorities, according to Mamdani, were protected from any external threat. Their officials were appointed from above, and never elected. They had no term of office, and remained therein for as long as they enjoyed the confidence of their superiors.

Mamdani argues that the colonial legacy was reproduced after independence. However, no nationalist government was content to reproduce the colonial legacy uncritically. Each attempted to reform the colonial state, but in doing so reproduced a part of that legacy, thereby creating its own variety of despotism. Post-colonial African states, whether conservative or radical, deracialized the colonial state, but, according to Mamdani, did not democratize it. On democratic transformation, Mamdani proposes “nothing less than dismantling” the “bifurcated state.” This will entail “an endeavor to link the urban and the rural – and thereby a series of related binary opposites such as rights and custom, representation and participation, centralization and decentralization, civil society and community—in ways that have yet to be done” (1996:34).

These features of the Native Authorities aptly capture the central features of Tribal Authorities that were set up during the apartheid period in South Africa. It is arguably in response to these that the post-apartheid state is making efforts to “dismantle” Tribal Authorities. One of the consequences was the establishment of municipalities made up of elected representatives in the whole of South Africa, including rural areas, the other was the democratization of land administration. However, as will be shown, these attempts are being hampered by the recognition of traditional authorities without any clarity as to

their roles, functions and powers, and particularly, for purposes of this paper, with respect to land and local government.

In 1995/1996, developmental and democratic forms of local governments were created. In addition, emerging policies on land administration were in favor of establishing democratically elected structures. It is not clear, however, how far these new local political-administrative arrangements move away from the system of “decentralized despotism” and towards a more democratic form of rural governance. “Political/democratic decentralization” is said to occur when powers and resources are transferred to authorities that are “downwardly accountable to local populations” (Agrawal and Ribot 1999:478). The aim is to increase public participation in local decision-making. Advocates of this kind of arrangement believe that locally accountable representatives with real public powers and greater community participation will increase efficiency and equity in the use of public resources.

This notion of decentralization can be contrasted with other kinds of decentralization reforms taking place in the name of democratization and development. For example, deconcentration or administrative decentralization, and privatization, which are not democratic in nature, often accompany or take place in the name of democratic decentralization reforms. Deconcentration occurs when the central state transfers some responsibilities to its local branches. In this regard, local branches are primarily upwardly accountable to the central state, and not necessarily downwardly accountable to the communities they are serving. The Department of Land Affairs (DLA) fits this definition. It has created its own provincial structures to implement land reform. Proponents of democratic decentralization consider this form of decentralization as “weak” precisely because it is not downwardly accountable and therefore is not democratic.

Whether privatization could be regarded as a form of decentralization is a hotly debated issue. Those in dispute argue that decentralization concerns public resources, while privatization entails transferring public resources to private groups and individuals that may or may not serve public interests. As with deconcentration, these groups and individuals are not obliged to be downwardly accountable to the communities they serve. Also, the logic of privatization is quite different from that of decentralization.

Manor (2001:2) argues that studies of democratic decentralization find three essential conditions for a democratic local government: substantial resources (especially financial resources) from higher levels of government; substantial powers to local authorities and mechanisms to ensure that bureaucrats are accountable to elected representatives, and mechanisms to ensure that elected representatives are accountable to voters.

Through the lens of land tenure and local government, this paper investigates the degree to which rural political-administration is shifting away from the closed-fist policies of colonial and apartheid decentralized despotism towards more democratic and enfranchising forms of rural authority.

POLICY ON RURAL LOCAL GOVERNMENT AND LAND ADMINISTRATION

Before the first democratic elections in 1994, local government and land administration functions and activities were concentrated in tribal authorities. Given that the tribal authorities were an extended arm of the state during the apartheid period in particular, there was no distinction between land ownership, administration, and management. The post-1994 South African government not only attempts to democratize rural local government and land administration, but also seeks to decentralize functions and powers to democratically accountable local institutions. At the same time, it requires the active participation of communities in decision-making processes. The rest of this section will be devoted to a description of the policy and legal processes of local government reform and land administration, and their relevance to natural resources.

Rural Local Government Policy and Legislation

Local government in post-1994 South Africa went through two phases: a transition phase, between 1995 and 2000, followed by the establishment of fully-fledged municipalities in December 2000. A feature of the transition phase was its urban bias. Unlike in the urban areas, where transitional structures were set up, the 1993 Transitional Local Government Act was initially silent on the form that local government would take in rural areas. However, the ANC-led Government of National Unity recognized this deficiency, and in June 1995 passed amendments to the 1993 Local Government Law. These amendments focused specifically on local government in rural areas and provided for a “district council” model establishing a two-level structure: a district council at a sub-regional level, and a range of possible structures at local (primary) level. In rural areas, the primary structures, established at magisterial district level, would either be transitional rural councils (TRCs), or transitional representative councils (TrepCs). These structures were to be made up of elected representatives. The main difference between transitional rural councils and transitional representative councils was that the former were accorded the powers of a fully-fledged local authority, while transitional representative councils were seen as fulfilling representative and brokering functions. Both bodies were to eventually evolve into effective and democratic local authorities.¹

Unlike in the urban areas, where the electoral system was based on a combination of the constituency and proportional representation, the system that was adopted for rural areas was proportional representation only. This meant that rural people voted only for political parties, rather than political parties and independent candidates. This form of election has grave implications for the kind of decentralization that should emphasize downward accountability of officials to their constituency. In the proportional representation system, officials are often prone to be primarily accountable to their political parties, or the leadership thereof, rather than to their constituency, the voters.

¹ The rationale for adopting the district council model is to move towards equity and redistribution in terms of which the wealthier urban councils will be amalgamated with poorer neighboring communities, and so extend basic services to the latter. This argument, though, does not address the widespread problem in the former Bantustans: here the towns that are surrounded by large poverty-stricken rural communities are themselves small, poorly run, and lack a strong revenue base.

Following the demarcation of municipal boundaries in 2000, new municipalities were established. A model amalgamating several urban and rural municipalities was adopted. This resulted in the creation of fewer and geographically larger municipalities. The number of municipalities was drastically reduced from 834 between 1995 and 2000, to 284. The number of councilors was also reduced, meaning fewer councilors were responsible for larger municipalities. The electoral system combining constituency and proportional representation, applied to urban areas, was extended to all municipalities with wards (De Visser et al. 2000).

“Developmental” local government distinguishes itself from pre-1994 local government by its insistence that a municipality must give priority to the basic needs of its community, and should promote the social and economic development of the concerned community. In terms of the South African Constitution, the objects of local government are:

- To provide democratic and accountable government for local communities;
- To ensure the provision of services to communities in a sustainable manner;
- To promote social and economic development;
- To promote a safe and healthy environment; and
- To encourage the involvement of communities and community organizations in the matters of local government.

Central to this form of local government is the notion of integrated development planning. Integrated development planning requires municipalities to coordinate all development activities within their area of jurisdiction. “Developmental” local government seeks not only to democratize local government by introducing the notion of elected representatives even in rural areas, but also to transform local governance with a new focus on improving the standard of living and the quality of life of previously disadvantaged sectors of the community. In addition, “developmental” local government requires that citizens should actively participate in development initiatives in their areas. All municipalities were initially required to produce Integrated Development Plans (IDPs) and Land Development Objectives (LDOs). However, this process was streamlined with the adoption of the 1998 White Paper on Local Government recommendation that the Land Development Objectives be part of the IDPs. A discussion of the role of local government in land matters is discussed later in the paper.

LAND ALLOCATION IN THE RURAL AREAS OF THE FORMER BANTUSTANS DURING THE APARTHEID PERIOD

All functions, including land allocation in the rural areas of the former Bantustans were, during the apartheid period, concentrated in the hands of unaccountable traditional authorities. The fact that Africans’ access to land was restricted to the former Bantustans greatly enhanced the powers of traditional authorities (Tapscott 1997:295). This is despite the fact they were not the owners of the land and that it was the magistrate—or later the district commissioner—who, granted the permit to occupy (PTO), a document that granted limited land rights to the holder thereof (Spiegel 1992; Segar 1989). Traditional authorities derived their power from the fact that no application could be considered

without the signature of the head of the Tribal Authority, some of the councilors, and the secretary of the Tribal Authority.

The process of allocating land started at a local, sub-headman area and was finalized with the issuing of a permit to occupy by the magistrate/district commissioner. In theory, a person, usually a man, who wanted land first identified the land and approached the people in the neighborhood to establish if there were other claimants and to solicit their support. In the event that the land was available, the applicant approached the sub-headman of the ward in which the property was situated. The sub-headman then called a ward general assembly (*imbizo*). The purpose of this meeting was to offer people the opportunity to comment on the application. In the event of there being no objections, the sub-headman submitted the application to the headman of the administrative area. The headman verbally verified that the general assembly was called, and that no objections had been lodged. In addition, the headman established whether the applicant was a married and a registered taxpayer. In this regard, the sub-headman had to produce a receipt issued by the magistrate as proof. If the applicant could not produce a receipt, the headman would have to accompany the applicant to the magistrate's office where he would be duly registered—the applicant could not go to the magistrate's office on his own, he had to be accompanied by a headman or the chief.

Upon production of the receipt, the headman then normally granted the application. This was seen as a formality. As one headman stated, "As a headman, I accept and respect the decision of the sub-headman." The headman submitted the application to the Tribal Authority. This was also seen as a formality. The Tribal Authority completed the application form, which then was submitted to the district commissioner. The application form had to be signed by the chief, councilors and the Tribal Authority Secretary. Only at this point was the applicant expected to pay an application fee to the Tribal Authority in order to augment the funds of the latter. This was the only fee that the applicant was supposed to pay.

A similar procedure was followed when an "outsider," that is, a person from another Tribal Authority area, applied. The only difference was that the applicant had to produce a transfer letter from his Tribal Authority. This was basically a "certificate of conduct" of the applicant.

As indicated, applicants were mainly married men, the exception being:

- Men who were of marriageable age but who, for one reason or another, were bachelors;
- Women who had been abandoned by their migrant husbands;
- Divorced women; and
- Women with children who wanted to be independent.

The allocation of land to women is recent, but it occurred before 1994. Women who applied for land, though, had to be accompanied by men, be it their fathers or male

relatives, for example, a brother or uncle. Unmarried young men were not entitled to land.

In practice, the system of land allocation was complex and often did not adhere to the law. The main problem was how to monitor the system and make those charged with authority to be downwardly accountable to rural residents. In the majority of cases, traditional authorities were upwardly accountable to the government. This was made possible by the fact that the apartheid and Bantustan regimes gave traditional authorities such powers that they were feared, rather than, respected by their communities (Delius 1996; Ntsebeza 1999). This made it extremely difficult for ordinary, elderly rural residents to hold traditional authorities accountable.

Traditional authorities exploited the lack of “checks and balances.” There were basically two forms of violations: allocating land without going through the procedure, and illegal taxation. Traditional authorities abused their powers by charging unauthorized fees, in the name of the “rights of the great place” (*iimfanelo zakomkhulu*) to applicants. These included alcohol, poultry, sheep, and even an ox. This practice reached its zenith in the early 1990s when some cottage sites were illegally allocated to some “whites” along the Wild Coast in the old Transkei. These sites were dubbed “brandy sites,” as it was imperative that applications be accompanied by a bottle of brandy. It was standard practice in some parts that ordinary rural residents present the sub-headman with a bottle of brandy (or some suitable gift) (De Wet and McAllister 1983:50). In a number of cases, traditional authorities even allocated land to rural residents bypassing the district commissioner. These rural residents were consequently not issued a permit to occupy.

The above was the situation when negotiations for a political settlement started in earnest in South Africa in the late 1980s and early 1990s. This process opened up political space in the rural areas of the former Bantustans. Hitherto, the popular resistance that challenged the apartheid regime was mainly concentrated in the urban areas. In many rural areas, civic structures emerged. One of the issues taken up by the newly created structures was the question of corruption in land allocation. These civic structures denounced Tribal Authorities (Manona 1998; 1990). This process, however, was uneven. In other areas, especially along the Wild Coast of the old Transkei, traditional authorities were not challenged by civic structures that emerged in some parts of the country (Ntsebeza 1999; Kepe 1997). This is not because traditional authorities in these areas were popular and legitimate. Years of autocratic rule by traditional authorities made some people in rural areas, especially the elderly, to fear, rather than respect traditional authorities. This is how traditional authorities derived their “legitimacy.”

ATTEMPTS TO ESTABLISH POLICY AND LEGISLATION ON LAND ALLOCATION IN THE POST-1994 PERIOD

Soon after the 1994 democratic elections, the Department of Land Affairs embarked on a land-reform program. Of the three components of this program, land-restitution, land-redistribution and land tenure reform, it is tenure reform that attempted to address the question of land allocation. The 1997 White Paper on South African Land Policy announced its “key areas of concern” as “the rights in land of the people living in” rural

areas. The White Paper drew a distinction between “ownership” and “governance.” In terms of the White Paper, “the Tenure Reform program will separate these functions, so that ownership can be transferred from the state to the communities and individuals on the land” (1997:93).

