

**Land tenure reform in South Africa:
An example from the eastern Cape Province**

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INTRODUCTION

A certain inconsistency exists in post-1994 South Africa's Constitution as well as legislation flowing from it¹. On the one hand, it enshrines a Bill of Rights which is based on democratic principles, including elected representative government; on the other, the Constitution acclaims the role of unelected traditional authorities² but fails to clarify their functions and powers. This is despite the fact that a large number of traditional leaders were "puppets" of colonial and apartheid regimes.

The recognition of the powers of traditional leaders has a number of far-reaching implications for control over land allocation, democratic local government and gender equality. Chiefly authority is ascribed by lineage rather than achieved through elections, and its patriarchal principles ensure that major decisions on land allocation and local government are almost invariably taken by men only. Widespread abuse of power and corruption by the traditional leaders, especially after the introduction of the Bantu Authorities Act in 1951 which led to self-government and "independence" of some Bantustans, is well documented³. Although various chiefs responded differently to colonisation, which tended to marginalise them⁴, the implementation of Bantu Authorities

¹ See Ntsebeza, L. and Hendricks, F.T. (1998). *A democracy and despotism in post-apartheid South Africa: the role of chiefs/traditional authorities in rural local government*. Paper presented to a conference on Comparing experiences on democratisation between South Africa and Nigeria, Centre for African Studies, University of Cape Town, 30 May - 2 June. Also Walker, C. (1995). Women, tradition and reconstruction in South Africa, *South Asia Bulletin - comparative studies of South Asia, Africa and the Middle East*, Vol Xv (1): 58

² The terms "traditional authorities" and "traditional leaders" are all-encompassing terms to refer to "chiefs" of various ranks. As the usage in this paper refers to people, and not structures, the term *traditional leaders* will be used, rather than traditional authorities, to avoid confusion with the term "Tribal Authority". The Tribal Authorities were the formal structures set up under the Bantu Authorities Act of 1951 and comprised chiefs and headmen, appointed councillors and a tribal secretary. The extent to which "chiefs" can be regarded as "traditional", is highly disputed. The use of the term is not intended as acknowledgement that "chiefs" are necessarily legitimate leaders in their areas.

³ Tabata, I.B. (1961). *The awakening of a people*; Mbeki, G. (1984). *South Africa: a peasants revolt*. (International Defence and Aid Fund for Southern Africa); Hendricks, F.H. (1990). *The pillars of apartheid: land tenure, rural planning and the chieftaincy*. (Uppsala: Acta Univ. Ups. Studia Sociologica Upsaliensia); Tabata and Mbeki were leading activists in the Transkei during the 1940s, 1950s and early 1960s. For more on this see Drew (1996) The theory and practice of the agrarian question in South African socialism, 1928-60, in *Journal of Peasant Studies*, 23: 2-3, Jan - April

⁴ Stultz, N.M. (1979). *Transkei's half loaf - race separation in South Africa*. New Haven: Yale University Press, p 51.

firmly enlisted them as the local arm of the central state, thereby restricting their independence. As the apartheid state became vicious, so did traditional leaders. Rather than winning reverence and legitimacy, traditional leaders became feared by most rural people.

At the same time, it is a constitutional requirement that elected local government structures be “established for the whole of the territory of the Republic”, including rural areas, and that a person or community whose tenure of land is insecure in terms of racial laws or practices should have their tenure legally secured. With regard to local government, rural elected councillors called Transitional Representative Councillors (TrepCs) have been elected in most of the former Bantustans. As far as security of tenure is concerned, the Department of Land Affairs is in the process of promulgating legislation that will create various options to ensure tenure security for rural people.

A feature of rural local government during the apartheid period, and to some extent the colonial period, was the concentration or fusion of administrative, judicial and executive power in a single functionary, the Tribal Authority⁵. This fusion is well captured by Mamdani⁶ in what he calls “decentralised despotism” or the “bifurcated state”, namely, the Native Authority:

Not only did the chief have the right to pass rules (bylaws) governing persons under his domain, he also executed all laws and was the administrator in “his” area, in which he settled all disputes. The authority of the chief thus fused in a single person all moments of power, judicial, legislative, executive, and administrative. This authority was like a clenched fist, necessary because the chief stood at the intersection of the market economy and the non-market one. The administrative justice and the administrative coercion that were the sum and substance of his authority lay behind a regime of extra-economic coercion, a regime that breathed life into a whole range of compulsions: forced labour, forced crops, forced sales, forced contributions, and forced removals (Mamdani, 1996).

It is this “clenched fist” that Mamdani sees as central to despotism in colonial and post-colonial rural Africa. Dismantling it is seen by him as a precondition for democratic transformation in the countryside. What Mamdani does not stress, however, is the hereditary nature of chiefly power. Further, dismantling

⁵ see footnote 2.

⁶ Mamdani, M. (1996). *Citizen and subject: contemporary Africa and the legacy of late colonialism*. Princeton: Princeton University Press, p 23.

Tribal Authorities is a necessary, but by no means sufficient, condition for democratic transformation⁷.