By the beginning of 1998, the Department of Land Affairs had developed principles that would guide its legislative and implementation framework. These included that:

- These rights should be vested in the people who are holders of the land rights and not in institutions such as tribal or local authorities. In some cases, the underlying rights belong to groups and in other cases to individuals or families. Where the rights to be confirmed exist on a group basis, the rights holders must be allowed to choose the system of land administration which will manage their land rights on a day-to-day basis.
- In situations of group-held land rights, the basic human rights of all members must be protected, including the right to democratic decision-making processes and equality. The government must have access to members of the group-held systems in order to ascertain their views and wishes in respect to proposed development projects and other matters pertaining to their land rights.
- Systems of land administration, which are popular and functional, should continue to operate. They provide an important asset given the breakdown of land administration in many rural areas. The aim is not to destroy or harm viable and representative institutions. Popular and democratic tribal systems are not threatened by the proposed measures (Thomas et al. 1998:528).

Three issues need to be highlighted in this regard. First, the distinction between land ownership and governance provides the ability to transfer communal land from the state to members of particular communities as co-owners of the land. This is an ownership issue. It means that rural people could have freehold rights to their land. As co-owners, rural residents would have rights they did not have during the colonial and apartheid periods, including the right to sell their land and, as the DLA principles highlight, the right to decide who should administer and manage their land.² The latter is an issue of governance.

It is important to note that transferring communal land has serious implications for decentralization as defined in this paper. Transfer of land from the state implies some form of privatization,³ a declared policy of the ANC-led, post-1994 state.⁴ It implies that communal land will no longer be a public resource, something that raises the fear amongst some of the proponents of decentralization that private groups and individuals may or may not serve public interests.

A more positive implication of the distinction between ownership and governance is that the concentration, or fusion, of power in tribal authorities that was characteristic of the

² Despite the suggestion that rural communities will have freehold rights to their land, the government insists that in instances of proposed development projects, it must have access to members of group-held systems in order to ascertain their views and wishes.

³ The land will not be transferred to the private sector, but to rural communities and individuals residing on it. This, of course, does not stop rural communities and individuals from selling parts of their land to the private sector.

⁴ On the macro economic policies of the post-1994 South African state see: Hart 2002; Bond 2000 and Marais 1998.

apartheid epoch would be undermined. There would, instead, be a clear separation of powers. Some functions would be carried out by the land co-owners, while other functions would be carried out by various structures. Functions of ownership include the right to sell land. Apart from ownership functions, there are functions of governance, which are not carried out by the landowners. The four main actors in communal areas are: landowners (the broad community), land administrators or managers (the officials/bureaucrats), traditional authorities, and local government. The latter two would not be the landowners, and would not necessarily have the right to allocate land, unless asked to do so by the landowners. With regard to local government, however, it is important to note that no land rights are absolute, either in urban or rural areas. As a body representing public interests and given that the Constitution orders municipalities to be established throughout the country, local government has control, regulatory and (in terms of the Constitution) development functions. Land use planning and zoning are examples of functions of governance.

Finally, it is quite clear from the above that the Department of Land Affairs intended to subject traditional authorities to a system that would make them more representative and accountable to their communities. However, establishing democratic and accountable structures while recognizing an undemocratic and unaccountable institution of traditional leadership, especially in the form it has been inherited from the apartheid past, is a fundamental contradiction. The Department of Land Affairs has suggested that there may be examples of a “popular and democratic tribal system.” Given that no examples of these “tribal systems” are given, it is not clear what this statement means in late twentieth century South Africa. If the “tribal systems” referred to incorporate the “institution of traditional leaders,” then a “democratic tribal system” is a contradiction in terms. The institution of traditional leadership can be democratic in one important respect—the involvement of rural residents in decision-making processes. This was indeed the hallmark of governance in most African societies at the advent of colonialism.⁵ However, there is an important sense in which the institution in South Africa cannot be democratic. In so far as so-called traditional leadership is based on the ascribed, hereditary rule, the possibility of rural residents having the freedom to choose which institution and/or individuals should rule them is automatically excluded. Yet, it is precisely this right upon which the South African constitution is based.

It is possible to argue that the proposed accommodation of popular and functioning “tribal systems” was a pragmatic move, especially considering that the government does not have the capacity to set up and monitor new structures. It could also be argued that given the violent struggles of the 1980s and 1990s in the rural areas of KwaZulu Natal in particular, coupled with the reconciliation agenda of former President Mandela, there is a need to be accommodative of traditional authorities. Even if this is the case, the issue of the meaning of democracy in post-1994 rural South Africa still stands. More specifically, the question of whether rural residents should continue to be “subjects” after 1994 when their counterparts in urban areas enjoy citizenship rights, still haunts us. My position is that democracy should, at least, be both participatory and representative, rather than one

⁵ Only men participated in these gatherings (*iimbizo/ pitso/kgotla*). Further, these systems differed, and some were more autocratic than others (Ntsebeza 1999).

or the other. Ensuring that rural residents enjoy the right to choose their representatives remains one of the key challenges of the ANC-led, post-1994 government.

A much-awaited Communal Land Rights Law, supposed to, among other things, address land-rights administration in the rural areas of the former Bantustans, has not seen the light of the day. The legislative process began soon after the publication of the 1997 White Paper on Land Policy. By 1999, a draft Bill that sought to provide for the establishment of various institutions that would provide for a decentralized system of land-rights management was ready for consideration. However, the new Minister of Agriculture and Land Affairs, Ms. Thoko Didiza, was not in favor of the draft Bill. President Thabo Mbeki appointed Ms. Didiza following a cabinet reshuffle after the ANC won the second democratic elections in June 1999. Her contention was that the draft 1999 Land Rights Bill did not propose any mechanism for transferring land to “tribes.”⁶ The 1999 draft Land Rights Bill was cautious about “up-front” transfers of land to legal entities, however defined. This was despite an earlier preference to transfer land to legal entities, in particular, Communal Property Associations. To show her disapproval of the draft Land Rights Bill, the new Minister disbanded, by the end of 1999, the team who drafted the 1999 Bill.

In February 2000, after almost eight months of silence, the Minister unveiled her “strategic objectives” regarding land tenure reform in the rural areas of the former Bantustans. The Minister indicated the need to consolidate and rationalize land administration laws and create an integrated system of land tenure and statutory rights that could be legally registered. An important shift also emerged. Instead of introducing a new structure as was proposed in the draft Land Rights Bill, the new Minister laid stress on the importance of building on existing local institutions. Part of the thinking was that this approach would reduce costs, but it can also be argued that this was an attempt to accommodate traditional authorities, in line with the ANC shift from its previous position as discussed above.

A feature of the operations of the Department of Land Affairs between mid-1999 and 2001 was the difficulty in getting information. This made it difficult to know the precise form policy would take with regard to the role of traditional authorities in land allocation. However, it seemed clear, from the bits and pieces that were coming out, that traditional authorities were destined to play some role, particularly in land allocation. In the course of 2000, a Communal Land Administration Bill (draft 2) was produced.⁷ The Bill gave a confusing picture of the land allocation procedure. Under “Allocation for Communal Land Rights,” it stated, *inter alia*:

Traditional authority or legal entity shall in accordance with the indigenous law and custom or community rules, allocate any communal land right in respect of any portion of communal land.

⁶ Some Department of Land Affairs officials regard the term “tribe” as, quite rightly in my view, offensive. For this reason, these officials have coined the term “African traditional communities,” without any clarity, though, as to what they mean by “traditional” and “communities.”

⁷ It is quite possible that other drafts have been produced.

It went on to state that:

Prior to allocation of any communal land right, the traditional authority or the legal entity, shall convene a meeting of members of a local community to table the application. The application shall only be proceeded with if it enjoys the majority support of the adult members of the local community.

Applications for land for business or public purpose would, according to the Bill, need to “be ratified by the Department and the municipality within which the land is situated, respectively.” The Bill adopted, without any elaboration, would have a gender and generation neutral approach by not discriminating against women and young people. For example, it stated that traditional authorities or legal entities should, upon allocation of communal land, provide the Department of Land Affairs with particulars, including that “such right shall be capable of being held and exercised without regard to the gender, and marital status.” The Bill also proposed setting up of a Communal Land Rights Tribunal that would deal with disputes.

The Bill tried, as the constitution does, to balance democracy and the recognition of the institution of traditional authorities. However, the Bill did not define critical terms such as “traditional authority” and “legal entity.” Further, concepts such as indigenous law, custom and so on were used, as is the case with the constitution, in a non-controversial manner. Indeed, what counts as indigenous law and custom in a society that has been disrupted by land dispossession, Christianity, Western Education and the migrant labor system? As with the Land Rights Bill, the Communal Land Administration Act did not see the light of the day.

The National Land Tenure Conference held in Durban in November 2001 failed to give clarity on the development of land tenure reform in the rural areas of the former Bantustans. This was despite the positive theme of the conference: “Finding Solutions, Securing Rights.” A copy of a draft Communal Land Rights Bill was supposed to have been circulated in advance for discussion at the conference. However, no official draft had been circulated at the commencement of the conference.⁸ The conference ended up being a brainstorming session on some principles that would inform the Communal Land Rights Bill. At the end of the conference, DLA committed itself to producing a draft Bill in 2002 for public comment.

The long-awaited draft Communal Land Rights Bill was finally gazetted on August 14, 2002. This draft has retained some of the key principles of Minister Didiza’s “strategic objectives” regarding land tenure reform in the rural areas of the former Bantustans. This is particularly the case with regard to the objective of “divesting the government of land ownership.” However, whereas in 2000 the Minister had suggested transferring land to African Traditional Communities, the draft Bill proposes the transfer of registrable land rights to individuals, families and communities. This formulation thus excludes the possibility of transferring land to institutions, including the institution of traditional authorities. On land administration, the draft divests traditional authorities of their land

⁸ DLA refused to claim ownership of a “draft” that was leaked out before the conference.

administration functions, including land allocation in favor of democratically elected administrative structures.

As of February 2003, the future of the draft Communal Land Rights Bill is not clear. When the draft was published, there was to be a period of 60 days for submission of comments by interested and affected parties. No official statement has so far been issued to indicate what the next steps would be. Most important for this paper is that the critical question of the management and administration of communal land has not been clarified. This raises serious questions about not only the management of land as a resource, but also about the other land resources such as wood, grass and sand.

Reasons for the delay

Traditional Authorities Resist Democratic Decentralization

Traditional authorities are vehemently opposed to the moves of the ANC-led government to introduce decentralization and democratization in rural areas under their jurisdiction. What is striking about the post-1994 period is that traditional authorities, despite earlier divisions, seem to be drawing closer and closer to one another. In the late 1980s and early 1990s traditional authorities were deeply divided. Some formed the Congress of Traditional Leaders in South Africa (CONTRALESAs) in 1987 and struck an alliance with the ANC, while others, organized around the Inkatha Freedom Party, maintained a hostile attitude towards the ANC. In the run-up to the first democratic local government elections in South Africa in 1995/1996, the Inkatha Freedom Party and CONTRALESAs began to work together. Traditional authorities in both CONTRALESAs and Inkatha Freedom Party took the ANC-led government to the Constitutional Court, challenging the government over the issue of establishing municipalities throughout the country, including rural areas under their jurisdiction. The president of CONTRALESAs, Chief Patekile Holomisa, who is also an ANC Member of Parliament, took “an increasingly defiant stand” towards the ANC. He called for a boycott of the first democratic local government elections.

While the initial collaboration was around local government, it is quite clear that the main issue that brings traditional authorities together is their opposition to the notion of separation and democratization of powers. They would be happy to preserve the concentration of power they enjoyed under apartheid. Not only are they opposed to the idea of separation of powers, they are also opposed to any attempt to introduce alternative structures that would compete with them. For example, in the case of local government, traditional authorities reject the introduction of municipalities in “their” areas. They argue that they should play a central role in rural development, and by implication, they reject the democratic principles upon which post-1994 “developmental” local government is based.

Traditional authorities have adopted a similar stand with regard to land tenure reform. They do agree with the government that land in the rural areas of the former Bantustans should not be the property of the state. However, they reject the notion that where land is held on a group basis, it should be transferred to democratically constituted and accountable legal entities such as the Communal Property Association. Traditional

authorities strongly argue that the land should be transferred to Tribal Authorities that, as has been argued, are undemocratic and unaccountable. Transferring land to Tribal Authorities would legally exclude ordinary rural residents from vital decision-making processes, including land allocation.

Traditional authorities have rejected the 2002 Draft Communal Land Rights Bill. Chiefs Holomisa of CONTRALESA and Mzimela of the National House of Traditional Leaders indicated, as the draft Bill was published, that they would oppose the envisaged legislation and take up the issue, as they have in the past, with the President. Chief Mzimela, of KwaZulu Natal, went further to issue a veiled threat of violence in the event the draft become law (Sunday Times and City Press, 25 August 2002). It is difficult to predict how events will unfold, and whether a clear-cut piece of legislation defining a clear role for traditional authorities in land and local government will finally emerge.

The Ambivalent Position of the Government

The position of the ANC-led government towards traditional authorities has since the establishment of the ANC in 1912 been ambivalent (Ntsebeza 2002). This is still the case at the beginning of 2003: the issue of the roles, functions and powers of traditional authorities in local government, and land allocation in the rural areas of the former Bantustans is far from being clear. The government has not come up with a clear-cut position on the roles, functions and powers of traditional authorities in a democracy based on representative government. In the period up to 1997, it appeared as if the ANC was committed to bringing finality to the issue of traditional authorities. The 1997 White Paper on land policy was developed in this period. In the same year, anti-traditional authorities' forces within the ANC in the Eastern Cape pushed for the promulgation of the 1997 Regulation of Development in Rural Areas Act by the Eastern Cape Legislature. This Act sought to divest traditional authorities of all their development functions and transfer these to elected councilors. This, of course, was in line with the new functions of local government.

However, between the end of 1997 and 2002, the pendulum seems to have swung in favor of traditional authorities. The establishment of the United Democratic Movement (UDM), by an expelled member of the ANC, was critical. Some members of CONTRALESA were attracted by the idea of joining the United Democratic Movement. In fact, some joined and were awarded with executive positions. These widely reported "defections" of traditional authorities led to the emergence of former President Mandela as the chief ANC actor in issues dealing with traditional affairs. He organised meetings with traditional authorities in the Transkei region. In the run up to the June 1999 national election, Mandela became a familiar figure in election rallies in rural areas. He made it a point that traditional authorities were honored guests. Hardly any public statements were issued about jettisoning traditional authorities as an alliance partner.

The concessions in the White Paper on Local Government published in March 1998 were some of the first indications of this shift. The White Paper makes broad and sweeping statements about the possible role that traditional authorities can play. Traditional "leadership" is assigned "a role closest to the people." On the issue of development, a task that has been added to local government by the Constitution, the White Paper

(1998:77) boldly asserts, “There is no doubt that the important role that traditional leaders have played in the development of their communities should be continued.”

The recommendation in the White Paper that “the institution of traditional leadership” should “play a role closest to the people” flies in the face of the recommendation of the 1994 Reconstruction and Development Programme (RDP).⁹ The RDP was emphatic that democratically elected local government structures should play this role. The recommendation marks a major shift in government policy, and has grave consequences for the possibility of democracy in rural areas. Similarly, the Constitution has explicitly added development functions to democratically elected local government structures. Yet, the White Paper recommends that traditional authorities should continue performing these tasks. Moreover, the statement that traditional authorities played an important role in development among their communities must be viewed with suspicion. No evidence has been produced to support this statement. Existing evidence shows that traditional authorities were never directly involved in development projects. These projects were implemented by government line-departments. Where traditional authorities have acted as a link between government departments and their communities, research has shown that they were often corrupt. An example is the illegal taxes traditional authorities imposed in the process of land allocation. These clauses in the White Paper seem to back the view held in this paper that since 1997, there has been a gradual shift in government policy in favor of traditional authorities.

Similar trends could be detected with regard to land administration. Following the launch of the White Paper on Land Policy and the guiding principles on land tenure reform the Department of Land Affairs embarked on a legislative process in the form of drafting a Land Rights Bill. The draft Bill sought to establish a decentralized system of land rights management. A key element of this model was its democratic character, in the sense of ensuring that land rights holders play a central role in decision-making on matters affecting their land rights. This model of “democratic decentralization” would distinguish itself from the “decentralized despotism” (Mamdani 1996) that characterized the apartheid period. The role of traditional authorities was addressed within the context of “democratic decentralization.” Unlike the position taken in this paper, the drafters of the Land Rights Bill did not see any fundamental contradiction between democratic decentralization and acknowledging a role for the institution of traditional leadership. The expectation that the Bill would be legislated by Parliament in the course of 1999 or 2000, was dealt a set back when the drafting process was suspended after the 1999 election.

Whether the ANC-led government will resolve the vexing question of the role of traditional authorities in local government and land matters in the Communal Land Rights Bill process is not at all clear. Traditional authorities reject the 2002 draft Bill and the government, through the Department of Land Affairs, has not given any indication as of early 2003 of how the legislative process will unfold.

⁹ The RDP was an integrated, coherent socio-economic policy framework that was adopted by the ANC in 1994. In 1996, however, the growth, employment and redistribution (GEAR) programme that is based macro-economic principles replaced the RDP.

THE CONCRETE PRACTICE: THE CASE STUDIES OF THE TSHEZI AND XHALANGA TRIBAL AUTHORITIES

The Tshezi Case Study

The case study of the Tshezi area in the Eastern Cape is a clear example of the rejection of CPAs by traditional authorities. The Tshezi area, situated on the Wild Coast in the Transkei region of the Eastern Cape, was one of the economic development nodes that were identified by the Department of Trade and Industry led Spatial Development Initiatives (SDIs).¹⁰ One of the requirements of the SDI for investment in so-called communal areas is the need to establish legal landholding entities, which would enter into negotiations and sign contracts with investors. This led to the establishment in the Tshezi area of a SDI committee comprised of six men and two women, with some members drawn from the Tribal Authority and business people. After a series of meetings on legal entities, the committee opted for a communal property association (CPA).

Throughout the process of discussing legal entities, the chiefs of the area, Chief Dubulingqanga, and his son, Ngwenyathi, were kept informed. Their initial response was supportive and they were excited at the prospect of getting “their land” back. The SDI Committee was chaired by one of the four headmen, Mr. Mbambazela. The idea of the legal entity also received the support of the “legal” cottage owners and the Ocean View Hotel. What remained at the end of the first phase in April 1998 was for the broader Tshezi community to be informed about the TCPA in preparation for its registration. At the beginning of June 1998, an Interim TCPA Committee was elected at a mass meeting (attended by 200 to 300 people) which was held at the tribal authority offices. The Interim Committee was elected (some say appointed) with Chief (to be) Ngwenyathi as chair and included members of the SDI Committee and a few additional members, including two “white” cottage owners who are permanent residents in Coffee Bay.

By the middle of June 1998 public meetings (involving the Department and the researchers) had been held on the CPA in all the administrative areas. The CPA concept was well received at the meetings held in Lower Nenga, Lower Mpako and Nzulweni, supported by headmen for these three areas. It was not possible to hold a meeting in Mthonjana. A small, but vociferous group, led by Richard Zithulele who is a resident in Mthonjana and also one of the “illegal” cottage owners that are being investigated by the Heath Special Investigative Unit, refused to be involved in meetings that had not been called by the chief. This is despite the fact that Zithulele had earlier expressed a vote of no confidence in chiefs as leaders in development. This group also indicated that they rejected the CPA, without any knowledge of what it really entailed. It is the self-same Zithulele who unilaterally withdrew his participation and that of the other representative of Mthonjana in the SDI committee.

¹⁰ The Spatial Development Initiative (SDI) program is a government initiative started in 1995 to provide assistance and encouragement, via tax incentives and grants, for private investment in particular development projects. There are currently eleven SDIs throughout the country. Examples are the Maputo Development Corridor, the West Coast Investment Initiative, and the Gauteng Special Economic Zones.

Another interesting development was that Chief Dubulingqanga and his headmen were starting to prevaricate, expressing doubts about the CPA. One of the headmen, who is also the son of the chief, suggested that traditional authorities should be given more time to consult with other traditional authorities outside the Tshezi area, including the Eastern Cape branch of CONTRALESA. He suggested that they would ask CONTRALESA to draft a Constitution for them, seemingly disregarding the draft constitution prepared with the SDI Committee and discussed with him and his father. Chief Dubulingqanga did not attend the April meeting.

For some time it was difficult to determine where the Tshezi chief, Dubulingqanga, stood. He would show enthusiasm in one meeting, and then would be opposed to developments in the next. His questions revolved around:

- Why is it that the CPA is being established on his land first?
- Where else has it been established?

It became apparent that the chief's position was being strongly influenced from the outside by people like chiefs Nonkonyana, Patekile Holomisa and Gwadiso who were advising him against the CPA and arguing in favour of the transfer of the land to the Tribal Authority. On one occasion, whilst the researchers were conducting fieldwork in the area, the chief, his son and councilors announced that Chief Patekile Holomisa had paid an unexpected visit to chief Dubulingqanga where the CPA process was discussed. Chief Holomisa advised chief Dubulingqanga and his son to request a meeting of the Department of Land Affairs) with the House of Traditional Leaders in Bisho to discuss the CPA in the Tshezi area.

Two meetings with the House of Traditional Leaders in Bisho resulted, one on July 2, 1998 attended by the author as a DLA consultant. The next meeting was on August 17, 1998, and the DLA was powerfully represented by the Chief Director of the Land Tenure Reform Directorate in Pretoria, Glen Thomas. The position of the House of Traditional Leaders was that they accepted transfer of land, but rejected the DLA policy that land be transferred to land rights holders as co-owners. They declared that land must be transferred to tribal authorities. Further, they informed the DLA delegation that this matter was in the hands of the Deputy President and the Minister of Land Affairs.

When the outcome of the July 1998 meeting was reported to the SDI and Interim TCPA Committees in the Tshezi area, committee members, including headman Mbambazela and Chief Ngwenyathi, felt strongly that the establishment of the CPA should proceed. At that stage the view held by Committee members was that the opposition against the CPA was not against the content of the legal entity (which accommodated the tribal authority), but the name, particularly the use of the word "Communal" in CPA. The proposal was that the name should be changed to "Tshezi Property Association" or "Tshezi Tribal Property Association."

However it soon became apparent that nothing less than the transfer of land to the chief or the Tribal Authority itself would satisfy Chief Dubulingqanga.

Following these events the Interim TCPA Committee decided to approach paramount chief or King Buyelekhaya Dalindyebo to intervene in the matter. On October 20, 1998, the DLA called a public meeting together with the Tribal Authority and the king's councilors to end the protracted discussions on the CPA and agree on a way forward. At this meeting the king's 12 councilors (mostly chiefs themselves) openly supported the CPA process and criticized chief Dubulingqanga for listening to outsiders and not to the king and his own people. In view of the chief's reservations and on the request of chief Ngwenyathi, the king's councilors decided to postpone a final decision on the matter to allow the Tshezi's to internally resolve the matter and report back at a meeting on November 12, 1998.

This meeting took place and was characterized by overwhelming support for the TCPA from the floor and from the headmen representing Lower Nenga, Lower Mpako and Nzulwini. All three headmen signed a declaration to establish a TCPA, and a new Interim TCPA Committee was elected. Chief Dubulingqanga was not happy with these events but nevertheless agreed to sign the declaration when he and the new Interim TCPA Committee met with paramount chief Buyelekhaya Dalindyebo the following week. However, once chief Holomisa heard about this, we were told, he went to chief Dubulingqanga and told him to reject the CPA and only accept transfer to the Tshezi tribal authority.

From around December 1998 on things took a turn for the worse. Chief Dubulingqanga did not attend the meeting with the king and was abusive about the fact that the Interim Committee had attended the meeting. The chief mobilized opposition to the TCPA, supported by headman Hoba and Richard Zithulele from Mthonjana, sub-headman Vulindlela from Rhini, and a number of people involved in illegal land allocations in Coffee Bay. People who associated themselves with the CPA were threatened and the Interim TCPA Committee was instructed by the chief not to hold any meetings. There were rumors that the SDI and the land reform process were bent on evicting people along the coast and reintroducing the "betterment" planning. The chief also openly charged the Interim TCPA Committee of trying to overthrow him as chief of the Tshezi.

Although these fears were real to those most directly affected by developments along the coast, it is also true that these fears were being exploited by those who have the most to gain from the illegal land allocations in Coffee Bay and Hole-in-the-Wall—beneficiaries of the current land administration vacuum in the area. Chief Dubulingqanga continues to be involved in many of the illegal allocations which have taken place in the Coffee Bay area, and that the chief takes these decisions without regard to the bottom-up and participative land allocation procedures that are, at least in theory, supposed to be followed. It is also widely held in the area that there are headmen and sub-headmen who collaborate with the chief in these illegal allocations of land. It is alleged that these traditional authorities get bribes in return.

It became clear that the ignorance and fear of communities, particularly those living along the coast, was being exploited. This led to a decision by the DLA to hold meetings

and discussions in the various villages along the coast to explain the land reform program and the protection of informal tenure rights, which it entails.

However, even supporters of the CPA had become fearful of actively promoting the TCPA cause. The indecision by the DLA with regard to implementation of policy compounded things. For example, they never spelt out their position at the many meetings of the House of Traditional Leaders in Bisho, and despite research that clearly demonstrated the continuation of illegal allocations of land along the coast, the DLA did not take action against those traditional authorities who were implicated.

It therefore became clear towards the end of 1998 that the introduction of the CPA at this stage would lead to conflict within the community. Apart from the indecision of the DLA, the establishment of the CPA was contingent upon the majority of the people at a public meeting making an informed decision on the establishment of the CPA. It was also contingent upon the community's ability to administer its own land and development affairs effectively. Developments by the end of 1998 clearly demonstrated that it would take some time for these conditions to be met. With regard to the first condition, it was doubtful whether the Tshezi people, especially without government protection in the event of consequences, would openly oppose the chief. "Tshezi people" is taken to mean those who attend meetings, mostly elderly, illiterate and semi-literate people, with no participation by the women who attend.

Largely due to the above conclusions, DLA researchers, in consultation with PDLA fieldworkers, decided to change focus and concentrate on land administration and development issues in the Tshezi area. Establishing some form of land-holding entity and the transfer of land remained the goal, but it was seen as a medium-term objective that would gain wider acceptance as the Tshezi people vigorously engaged with land administration and development issues. However, government support, especially from the DLA and Local Government would still be required for the successful implementation of land administration and development.

It became clear during the course of 1998, particularly when tensions in the area were at their height, that those opposed to the TCPA were mainly those benefiting from the existing land administration vacuum. Richard Zithulele is still being investigated by the Heath Special Investigative Unit for illegally erecting a cottage within the protected one kilometer area inland from the sea, and the sub-headman of Rhini location, together with the chief (and some say the chief's son) are allegedly implicated in numerous cases of illegal allocation of sites within the protected area, the same area over which the Heath Special Investigative Unit has issued a moratorium on development.

Researchers, including the author, proposed that the DLA, representing the Minister as a land owner, should establish an effective land administration system in the area so as to create a healthy environment for development, including SDI development. At the same time, the researchers were becoming increasingly aware that the Tshezi community was unable to benefit from leasehold revenue potentially available to them from cottage owners and commercial enterprises such as the hotel and back-packer's lodges—who are

willing to pay market-related leases in exchange for legally secure tenure rights. A related issue, which is viewed as a precondition for SDI development, involves the local government function of service delivery to the area.

In March 1999, the Chief Director of the Tenure Directorate, Glen Thomas, visited the Tshezi area. One of reasons behind his visit was to inform the Tshezi tribal authority that the DLA had abandoned the establishment of the CPA in the Tshezi area. He explained to the tribal authority the procedure to be followed in the event that development projects, requiring the consent of the Minister, were proposed. The issue of the illegal allocation of resort sites was also raised and the procedure for allocating these sites explained. The Chief Director also addressed similar meetings with the Interim TCPA Committee. Effectively, he told the committee that it should disband and that it would be replaced by an interim body (committee) which would be elected to represent the Tshezi's with regard to land development issues. This would be a consultative committee that would negotiate with potential investors, ensure that land allocation procedures were properly administered, and advise the Minister on the use of funds derived from the allocation and lease of land for development. At the time of writing this paper, no major SDI development was taking place in the Tshezi area, and no solution had been found for the administration and management of land in the area.

The Xhalanga Case Study

The Xhalanga case study provides an example of how the unresolved issue of the role of traditional authorities creates problems with land administration. As in the former Bantustans, there were in Xhalanga deep tensions and clashes between traditional authorities, headmen and councilors operating in Tribal Authority structures, first with groups in civil society led by resident's associations and starting around 1993, the South African National Civic Organization (SANCO). Xhalanga, in particular, unlike the Tshezi area, has a tradition of resisting state created rural local government structures, including Tribal Authorities and does not have a strong tradition of chieftainship (Ntsebeza 2002). At the center of the struggles of the 1990s was control over land, in particular, land allocation. We have seen above that it was primarily control over land, including land allocation, that traditional authorities and headmen used as a tool to blackmail rural people and to illegally tax rural residents. Indeed, as the Xhalanga case shows, it is precisely around the issue of corruption that organs of civil society, such as resident's associations and the South African National Civic Organization, mobilized support against traditional authorities and headmen.

The district of Xhalanga was declared a Betterment Area on November 23, 1962, in terms of *Government Gazette number 1910*. It was not, however, until the late 1960s and 1970s that the scheme was actually implemented. A critical aspect of the scheme entailed the demarcation of land into grazing camps, residential plots and fields. In most cases, the demarcation entailed the removal of people from their areas of residence into new settlements. All the interviewees, including headmen and supporters of the apartheid government, pointed out how illogical the demarcation exercise was. They explained that before the Betterment demarcation, the residential sites divided the grazing camps from the fields. This meant that, despite the fact that grazing camps were not fenced the risk of

livestock destroying crops in the fields was limited by the fact that the residential sites acted as a buffer.¹¹ With the introduction of Betterment planning, residential sites were in most cases relocated away from the fields. Often, the fields were adjacent to grazing camps. This meant that fields could only be protected from animals for as long as there was effective fencing of grazing camps and close monitoring of gates. The Betterment Scheme promised the provision of fencing of grazing land and rangers were employed to monitor and maintain the fences and gates.

It will be seen below that the people who were primarily affected by this kind of planning were the landholders (*oonomokolo*). Betterment planning affected landholders who were removed from their residential plots in another way. The new plots that they were allocated were smaller than the old plots. Headman Fani, who became headman when Betterment was being implemented, explained: “People were removed to new settlements. People who had bigger plots lost as the new plots were smaller. The law stipulated that measurements should be 50m x 50m. There was no compensation for land. Compensation was only for huts, and even then, it was the government who determined the amount.”¹²

In order to illustrate the concrete implications of Betterment Planning in Xhalanga District, the following example from one of the landholders at Emnxe is presented. Lungiswa Muriel Mguli (hereafter Madeyi, her clan name) was, until 1998, a community health worker employed by the Health Care Trust. According to her, landholders (*oonomokolo*) at Emnxe wanted to use their land for agricultural purposes, but could not do so as a result of damage caused by the stock.¹³ She recalled that after the implementation of Betterment, fields (*amasimi*) were adjacent to grazing camps, and houses were far away at the foot of the hills (*ezingqaqeni*). “By the time you get to the fields,” explained Madeyi, “the cow has finished eating.” The fields, according to her, were not fenced, and there were no herd boys, as children were encouraged to go to school. When the landholders asked the headman to arrange for the fencing of the grazing land, they were, according to Madeyi, told that the government did not have the necessary resources. Madeyi recalled that landholders refused a suggestion by the headman that they should lease their fields to some white people who wanted land for agricultural purposes. According to her, their counter suggestion to the headman was that, given the failure by the government to provide fencing, the landholders should be allowed to go back to their old sites (*kuzwedala*). Their argument, as Madeyi explained, was that they would be closer to their fields.

Attempts by Madeyi and her colleagues to take their case to Chief K.D. Matanzima revealed how vindictive a character Matanzima and his supporters at Qamata were. The occasion was used to belittle and vilify the people of Xhalanga presumably for the manner they resisted Tribal Authorities and Matanzima in the late 1950s and early 1960s.

¹¹ One of Matanzima’s strong supporters, Mawonga Nkunkuma, even took me to one of the locations, Tsengiwe, to demonstrate what he meant.

¹² Interview, Cala Reserve, 15 March 2000. Landholders, who were removed to new residential settlements, did not lose their fields.

¹³ Interview with Fani Ncapayi, Emnxe, 11 May 2000.

According to Madeyi, after explaining the problem to the Regional Authority, the chief in charge of the Regional Authority on that day berated the Xhalanga landholders: “Hey! You are groping in the dark (*Tyini! Nifukuza nje emnyameni*). You don’t even know chiefs. What does Mr Stofile (head of eQolombeni Tribal Authority) say?” When one of the men in the Emnxe delegation tried to argue, he was abruptly told: “You don’t do that to a chief (*akwenjenjalo enkosini*). You are talking nonsense.” The Chief apparently even threatened to arrest (*ukubopha*) the delegate from Emnxe. With regard to the request to be returned to their pre-Betterment land, the Chief warned the Emnxe delegation that what they were saying would land them in prison for suggesting “that the person who did the demarcation was out of his mind (*wayengenangqondo ngokucanda olwahlobo*).” It was quite clear that the Chief knew about the people of Emnxe and wanted to teach them a lesson. The landholders from Emnxe were finally told that they should make a formal application requesting that the camp next to their fields be demarcated for residential purposes. The letter that was subsequently written by the landholders had, by the early 1990s, according to Madeyi, not elicited any response, other than being told by the headman of Emnxe that legal processes take a long time (“*izinto zomthetho zihamba kade*”).

Madeyi’s account represents the specific position of those landholders who were relocated. Their problem was not landlessness, as such, but the fact that they were too far from their fields. Additionally, these landholders did not represent all the landholders at Emnxe, but only those who were removed. According to Madeyi, the landholders that she represented were eight in total. The majority of the inhabitants of Emnxe and other administrative areas in Xhalanga had, however, a different set of land-related problems. Their problem was “land hunger.” Not only did they not have fields to grow their crops, they also did not have residential plots to build their houses. The composition of this landless group ranged from the grown-up children of landholders who wanted to establish their own independent existence, to newcomers—mostly people who were either evicted by neighboring white farmers or had voluntarily left the farms. Between 1960 and 1991, the population of the rural areas of Xhalanga had more than doubled, having grown from 24 360 in 1960, to 60 545 in 1991. By 1993, the rural population in this district was estimated at 63 754 (Statistic South Africa 1993). By contrast, the size of land had not expanded.

Sub-headman Dyantyi of Lumphaphasi has pointed out that by the mid-1980s, it was difficult to get land. The plots that were demarcated in the 1960s had been fully allocated. There were delays in demarcating more sites. The practice was that the headman would call a meeting of (male) inhabitants where a grazing camp would be identified and a recommendation made to the Tribal Authority for the camp to be converted into a residential area. If approved by the Tribal Authority, the headman would contact the officials of the Department of Agriculture to do the planning and demarcation. This process was time-consuming and several people, like sub-headman Dyantyi, were forced to resort to claiming land without the approval of the Tribal Authority, as early as the 1980s.¹⁴ These measures, acts of despair under the repressive conditions of the 1980s, demonstrate the chronic shortage of land.

¹⁴ Interview, Lumphaphasi, 15 November 1999.

Lists of people who needed residential plots were compiled in many administrative areas of Xhalanga. Sub-headman and their committees compiled these lists in their villages.¹⁵ The lists were ultimately forwarded to the office of the District Commissioner through the headman and Tribal Authorities. By the early 1990s, however, there had been no demarcation of land. As has been indicated above, headman Kupe's response that legal processes take a long time was seemingly a standard response by headmen. This lackluster response provided the conditions for the re-emergence in Xhalanga of challenges to Tribal Authorities in the early 1990s. As already noted, there were similar struggles against Tribal Authorities in other parts of rural South Africa. Land struggles in the neighboring town of Cala clearly influenced the land struggles in rural Xhalanga (Bank 1992).

Arguably the most organized and sustained campaign for land was at Emnxe, the hub of the campaign against Tribal Authorities in the late 1950s and early 1960s. However, unlike the struggles of up to the early 1960s, which were led by landholders, the driving force behind the resistance to Tribal Authorities in the early 1990s was the youth and women. The composition of the youth was made up of migrant workers, mainly in their 20s and 30s, and students in tertiary institutions, high and secondary schools. The migrant labor system established women as the de facto heads of their households and, having to fend for themselves, they found themselves playing a leading role in development initiatives and, as in the case of Madeyi, the drive towards access to land. Emnxe provides a good example of how youth and women combined in the struggle against the headmen and Tribal Authorities. The Emnxe example also reveals another dimension—the urban-rural link.

Developments in nearby Cala had an influence on youth activists at Emnxe. One of the youth leaders, Loyiso Mdleleni, laid great emphasis on how developments in Cala influenced them, "One of the motivations was the establishment of the Residents Association in Cala. We insisted that there should be similar associations in rural areas."¹⁶ Mdleleni was in the late 1980s and early 1990s, a student at the University of Transkei in Umtata. When the Xhalanga Campaigns Action Committee (XCAC) was formed in 1991, Mdleleni became its secretary. Evidence of the urban-rural link was also captured in the undated publication of the Xhalanga Youth Club. The publication noted that there was an "informal" meeting at the Cala town hall on 2 December 1989 that was organized by the youth that later formed XAYCO.¹⁷ The meeting was apparently called to receive "visitors" who were a "certain Mr (Mbulelo) Ngamlana and Mr Gwede Mantashe from the National Union of Mineworkers (NUM)." These visitors were interested "to hear reports on developments" in Cala, and also wanted to report on developments in the then Transvaal and Orange Free State. After listening to developments in Xhalanga, the visitors are reported to have stated that they, amongst others, "held a workshop where they discussed strategies of forming structures in the

¹⁵ Madeyi was a member of the committee in her area.

¹⁶ Interview, Queenstown, 29 January 2001.

¹⁷ *Xhalanga Youth Club: The Voice of the Youth and Working Youth.*

rural areas.”¹⁸ Their reasoning was that as activists in trade unions in the urban areas, they wanted to be involved in rural structures when they are on holiday (Delius 1996). The “visitors” were from Emnxe. Apart from showing the link between the urban and the rural, this also highlights the role of the youth, both as migrant workers and as students.

The issue that was identified by the youth as the basis for establishing a rural structure was land. This was one issue that would bring together rural inhabitants across gender, generation, ethnic and class lines. As Mdleleni explained, “We discussed the issue of forming the association and tackling vital issues with elderly people. We discussed all sorts of things—unfenced camps, residential sites and fields.”¹⁹ We have seen that these were precisely the issues that people like Madeyi and landless people struggled with throughout the 1980s. It is thus not surprising that, as was the case even in Cala, the youth of Emnxe began to gain the support of elderly people, and especially women. Land for residential purposes was identified as the most essential, as Mdleleni and other activists recounted. This meant two things: the return to the original properties for landholders, and demarcation of land for the landless. It is worth mentioning that the old sites of landholders were never re-allocated, but became part of the grazing land (*amadlelo*).

The formation of a structure at Emnxe took longer to establish than might have been anticipated by the youth leaders. One of the reasons was, ironically, the leading role played by the migrant workers and students studying outside Xhalanga. Most activities took place during the December holidays, when migrant workers and students were back on holiday. The other reason was that there was, according to the youth leaders who were interviewed, resistance on the part of the headman, Kupe, to the establishment of a resident’s association.²⁰ A third and more interesting reason was the resistance of the landholders (*oonomokolo*), in particular those who were not removed and were not under the same pressure as Madeyi and her group. They apparently attempted to reconstruct social relations between landholders (*abemi*) and the landless who had recently arrived at Emnxe (*abahlali*).²¹ The argument of the landholders, as Mdleleni explained, was that as landholders, “they were the only ones who could decide whether the land should be made available or not.”²² As one of the youth leaders, Andile Sondlo, put it, “Only landholders were part of the cabinet of the headman.”²³

An important turning point in the process of establishing a Residents Association at Emnxe was the large-scale retrenchment of migrant workers from the late 1980s. Emnxe youth leaders such as Andile Sondlo and Mbulelo Ngamlana were retrenched around

¹⁸ Youth activists at Emnxe who were interviewed confirmed workshops run by the Unionist, Gwede Mantashe.

¹⁹ Interview with Mdleleni, Queenstown, 29 January 2001.

²⁰ It must be mentioned that former headman, Kupe, completely avoided any discussion of this phase of his reign. All he said was that “disrespect” on the part of the youth made him decide to retire.

²¹ Interviews and conversations with youth leaders and residents of Emnxe during 2000 and the beginning of 2001.

²² Interview with Loyiso Mdleleni, Queenstown, January 29, 2001.

²³ Group interview with Andile Sondlo, Charles Mabhadi and Mbulelo Ngamlana, Lower Cala, March 19, 2000.

1991. This meant that these youth leaders would be available throughout the year, rather than only during the December holidays. The leading role played by these youth leaders dealt a telling blow to the conservative wing of landholders. Whereas these landholders could dismiss a youth leader such as Charles Mabadi, whose background fell in the category of the landless new arrivals, the same could not be said about Sondlo and Ngamlana. They were the sons of the landholders. Although they also wanted land for residential purposes, as trade unionists, and supporters of the Congress Movement, in particular the South African Communist Party (SACP), they clearly did not subscribe to the class oriented views of their parents. Sondlo was quite clear, “What beat them was that we are the sons of *abemi*. We did not get into that. We strove that everybody should get a residential site. We were not very popular for that. They were surprised that it was us who were in the forefront of things.”²⁴

Serious efforts were made by the youth leaders during 1992 to gather support for the establishment of a Residents Association around the land issue. Initially skeptical, the movement gained support from a wide spectrum of Emnxe residents. The youth leaders adopted various strategies. First, they followed, to the best of their ability, legal channels, starting from the headman to General Bantu Holomisa’s Military Council that was in power at the time. Only after they did not get positive responses did they resort to demarcating residential plots on some grazing camps without the permission of the government. Details of how this process unfolded will be provided below.

Second, the youth leaders capitalized on the widely accepted view that former headman Kupe was, as was the case with many headmen in the former Bantustans, corrupt in the system of allocating land. In this regard, one interviewee stated, “The youth had complaints about the administration of Emnxe (especially) land allocation, funds collected for the building of a clinic, etc. ... We also used to challenge the headman complaining about levies whose results we did not see.”²⁵ According to another source, “If the headman did not like a particular person, for example, poor people, he would ignore the application for a site. Headman first considered the status of the person (*umntu onezinto zakhe*), what you would do for him and what he (headman) would get out of that person. It is precisely this behavior that created problems between us, as residents, and the headman.”²⁶ Interviews and conversations with rural residents in Xhalanga confirmed what the Xhalanga Campaigns Action Committee had identified—the corruption of chiefs and headmen as one of the grievances of rural people. The Committee alleged that chiefs and headman were prone to excessive bribery and corruption, especially when it came to the allocation of residential sites (Bank 1992:99).²⁷

²⁴ Group interview with Andile Sondlo, Charles Mabadi and Mbulelo Ngamlana, Lower Cala, March 19, 2000.

²⁵ Interview conducted by Fani Ncapayi, with Mrs. Xhegwana, June 1, 2000. It is worth noting, though, that by 1992, illegal taxation was no longer rife, given that the military regime of Holomisa had taken a stand against it. Holomisa is credited for having said: “When a chief comes to an administrative area (*elalini*), he should have his lunch-box. So why must poor people be troubled?” (Interview conducted by Fani Ncapayi with Lungiswa Muriel Mguli (Madeyi), Emnxe, May 11, 2000.

²⁶ Interview conducted by Fani Ncapayi with Nolungile Mkwai, Emnxe, 20 June 2000.

²⁷ Bank cites Minutes of the XCAC of a meeting that was held at the Royal Hotel in Cala on 18 April 1992. It has not been possible to view these minutes.

Third, the youth leaders approached prominent individuals for support. Madeyi confirmed that the youth (*ulutsha*) approached her about her group's request that landholders be returned to their old sites. When she replied that the headman was evasive about the application, amidst rumours that it was approved and was being delayed in Cala (the local town), the youth asked whether she would object if they intervened. According to Madeyi, she agreed that the youth "should help."²⁸ Finally, the youth leaders drew inspiration from the tradition of resistance at Emnxe. Linking the struggles of the early 1990s with those of 30 years earlier brought memories to the elderly as is evident from this elderly woman, "Some of us in the Emnxe Residents Association are a generation of the Xhalanga Residents Association."²⁹ Emnxe Residents Association (EMRA) are referring to the organization that was ultimately formed by the residents of Emnxe.

None of those interviewed was sure when exactly the Emnxe Residents Association (EMRA) was established, but it seems as if it was either in December 1991 or during the course of 1992. The youth leaders, who were active in the late 1980s and early 1990s, Sondlo, Ngamlana, Mabadi and Mdeleleni, became part of the executive. In order to ensure representatively, the committee was made up of two members from each of the nine sub-villages of Emnxe.³⁰ One of the founding members of EMRA sited the objectives of EMRA as bringing political awareness to the residents of Emnxe, particularly their perceived oppression under Tribal Authorities. The specific issues identified were the shortage of land for residential purposes and bribery in the land allocation process. EMRA was committed to a popular, transparent and participatory process of land allocation.³¹

EMRA took up the delay in the demarcation of residential sites. All the committee members of EMRA interviewed insisted that they made every effort to pursue legal channels, from the headman upwards. These were all in vain. According to Madeyi, the headman angrily told the youth, "You will be allocated land when you are very old" (*Nakucandelwa mhla nakhokhoba*).³² In the end, EMRA gave the government officials, including headman Kupe, an ultimatum that should there be no positive response by December 26, 1992, they would demarcate land.³³ The choice of date again points to the influence of migrant workers and of students studying outside Xhalanga, although it should be added that some migrant workers, such as Andile Sondlo and Mbulelo Ngamlana, had been retrenched. In the meantime, there were further meetings discussing the strategy for land demarcation (*ucando*). It was resolved that plots would be given to the landless according to the existing lists that were compiled by the sub-headmen.³⁴ At the time, it appears, the sub-headmen supported their headmen in full.

²⁸ Taped interview conducted by Fani Ncapayi with Lungiswa Muriel Mguli, Emnxe, 11 May 2000. Mabadi would also have known Madeyi's land struggles from the work situation, given that both worked for the Health Care Trust

²⁹ Interview conducted by Fani Ncapayi with Mrs Xhegwana, 1 June 2000.

³⁰ Interviews with various members of EMRA.

³¹ Interview conducted by Hlubi Xuba with Christopher Nkosinathi Kubukeli, Emnxe, 13 May 2000.

³² Taped interview conducted by Fani Ncapayi with Lungiswa Muriel Mguli, Emnxe, 11 May 2000.

³³ Interview conducted by Fani Ncapayi with Charles Mabadi, Cala, April 21, 2000.

³⁴ Interview conducted by Fani Ncapayi with Nolungile Mkwai, Cala, June 20, 2000.

When, by December 26, 1992, the government had not responded positively to the land demands of Emnxe residents, EMRA led the drive to demarcate land for residential plots. They started at Lower Cala without any incidents. On the second day, they moved closer to the area from where Madeyi and others were removed. Madeyi stated that the ranger wanted to know who gave permission for the demarcation. When they replied, “We gave ourselves permission ... ‘we’ being ‘Emnxe’ (*singuMnxe*),” the ranger apparently informed the headman and the agricultural officer, Mablawuti Ncoko. The police were also called and, after discussing with the committee members of EMRA, the police indicated that the committee members were under arrest and should report to court.³⁵ A lawyer, Prince Madikizela, was engaged to represent the accused. The case was subsequently thrown out, apparently on a technicality.³⁶ All those interviewed reported that there was wide support for the accused. People were brought in trucks to show their support during the trial. The arrest of office bearers did not dampen the spirit of resistance. Instead, new committee members were identified and recruited. So determined were the people of Emnxe, that the demarcation of land continued even as the court case was proceeding.

Madeyi strongly argued that women had played a leading role in the land struggle of the 1990s.³⁷ She stressed that it was women who took the initiative, with men following thereafter. She was emphatic, “It was women (*oomama*), then men (*ootata*) followed.³⁸ People who are quick to understand things are women. It takes time for men to understand, they are blunt (*ngqukuva*). But as soon as they see that ‘Hey! These women are persisting,’ they follow. Some understand, but drag their feet.”³⁹ Madeyi’s remarks should, of course, be understood in the context of her specific experiences as a health worker. In the project that she worked for, it is mainly women who participated. Activities ranged from health education to gardening and water projects. It appears that men expected to be paid and were unwilling to be involved in development activities on a voluntary basis.

Despite the activism of women, and although they were in the majority at the meetings on these land struggles, it was mainly (but not exclusively) young men in their thirties, who held leadership positions.⁴⁰ Interviews and conversations with rural women, coupled with my own observations, suggest there are enduring patriarchal relations where not only men, but women too, have not yet internalized gender equality. In some instances, it appears men simply did not accept gender equality and women found it difficult to challenge their husbands, and risk destroying their marriage. As one executive member of EMRA said, “My husband used to attend these meetings. I was a housewife, not knowing much about things.”⁴¹

³⁵ Interview with Loyiso Mdleleni, Queenstown, January 29, 2001.

³⁶ None of the informants grasped the details of the technicality.

³⁷ Taped interview conducted by Fani Ncapayi, Emnxe, May 11 2000.

³⁸ Literally translated “mama” is mother, and “tata” father. However, for purposes of this study, the terms “women” and “men” will be used.

³⁹ The visible role of young women was confirmed by all the interviewees and in conversations.

⁴⁰ Interview conducted by Fani Ncapayi with Nolungile Mkwai, Cala, 20 June 2000.

⁴¹ Interview conducted by Fani Ncapayi with Nolungile Mkwai, Cala, 20 June 2000.

The youth leadership insisted that they were respectful towards their parents and they went through the legal process as best as they could. However, there were some people, mainly the elderly, who regarded the youth as disrespectful. Not surprisingly, former headman Kupe was one of the most vocal in this regard. The youth, led by EMRA, removed Kupe as headman. EMRA members claim that this was a last resort, when it became clear that the former headman did not want to co-operate with them. Their account states, “When it became clear that we were not in agreement with the headman, we organised that the headman be removed from office, given that he was not co-operating with us. Mr Kupe (the headman) stepped down.”⁴²

It could be said that the youth were disrespectful and, indeed, intimidating. One of the founder members of EMRA frankly stated that elderly people “were against what we were doing as we were indeed very arrogant in so much that we used to threaten people by saying to them, ‘*Sizakunitshisela ukuba anifuni kulandela*’ (We will burn your houses if you do not follow).” He also alleged that some residents were “angered by the fact that the piece of land that we had allocated ... was actually grazing land and no consultation was made of senior citizens to be honest.”⁴³ Leading EMRA activist, Sondlo, argued in defence of EMRA that whereas they in the leadership were committed to conducting things in an orderly fashion, it was not always possible to control things “as tempers were running high.”

Whether the land campaign at Emnxe had popular support or not seems to be difficult to answer in simple terms. But it appears, from interviews and conversations that there was support for the campaign, particularly from the landless, across gender and generation lines. This issue of demarcation seems to have affected mainly the landless and some cattle owners. In interviews during my research on cattle production in Xhalanga, the linking of the shortage of land for grazing and the demarcation process of the early 1990s arose (Ntsebeza 2002). But those who raised this issue also understood and indeed sympathised with the plight of the landless. People who seemed not to have had an opinion are those “who did not have land related problems because their children are still young,” or “already had their own land.”⁴⁴ EMRA’s level of commitment to a radical transformation of existing governance and land tenure structures in the rural areas is worth consideration. EMRA, for example, did not challenge the system of headmen. We have seen they were even willing to work with headman Kupe, had there been co-operation on his part. When headman Kupe was removed, another headman was elected. Historically, the people of Emnxe had never been against the system of headmen. EMRA, however, changed the nature of the system of headmen. In the past a headman was elected until retirement, as if they were civil servants, but the leadership of EMRA argued that headmen should be elected every five years, as are politicians in a representative democracy. Some of the leaders thought that headman Mbimbi, who was elected to

⁴² Interview conducted by Fani Ncapayi with Nolungile Mkwaiyi, Cala, 20 June 2000. No one could recall when, exactly, the headman was forced to step down. The former headman was not keen to deal with this question in our interview.

⁴³ Interview conducted by Hlubi Xuba with Kubukeli, Emnxe, 13 May 2000.

⁴⁴ Interview conducted by Fani Ncapayi with Nolungile Mkwaiyi, Emnxe, 20 June 2000. Those who already had land would presumably exclude cattle owners.

replace Kupe, would either be re-elected or replaced in an election after five years. This, however, was not to be. There has never been another election of a headman.⁴⁵

With regard to land tenure, the leadership of EMRA negotiated the registration of the plots they had demarcated, without raising any questions about the form of tenure based on the permit to occupy system that existed under colonial and apartheid governments. This is perhaps an indication that rural people did not really regard the permit to occupy as insecure.

EMRA encountered problems in their bid to acquire permits to occupy for the plots they demarcated. The bone of contention was that EMRA had not followed existing procedures for land allocation, including the size of residential plots and payment of taxes.⁴⁶ EMRA had demarcated bigger plots and refused to pay taxes, on condition that they would pay taxes from the time plots were demarcated, and not before, while the landless were still staying with parents and/or relatives. The second condition was that the taxes be used for the development of Emnxe. Mabadi summarizes the views of EMRA on the issue of taxes thus, “We may agree to pay from the time we started occupying our houses, but not pay interest, as we did not have any papers. Secondly, we wanted to know what happens to the money we pay, and to what benefit would it be to us.”⁴⁷

By April 1994, the differences between the government and EMRA had not been resolved. Instead, EMRA encouraged its supporters to occupy their plots. It is quite clear from interviews that at the time, the leadership of EMRA was certain that the delays were a result of laws, regulations and officials of a dying apartheid, Bantustan regime. By the end of 1993, there was already agreement amongst the negotiating parties at the constitutional talks that the first democratic election in South Africa would be held in April 1994. It was also clear that the ANC would win the election by a large majority. As Sondlo put it, “We were a matured youth, and we had information of the coming government.”⁴⁸ Additionally, given the political climate of the early 1990s, and the fact that General Bantu Holomisa had openly aligned himself with the liberation movement, it was not possible for the Transkei administration to evict EMRA’s supporters. In fact, no one was evicted. By 1994, about half of the demarcated sites had either been occupied or were fenced. Madeyi was one of the first elderly people to return to the household she had been removed from. As the houses had been destroyed, she rebuilt hers from scratch.

Under the policy and legislative process in post-1994 South Africa, the nature of rural local government and land tenure arrangement in the rural areas of the former Bantustans have yet to be clarified. The election of rural councilors caused major confusion as to whose function it was to allocate land in the rural areas. This was particularly the case in

⁴⁵ This is despite numerous complaints villagers have against him. Part of the reason is that EMRA had, by the late 1990s become almost defunct.

⁴⁶ I was unable to secure an interview with the former District Commissioner. He has since left Cala after District Commissioners were abolished after 1994.

⁴⁷ Interview, Cala, March 16, 2000.

⁴⁸ Interview, Cala, March 16, 2000. The “coming government” he was referring to was the ANC government.

areas where civic structures and traditional authorities and headmen were almost equally represented in terms of support. The three main contestants to the function were usually the elected councilors, South African National Civic Organization and traditional authorities (chiefs and headmen).

There are two levels at which this dilemma could be understood and explained: the law and practice. Legally, the laws governing the allocation of land in the rural areas of the former Bantustans have not been repealed. In this regard, the South African constitution is clear that existing laws will remain in force until such time that they have been replaced by appropriate legislation. The processes of establishing legislation that would clarify questions such as land allocation in post-1994 rural South Africa have not yet borne any fruit. This then means that as far as the legal position is concerned, apartheid laws regarding allocation of land in rural areas remain in force.

The reality, though, is different. Most rural residents, including rural councilors themselves, and indeed many South Africans, thought that land allocation was to be one of the responsibilities of the newly elected councilors. After all, control over land was the cardinal issue in rural struggles in the early-to mid-1990s. The perception of most rural residents was that all the functions that were performed by traditional authorities and headmen, including land allocation, would be taken over by elected councilors. As things are, this is not the legal position. Above all, government officials still use, with minor adjustments, the apartheid procedure and do not recognize elected councilors and resident's associations such as EMRA as having the powers to allocate land. The extent of the above confusion, the dilemma of rural residents and the role of the officials of government, are best captured in the following response by Mr. Jama on the question as to who is responsible for land allocation in areas under the jurisdiction of traditional authorities.

This is the reason why we still use chiefs. Rural councilors run in circles. This makes us a laughing stock and divides us. People will tell you: "Go to your rural councilor, you won't succeed." You end up going to the chief, even if you did not want to. At the magistrate's offices they ask you about the stamp (of the Tribal Authority). If you do not have the stamp they will say: "Don't waste our time." The land issue is complex. There is a struggle between TrepCs (transitional representative councils) and the headman. The former brought electricity and telephones, but land is in the hands of chiefs. You are forced to be flexible (*kufuneka ubemvoco*) otherwise you won't get your benefits. When we wanted land for pre-schools we were told to go to the headman, something that made the headman boastful. Sometimes you may have spoken badly about the headman, and you end up bowing down to it, as it is often necessary that you get what you want. With chiefs and headmen it takes a few days to get what you want, whereas with rural councilors it takes months, and even then you end up not succeeding.⁴⁹

Mr. Jama was referring to his experiences in one administrative area of Xhalanga, Sifonondile, where inhabitants were divided between supporters of the headman, on the one hand, and civic structures and rural councilors, on the other. In this area, civic structures under the auspices of South African National Civic Organization followed the example of EMRA and demarcated land and allocated plots to its supporters. Those who

⁴⁹ Interview with Mr. Jama, Cala, 9 September 2000.

were allocated plots, however, were not granted permits to occupy as the government officials did not recognize their process. It is partly this dilemma, which is similar to the one EMRA faces, that the informant was referring to.

This study has so far argued that the key stumbling block to extending democracy to rural areas in land and local government reform is the unresolved problem of the role of traditional authorities in post-1994 South Africa. But there is another major problem confronting rural areas that has major implications for democratic decentralization effective management of resources: the performance of rural councilors.

THE PERFORMANCE OF RURAL COUNCILORS

It is quite clear from interviews with rural inhabitants across gender and generation that there was a lot of expectation that a “developmental” local government would transform their lives. By the end of the transition period in 2000, though, rural councilors had lost the confidence of the rural residents who had initially supported them. The main cause of the disgruntlement seems to have been lack of even basic services such as water and road maintenance. This section explores some of the possible reasons for poor delivery.

The government has so far not given rural councilors adequate support to run an efficient local government. The allowance of R500 per month is too low to attract capable and skilled people. During the liberation “struggle” period, especially in the 1980s, it would have been possible to attract skilled and capable people even as volunteers. After 1994, though, things changed. None other than the ruling ANC party set the new, post-1994 standards when they, soon after coming to power, voted themselves huge salaries in what became notoriously known as the “gravy train.” From there on, it was to be almost impossible to get skilled people working for a meager allowance, let alone as volunteers. It is thus not surprising that in most rural areas, including Tshezi and Xhalanga, councilors were either unemployed or held full time jobs, finding very little time to devote to their roles as councilors.

Apart from the allowances, it appears that there is very little money budgeted for rural areas. Although repeated attempts to get budget figures from government officials in the Eastern Cape failed, there is palpable evidence of shockingly inadequate provision of basic services. A constant complaint of local government structures reported in newspapers (Daily Dispatch in the Eastern Cape) was that they did not have sufficient funds in the budget for the provision and maintenance of services. One of the burning issues in most rural areas in the former Bantustans is poor infrastructure, especially water and roads. This is even more the case in Xhalanga, as Matanzima, the former dictator of the Transkei during the apartheid era, singled it out for punishment for rejecting him as their chief when Bantu Authorities were introduced in the 1950s. Cala, the village of Xhalanga, must be one of very few towns in the former Bantustans that has never had a tarred road.⁵⁰ Apart from roads, another cry of the people in the district is water, for human beings, animals and crops. Surveys that have been conducted in the area, and the IDP process, have put water and roads high in the list of the basic needs of the people of

⁵⁰ Rumour has it that in terms of official records, the main roads in Xhalanga have been tarred and contractors were paid. Whether this rumour is true or not is neither here nor there.

Xhalanga. In the five years of the transitional local government, the water and roads crises had not been solved.

The impact of rural councilors has further been weakened by the fact that they are few in numbers and are expected to cover large, scattered and often, inaccessible areas. For example, in the transition period (1995-2000), there were 17 councilors in the Mqanduli district under whose jurisdiction the Tshezi area fell. They were expected to cover 40 villages. Following the demarcation of boundaries in 2000, the number of municipalities has been drastically reduced. Fewer councilors are expected to cover vast areas. Given that there is very little infrastructure support in the form of transportation and telecommunication systems, these councilors do not cover all the areas under their jurisdiction. Consequently, they end up being accused of not being accessible and visible (Ntsebeza 1999).

Finally, rural councilors in the case study areas are not familiar with the intricacies of the plethora of post-1994 policy and legislation on local government and land reform. Initially they thought that the allocation of land would be their responsibility. Nowhere has this lack been exposed more than in the IDP/Land Development Objective process during the transition period. This process, involving developing local government planning with the active participation of citizens, is supposed to be the backbone of local government reform. Yet, in many parts of the country, including the Tshezi area, the process was either not started, or never finalised. Where it was “completed,” it fell far too short of the policy and legislation required, as the case study of Xhalanga shows.

The IDP in the Xhalanga District

The announcement that IDPs be drawn in the Eastern Cape was made by the Members of the Executive Council for Housing and Local Government in 1998. Following the announcement, the Drakensberg District Council, under whose jurisdiction Xhalanga fell during the transition period, appointed consultants to draw the Xhalanga IDP.⁵¹ A workshop involving the people of Xhalanga area was later organized by the District Council to elect a planning committee.⁵² Interviews conducted with participants suggest that the workshop was well attended, although the majority of people came from Cala town, where the meeting was held. Traditional authorities were also represented. Each organization attending was asked to elect a representative to the planning committee. In the end, a total of about 18 members made up the planning committee, guided by the consultant.

The first few meetings were largely devoted to an explanation of the process and brainstorming problems and opportunities in the area. Not surprisingly, the main issues raised were bad roads, inadequate supply of water and sanitation. Agriculture and coal deposits were identified as opportunities. At the request of the consultant, this meeting later resolved that there was a need to hold a community workshop in order to establish the views of Xhalanga people on challenges and prospects of development in Xhalanga.

⁵¹ Interview with Antony Meuleman, the consultant, East London, 18 November 1999.

⁵² Interview with Sipiwe Liwani, Cala, 14 March 2000. Liwani is a member of the Planning Committee and represents one of the local NGOs, Calusa. He is employed as a Training Officer.

Each administrative area was supposed to choose five representatives. The task of coordinating this activity was given to the Xhalanga Transitional Representative Councilors.⁵³ Seemingly, this decision caused “tensions between transitional representative councils and traditional authorities regarding the method of who would represent rural communities in the IDP.”⁵⁴ In April 1999, a workshop was held at the Cala (TLC) Community Hall to discuss the IDP process in Xhalanga. The consultant took the lead. A list of development issues and needs was compiled. This list was not radically different from the one earlier identified by the planning committee. Roads, water and sanitation topped the list. It was then agreed that the planning committee would prioritise the development issues and needs.

Subsequent meetings of the Planning Committee were around the formulation of a “Development Framework” for Xhalanga, including the formulation of project goals and principles, and information about current plans. In the final analysis, the Integrated Development Plan and Land Development Objectives of the Drakensberg District Council essentially proposed infrastructure projects for the Xhalanga area. These included land redistribution, spatial planning and upgrading of settlements, subsidy housing projects, rehabilitation and upgrading of roads, water supply, sanitation, stormwater drainage, street lights, crèches, schools, community halls, road protection and upgrading of taxi rank (Drakensberg District Council 2000). The document was accepted in a public hearing held in Cala in August 2000.

Traditional authorities in the Xhalanga IDP

Traditional authorities in Xhalanga were represented in the IDP. Interviews and the minutes of meetings suggest that on the whole there were no tensions between elected rural councilors and the representative of traditional authorities. This is despite the fact that the issue of the conflict between elected rural councilors and traditional authorities was listed in the initial meetings of the IDP as one of the key challenges facing development in the district. An area that was a source of tension was the land question. This arose when there were discussions around land administration.

It appears that the representative of traditional authorities pointed out that Tribal Authorities were still responsible for land administration, a claim that was strongly challenged by rural councilors. The explanation by the representative of traditional authorities was simple and highlighted the lack of clarity regarding land administration in the countryside: “Nothing is clear. Government has indicated that land allocation will be the function of the transitional rural councils (TRCs). However, at the moment this has not happened. Most areas still use the old method.”⁵⁵ The IDP committee never resolved this issue. One of the committee members pointed out that one of the reasons why the matter was not discussed further was that “it was seen as divisive.”⁵⁶ Of course, the

⁵³ Second meeting of the Planning Committee, March 10, 1999.

⁵⁴ Interview with Liwani, Cala, March 14 2000.

⁵⁵ Interview with headman Zantsi, Manzimahle, September 9, 2000.

⁵⁶ Interview with Liwani, Cala, September 11, 2000

committee could not resolve the issue, given the government's ambivalence regarding the role, functions and powers of traditional authorities shown above.

Assessment of the IDP in Xhalanga

The IDP process in Xhalanga confirms the view expressed in this study that post-1994 policies and planning procedures are incomprehensible for rural people, including councilors. The minutes of the planning committee and interviews with some members clearly show that there was very little understanding of what the process entailed on the part of the majority of the members of the Planning Committee. Although it was explained in the first meeting that the goal of the IDP was to formulate a Development Framework, little progress beyond identifying key problems and opportunities was made. A total of 18 meetings were held with very little substance in terms of input. One of the reasons, it seems, was that the majority of the members of the Committee did not know how to formulate a Development Framework. They were not familiar with the various pieces of legislation, such as the 1995 Development Facilitation Act, 1993 Local Government Transition Act, 1998 Municipal Structures Act, 1998 Municipal Demarcations Act, and 2000 Municipal Systems Bill, which are vital in formulating the Development Framework. Where material was made available, as with the principles of the Development Facilitation Act cited above, no one read the documents. Headman Zantsi summarised the views of most members when he stated: "No one really knew what the IDP was all about. The person who came with knowledge and information was Antony (the consultant)."⁵⁷ The dominance of the consultant was dramatized by one of the committee members. According to him, a typical meeting would start with a prayer. After the prayer, the chairperson would start the meeting by welcoming the consultant and asking, "Mr. Meuleman (the consultant), *usiphathele ntoni namhlanje* (Mr Meuleman, what have you brought for us today)." The consultant, according to this member, was "highly regarded. He drew the agenda. He drove the process and we did not engage sufficiently enough."⁵⁸ All the committee members that were interviewed confirmed that they never met outside the formal committee meetings in order to plan and strategize.

While policy and legislation are clear about the need for democratic participation and accountability, the Xhalanga IDP process did not observe these requirements. In the first place, it is questionable that rural inhabitants were properly represented. The public meeting that elected the Planning Committee was, as already stated, held in the village of Cala and was, not surprisingly, attended mainly by people from Cala. Apart from this, it is not clear that the various interests in Xhalanga were represented. For example, there was no youth representative in the planning committee and the gender balance was heavily in favor of men. Only two women participated and their attendance was erratic.⁵⁹

As regards accountability of representatives, it was palpable in interviews that the majority of members of the planning committee were not accountable to their

⁵⁷ Interview with headman Zantsi, Manzimahle, September 9, 2000.

⁵⁸ Interview with Liwani, Cala, September 11, 2000.

⁵⁹ Interview with Liwani, Cala, September 11, 2000. See minutes of the planning committee.

constituencies. This was the case even with the Calusa representative. Calusa is one of the leading NGOs in the area that attempts to adhere to a code of conduct that is underpinned by democratic principles of, *inter alia*, accountability. In fact, this NGO introduced the notion of IDPs in Xhalanga when they organized a workshop, attended by the author, soon after the Members of the Executive Council announced the IDPs in 1998. Calusa members hold monthly meetings where they report on their activities. The issue of the IDP barely featured on their agenda.⁶⁰ One Committee member's explanation towards the end of the process amounted to a serious indictment of the IDP, "I haven't reported back to the pre-school forum for the simple reason that nothing of substance has taken place in the IDP process."⁶¹ Of those interviewed, only the CONTRALESA representative claimed to have regularly reported back to his constituency.⁶² The forum he claimed to have utilised was the quarterly meeting that used to be called by the magistrate. This forum involved members of the Xhalanga Tribal Authorities and government departments. He claimed that he also reported to his Tribal Authority, meetings in his administrative area and to CONTRALESA.⁶³ However, reporting back to constituencies was more the exception rather than the rule.

A resolution taken during the community workshop that elected the IDP committee that there would be a "road show" in the form of report back workshops held at strategic venues in the rural areas, would have probably fulfilled the community participation requirement. The committee discussed the mechanism of reporting back to communities as early as July 1999.⁶⁴ At the time, it was apparently felt that not enough work had been done to justify a report-back. For reasons that are not clear even to those interviewed, an itinerary that was requested by the Drakensberg District Council was never prepared. In the process, the notion of a "road show" was reversed. The Planning Committee resolved that it was not feasible to engage in this exercise "at this point." It was ultimately resolved that a workshop similar to the April workshop would be held early in the year 2000. The workshop would focus on work done to date, including draft proposals formulated by the Planning Committee. No workshop was held at the beginning of the year. Instead, the focus in 2000 was to finalize the Development Framework and Land Development Objectives as required by the Development Facilitation Act.⁶⁵ In the final analysis, the IDP document was finalized for presentation to a public hearing without any further input from the Xhalanga rural communities, a clear violation of policy and legislation.

The process followed for the public hearings also made meaningful feedback from the wider community impossible. Although copies of the draft plan were circulated, in theory to allow the people of Xhalanga to read and analyze the report and ensure informed and meaningful participation in the public hearings, the wide community never discussed the plan before the public hearings. As seems to be case with post-1994 policies and laws,

⁶⁰ See minutes of the monthly meetings in 1999 and 2000.

⁶¹ Interview with S. Jama, Cala, March 16, 2000

⁶² Interview conducted by Fani Ncapayi with headman Fani, Cala Reserve, May 20, 2001.

⁶³ Interview with headman Zantsi, Manzimahle, September 9, 2000.

⁶⁴ Interview with Liwani, Cala, March 14, 2000.

⁶⁵ Minutes of the thirteenth meeting of the Planning Committee, February 9, 2000.

there was, in the case of Xhalanga, a wide gap between theory and practice, as is attested by this informant:

A draft report that was to be presented at the public hearings was made available in April 2000. About 5 reports were circulated among members of the planning committee. It was made available only to members of the planning committee and they were not even enough for them. The document was not simplified, and was not easy reading, especially for ordinary people. At the time the draft report was presented to the planning committee, the attendance was really low. This was not even a meeting as such. It was not well attended. The planning committee never discussed the draft report. No attempt was made to circulate the report to the wider Xhalanga community.⁶⁶

Organizing a date for the public hearing was, according to interviewees, difficult. One meeting was cancelled because of a low turnout. These hearings were eventually held in August 2000. It appears from informants in the planning committee that this meeting was also not well attended.

In fact, even some members of the planning committee were, by the end of 1999 no longer regularly attending meetings. In some cases, it was difficult to get a quorum. The representative of traditional authorities attributed the dwindling number of participants to lack of interest and disappointment with government performance. According to him, “government did not deliver. This is a government of promises (*Ngurhulumente wezithembiso lo*).”⁶⁷ Another member of the Planning Committee thought differently:

People thought that the planning committee members would be paid. As it turned out, only traveling costs were reimbursed. Secondly, people never expected the process to be long-drawn and demanding. Some of the people who attended represented structures that hardly existed. The transitional representative councils were committed, though.⁶⁸

With an air of frustration and anger, the committee member declared, “People were particular about time. Meetings were short, between 10H00 and 13H00. Sometimes a lot of time would be wasted debating whether the meeting should continue or not when there was no quorum. It was a real waste of money and time.”⁶⁹

In sum, it appears that the IDP process in Xhalanga was a disaster especially as, for purposes of this paper, it did not fulfill the policy and legal requirements that emphasise democracy and downward accountability. It has also been suggested that the process is so complicated that ordinary rural people cannot draw up the plans. The employment of consultants, who are not familiar with the area, and have to operate within a budget that often restricts the number of days and hours that can be devoted to a task, seems to be a waste of scarce public resources. Indeed, the infrastructure projects and the need for land that were ultimately identified had long been identified as critical in Xhalanga (Keyter 1994). To spend more than a year and hire a consultant to confirm what knows in

⁶⁶ Interview with Liwani, Cala, 11 September, 2000.

⁶⁷ Interview with headman Zantsi, Manzimahle, 9 September, 2000.

⁶⁸ Interview with Liwani, Cala, March 14, 2000

⁶⁹ Interview with Liwani, Cala, 11 September 2000.

Xhalanga is striking.⁷⁰ To compound things, this IDP plan was not used when a new municipality, Sakhisizwe, was introduced after the 2000 local government elections. A new process, still dependent on consultants and lacking community participation, especially rural residents, was started in 2001. It has not been possible to establish whether the IDP of Sakhisizwe has been approved.

CONCLUSION

This brings us back to the theme of this study: the extent to which post-1994 South Africa has followed the principles of democratic decentralization and implications for natural resource management. Key to the aims of decentralization, as Agrawal and Ribot (1999) have stated, is that decentralization increases public participation in local decision-making, thus increasing the efficiency and equity in the use of public resources. The resource that has been the focus of this paper is land, within the context of the introduction of democratic and “developmental” local government throughout South Africa.

The paper has dealt with the policy and legislative processes regarding land and local government reform in the post-1994 period in South Africa, and the empirical position on the ground. It has shown that the ANC-led post-1994 government is simultaneously attempting to dismantle Tribal Authorities by apportioning some of its land and local government functions to democratic structures for example the attempt to privatize communal land to communities and individualize residing on the land. At the same time, the hereditary “institution of traditional leadership” has been recognized, without any clarity as to its role in a democratic order. The paper has attempted to illustrate the dilemma faced by the ANC-led government as a result of this tension. It has argued that so far the ANC has not managed to resolve the tension. In so far as attempts were made to resolve it, this paper has argued that some of the gains made to ensure that a democratic and accountable dispensation is also extended to rural areas are being reversed. The draft Communal Land Administration Bill and the draft amendment to the Municipal Structures Act are cases in point. Quite clearly, the ANC’s aim to be a broad church and to incorporate diverse class and political interests has led it to make political concessions to traditional authorities in order to obtain their support.

With regard to conditions on the ground, the paper has argued that for some reasons, including lack of government support towards rural councilors and that no post-apartheid law on land tenure in communal areas exists, no effective delivery has taken place in the rural areas after 1994. This situation has discredited rural councilors, a development that has forced some rural inhabitants to fall back on traditional authorities. This does not necessarily mean that the latter have become popular and legitimate. The point that is made is that traditional authorities and headmen continue to be the only officials, at an administrative/Tribal Authority area, through which rural residents can access land and get legal recognition.

⁷⁰ The consultant attended almost 20 meetings traveling a total of almost 500 km a trip from East London. It has not been possible to get the amount of money that was spent on the Xhalanga IDP exercise.

The case studies of the Tshezi and Xhalanga districts illustrate the difficulties and complexities of balancing democracy and traditional authority rule based on hereditary principles. Apart from illuminating these complexities, the Tshezi case also demonstrates that forming a legal entity to ensure tenure security and transparent land rights administration goes far beyond the drawing up of constitutions and legal documents. It is a process of institutional transformation and development that requires a clear policy and the political will to implement it. There are significant practical considerations as well. For example, a CPA requires adequate capacity coupled with careful facilitation and conflict management skills to:

- engage with local power and control and in particular the unresolved role of traditional authorities;
- assist the rights holders to understand their options and responsibilities;
- identify local rights holders and agree on membership;
- identify, negotiate and agree on boundaries;
- record existing land rights management practices and develop positive aspects of existing systems to reach consensus on group rules;
- develop institutional arrangements and local capacity to run and manage a new accountable institution tasked with managing members' land rights in perpetuity; and
- identify and secure sources of revenue to enable the institution to function.

Whereas, unlike the Tshezi case, Xhalanga does not have an entrenched tradition of chieftainship, the unresolved question of the role of traditional authorities and headmen in land allocation in particular affects this area too. We have seen that despite the popularity of the civic organization-led land demarcations and allocations in the area, it has not been possible for rural residents who obtained land via these civic structures to secure even the inferior permit to occupy legal document. This has, as Jama has so eloquently stated, compelled rural residents who are desperate to have a legal document to their land to “use chiefs,” even if they may “have spoken badly” about them. Thus, this study has shown at the heart of the problem is the unresolved issue of the role, functions and powers of traditional authorities in a representative government. This problem has either delayed the establishing laws on land tenure in the communal areas or, where laws exist (as in the Communal Property Associations Act), created a situation where they are not enforced.

The ambivalence of government regarding the role of traditional authorities in a democratic dispensation in South Africa throws serious doubt about the prospects of democratic decentralization in the rural areas of the former Bantustans. In addition, this state of affairs has grave implications for control and management of natural resources and the environment in general.

REFERENCES

- African National Congress. 1994. *The Reconstruction and Development Programme: A Policy Framework*. Johannesburg: Umanyano Publications.
- Agrawal, A. and Ribot, J. 1999. "Accountability in Decentralization: A Framework with South Asian and West African cases," *The Journal of Developing Areas*, 33 (Summer).
- Bank, L. 1992. "Squatting and the Politics of Urban Reconstruction in Transkei: The Case of Cala," *Journal of Contemporary African Studies*, Vol. 11, No. 2.
- Bond, P. 2000. *Elite Transition: From Apartheid to Neoliberalism in South Africa*. Pietermaritzburg: University of Natal Press.
- Delius, P. 1996. *A Lion amongst the Cattle: Reconstruction and Resistance in the Northern Transvaal*. Johannesburg: Ravan Press.
- Department of Land Affairs. 1997. White Paper on South African Land Policy. Pretoria.
- Department of Provincial Affairs and Constitutional Development. 1998. The White Paper on Local Government. Pretoria.
- Department of Water Affairs and Forestry. 1997. South Africa's National Forestry Action Programme. Pretoria.
- De Visser, J., Steytler, N and Mettler, J. 2000. Electing Councilors: A Guide to Municipal Elections. Community Law Centre, University of the Western Cape, in association with South African Local Government Association and the Independent Electoral Commission.
- De Wet C.J. and McAllister P.A. 1983. Rural Communities in Transition: A Study of the Socio-Economic and Agricultural Implications of Agricultural Betterment and Development. Working Paper no. 16. Grahamstown: Department of Anthropology in collaboration with the Institute of Social and Economic Research, Rhodes University, November.
- Drakensberg District Council. 2000. Draft Drakensberg District Council Integrated Development Plan and Land Development Objectives, Report No. 723 ddc-idp, Setplan, April 2000, especially pp 22-36.
- Hart, G. 2002. *Disabling Globalization: Place of Power in Post-Apartheid South Africa*. Pietermaritzburg: University of Natal Press.
- Kepe, T. 2001. "Waking up from the Dream: The Pitfalls of 'Fast Track' Development on the Wild Coast of South Africa," Research Report No. 8. Bellville: Programme for Land and Agrarian Studies.
- Kepe T 1997. "Environmental entitlements in Mkambati: Livelihoods, Social Institutions and Environmental Change on the Wild Coast of the Eastern Cape," Research Report No. 1. Bellville: Programme for Land and Agrarian Studies.
- Keyter C. (1994). Profile of a Neglected Area: The Xalanga District of the Transkei-subregion, Eastern Cape. Unpublished Survey Report.
- Lodge, T. 1983. *Black Politics in South Africa since 1945*. Johannesburg: Ravan Press.
- Mamdani M. 1996. *Citizen and Subject: Contemporary Africa and the Legacy of Late Colonialism*. Cape Town: David Phillip Publishers.
- Manona, C. 1998. "The Collapse of the 'Tribal Authority' System and the Rise of Civic Associations," in C. De Wet and M. Whisson (eds.) *From Reserves to Regions: Apartheid and Social Change in the Kiekamahoeck District of (former) Ciskei, 1950-1960*. Grahamstown: Institute of Social and Economic Research, Rhodes University.
- Manona C. 1997. "The Collapse of the 'Tribal Authority' System and the Rise of Civic Associations," in: De Wet C. and Whisson M. (eds), *Reserves to Region: Apartheid and Social Change in the Kiekamahoeck District of (Former) Ciskei, 1950-1960*. Grahamstown: Institute of Social and Economic Research, Rhodes University.
- Manona C. 1990. "The Big Lip of Sebe has Fallen," *Indicator South Africa* 8(1), quarterly report.
- Manor J. 2001. *Local Government in South Africa: Potential Disaster Despite Genuine Promise*. Sussex: IDS.
- Marais, H. 1998. *South Africa, Limits to Change: The Political Economy of Transformation*. London: Zed Books Ltd.
- Mbeki G. 1984. *South Africa: the Peasants' Revolt*. London: International Defense and Aid Fund.
- Ntsebeza, L. 2002. Structures and Struggles in Rural Local Government in South Africa: The Case of Traditional Authorities in the Eastern Cape. Unpublished PhD. thesis, Rhodes University, Grahamstown.

- Ntsebeza, L. 2002a. . "Cattle Production in Xhalanga district," in Ainslie, A. (ed.) *Cattle Ownership and Production in the Communal Areas of the Eastern Cape, South Africa*. Research Report No. 10. Bellville: Programme for Land and Agrarian Studies.
- Ntsebeza L. 2001. "Traditional Authorities and Rural Development," in Coetzee, J, Graaff J, Hendricks, F and Wood, G (eds.) *Development Theory, Policy and Practice*. Oxford University Press.
- Ntsebeza, L. 2000. "Indirect Rule May Well Continue," *Land and Rural Digest*. March/April.
- Ntsebeza L. 1999. "Land Tenure Reform, Traditional Authorities and Rural Local Government in Post-Apartheid South Africa: Case Studies from the Eastern Cape," Research Report No. 3. Bellville: Programme for Land and Agrarian Studies.
- Pycroft, C. 1998. "Integrated Development Planning or Strategic Paralysis? Municipal Development during the Local Government Transition and Beyond," *Development Southern Africa*, volume 15 (2), Winter.
- Segar J. 1989. *Fruits of Apartheid: Experiencing "Independence" in a Transkeian Village*. Bellville: Anthropos Publishers.
- Setplan. 2000. Draft Drakensberg Council IDP and Land Development Objectives. East London.
- Spiegel A. 1992. "A Trilogy of Tyranny and Tribulations: Village Politics and Administrative Intervention in Matatiele During the Early 1980s," *Journal of Contemporary African Studies* 11(2).
- Tapscott C. 1997. "The Institutionalisation of Rural Local Government in Post-Apartheid South Africa," in Hofmeister W. and Scholz I. (eds.) *Traditional and Contemporary Forms of Local Participation and Self-Government in Africa*. Johannesburg: Konrad-Adenauer-Stiftung.
- Thomas G, Sibanda S, and Claassens A. 1998. "Current Developments in South Africa's Land Tenure Policy" in *Proceedings of the International Conference on Land Tenure in the Developing World with a Focus on Southern Africa*. University of Cape Town, 27-29 January 1998.
- Turner S and Meer S. 1999. "Conservation by the People in South Africa: findings from TRANSFORM Monitoring and Evaluation," Research Report No. 7. Bellville: Programme for Land and Agrarian Studies.

ABOUT THE AUTHOR

Dr Lungisile Ntsebeza is a Senior Researcher in the Programme for Land and Agrarian Studies (PLAAS), a unit of the School of Government at the University of the Western Cape, Cape Town, South Africa. He has worked in tertiary education programs, engaged in research on youth politics, rural democracy and urban-rural interactions, and lectured in philosophy. Since the advent of democracy in South Africa in 1994 he has been exploring the tension arising out of the roles, functions and powers of a hereditary institution of traditional authorities in a post-apartheid South Africa that is based on principles of democratic decision-making and elected representative government. His current research and analysis focuses on rural local government and the relationship of traditional authorities to elected representatives, and how this relationship impacts on land tenure and land administration in the rural areas of the former Bantustans. Ntsebeza has held a number of Research Fellowships at institutions such as the Land Tenure Center, University of Wisconsin, University of York, St. Antony's College, Oxford, and the Institute of International Studies, University of California, Berkeley. He has published his work as books, chapters, and in a wide range of academic and advocacy journals.

Environmental Governance in Africa Working Paper Series

The *Environmental Governance in Africa* Working Paper Series presents position papers, works in progress, and literature reviews on emerging environmental governance issues of relevance to Sub-Saharan Africa. The series is designed to circulate ongoing policy research and analysis that derives from and complements the Environmental Accountability in Africa (EAA) initiative of WRI's Institutions and Governance Program (IGP). Our target audience is the small group of researchers and activists directly involved with EAA. The authors and editors welcome questions and comments from readers. The series aims to stimulate discussion and dialogue on worldwide issues at the intersection of environment, democracy and governance, while providing constructive feedback to IGP and the authors. For more information about IGP and EAA please visit <http://www.wri.org/governance>.

EAA seeks to foster development of the essential legal and institutional infrastructure for effective, replicable and sustainable environmental governance. This overarching goal is supported by three specific objectives:

- To influence the character of ongoing World Bank, U.N. and other donor-driven African government decentralization efforts to ensure that rights, responsibilities, capacities, and accountabilities are consistent with sound environmental management;
- To promote national-level administrative, legislative, and judicial reforms necessary to accomplish environmentally sound decentralizations and to enable public interest groups to hold governments and private actors accountable for their environmental management performance; and
- To develop regional networks of independent policy research and advocacy groups that are effective in promoting and utilizing the above reforms in the interests of improved environmental management.

EAA achieves these objectives through three inter-related efforts: 1) Decentralization, Accountability, and the Environment, 2) Environmental Procedural Rights, and 3) Non-Governmental Organization Capacity-Building.

The Decentralization, Accountability and the Environment effort aims to identify and promote policies and laws essential for effective, efficient, and equitable decentralization, including those establishing accountable representative authorities for local communities in participatory natural resource management; laws specifying the distribution of decision-making powers over nature among state authorities, civil, and private bodies; laws assuring just recourse; and laws ensuring an enabling environment for civil action. Through informed analysis, the effort aims to influence national-level policy-makers to develop environmentally sound decentralization policies and an enabling environment for civic action concerning environmental policy and its implementation. It reaches this audience directly and through the international financial and donor organizations, environmental policy research institutions, and international and local non-governmental organizations involved in environmental policy matters. This effort supports research on

existing decentralization policies and on the enabling environment for civic action. To further these goals it conducts research jointly with independent policy-focused institutions, the preliminary results of which are presented in this series.

The Environmental Procedural Rights component of the EAA initiative is designed to establish and strengthen an enabling environment for citizens and advocacy organizations both to enforce their constitutional rights to a clean environment and to meet their constitutional responsibilities to ensure sound environmental management. This environment includes fundamental civil liberties, such as freedom of association and expression, and basic rights, including access to information, justice, and decision-making in environmental matters. This component works at three levels. At the national level in pilot countries, the initiative supports the work of local policy groups to improve the law and practice of environmental procedural rights. At the regional level, the initiative supports networks of local organizations to promote legally-binding regional environmental governance instruments, similar to the European Aarhus Convention, that provide for procedural rights irrespective of citizenship and place of residence. At the global level, this component supports African involvement in a coalition of organizations to collaborate on the establishment of international environmental governance norms and on ensuring compliance by governments and private corporations.

The Non-Governmental Organization Capacity-Building component of the EAA initiative aims to strengthen a select group of independent policy research and environmental advocacy groups and their networks. This group includes, for example, the Lawyers' Environmental Action Team (LEAT) in Tanzania, Green Watch, Advocates for Development and Environment (ACODE) and the Center for Basic Research in Uganda, and the African Centre for Technology Studies (ACTS) in Kenya. These environmental advocacy organizations seek to improve environmental management and justice by contributing to policy and legislative reform, and ensuring compliance to environmental laws and norms. The groups use a range of approaches and tools to influence policy formation, including policy research and outreach, workshops and conferences, public debates, press releases, and litigation. This EAA project component supports efforts in organizational development, capacity building in advocacy approaches and skills, and technical competence in specific environmental matters. Federations and networks of such NGOs, joint initiatives, and South-South collaborative efforts are also facilitated and supported.

The *Environmental Governance in Africa* Working Paper Series aims to further these objectives. All papers in this series are reviewed by at least two outside reviewers. It is the aim of the editors that select working papers be published in more broadly circulating fora, including academic journals, or as WRI reports. The feedback gained from discussion of these working papers should form the basis for the authors to rewrite their papers for publication.