By establishing democratically elected local government with “development functions” and democracy in decision making regarding land, the intention of post-1994 South Africa is to introduce a separation of powers and democracy in the form of elected representation in local government and land, even in rural areas. Quite clearly, at least on paper, this is a major departure from a single, powerful Tribal Authority where almost none of its officials were democratically elected. Of course, traditional leaders are not happy with this. They see rural elected councillors and the extension of democracy to land issues as deeply threatening attempts to undermine their political and economic powers. The refusal of traditional leaders to accept government policies and legislation is at the heart of current debate on tenure reform in South Africa’s countryside.

Apart from the complexities that arise from the recognition of traditional leaders, there is a perception that the post-1994 ANC-led government has failed to deliver in rural areas. Hardly any support is given to newly elected rural councillors. They are few and cover scattered, often inaccessible villages. They do not have adequate transport, or even, in some cases, telephones. Above all, they are poorly remunerated, making it difficult to attract people of calibre⁸.

It is against this complex background that the Department of Land Affairs is trying to address tenure reform in South Africa’s former Bantustans. South Africa’s land reform programme, of which land tenure is one of three components, was officially launched in April 1997 with the publication of the White Paper on Land Policy. The goals of land tenure reform include the establishment of co-ownership rights for groups and communities living in the former Bantustans, where land in the ‘tribal’ areas is still nominally state owned. It is proposed that these rights be registered in the national Deeds of Registry.

This paper commences with a brief overview of land tenure in the Reserves, later called Bantustans/homelands during the period to 1990, goes on to look at tenure reforms during the negotiation period of the early 1990s and the run up to the 1994 elections, and finally provides an account of tenure reform since

⁷ See also Beinstein, H. Review of Mamdani’s book in *Development and Change* Vol 29 (1998), and “Social change in the South African countryside? Land and production, poverty and power” in *The Journal of Peasant Studies*, Vol 25, No 4, July 1998.

⁸ See Ntsebeza, L. (1998) Rural local government in post-apartheid South Africa, *African Sociological Review* 2,1.

1994. Throughout, the paper will consider the role of traditional leaders, and will highlight the enormous problems encountered in implementing democratic land tenure policies whilst recognising these traditional authorities. Material from the Eastern Cape will illustrate the above complexities, at both provincial and local levels.

LAND TENURE BEFORE 1990

Land in the rural areas of the former Bantustans is categorised as unsurveyed, unregistered state land, and “trust land”. The current roots of this classification can be traced to the 1913 and 1936 Natives Land Acts. In terms of the 1936 Act, occupation of land was based on a ‘permission to occupy’ (PTO) system. While the PTO guaranteed permanent occupation, the holder was nevertheless vulnerable. For example, PTO holders could be forcibly removed without being consulted if the government, the nominal owner of land, deemed fit. This was the case when the government introduced its Betterment (conservation) Plan⁹, or when development projects, such as irrigation schemes, tea factories, and nature reserves, were introduced¹⁰. In some cases, PTO holders were evicted and their houses were demolished, often without compensation and recourse to law. Finally, PTOs were not recognised by financial institutions as collateral.

Traditional leaders played a principal role in land allocation, especially after the promulgation of the Bantu Authorities Act of 1951 by the apartheid regime. In implementing apartheid policies and legislation, traditional leaders were vicious and corrupt.

The apartheid style “independence” of some Bantustans between 1976 and 1981 did not initially alter power relations in rural areas. If anything, the power of the traditional leaders, from sub-headman to paramount chief, was strengthened. The two Bantustans in the Eastern Cape, Transkei and Ciskei, continued to issue PTOs in terms of the 1936 Land Act¹¹.

⁹ This was a form of ‘villagisation’ that was introduced in the 1930s, but only implemented in the 1950s, as a conservation measure against soil erosion.

¹⁰ The majority of land claims in the Transkei region of the Eastern Cape are based on such removals.

¹¹ To this day, the position remains unchanged.

However, by the late 1980s and early 1990s, the mass mobilisation which characterised most urban areas of South Africa during the 1970s and 80s, had also spread to rural areas. Tribal Authorities became the main target. In vast areas of the Ciskei the Tribal Authority system collapsed and the Civic Associations took over¹². To a lesser extent, Tribal Authorities in most parts of the Transkei region were also affected¹³. In KwaZulu Natal, an intense and bloody war took place mainly between the supporters of the Inkatha Freedom Party and the United Democratic Front, and later the ANC, when the ban on the latter lifted. At the same time, the National Party apartheid regime embarked on a path of reform in the late 1980s and early 1990s, and indicated its willingness to negotiate change in South Africa.

THE TRANSITION TO THE 1994 DEMOCRATIC ELECTIONS

The challenge to Tribal Authority rule from civic organisations in particular, greatly contributed to the collapse of land administration in most of the Bantustans. Government officials in some areas reported that they have not received applications for PTOs for a long time¹⁴. In areas where traditional leaders were still reasonably entrenched, for example in some parts of the Wild Coast in the Eastern Cape, cases of corruption in the form of illegal allocation of cottage sites and sale of communal resources such as sand, thatching grass, etc, have been reported. Some of these cases are currently under investigation. Despite all this, traditional leaders have been recognised without clarification of their role in a democratic context. It is worth noting that civic organisations merely challenged Tribal Authority rule without any firm and concrete alternative proposals and practices.

The early 1990s also saw dramatic shifts in land reform in the Bantustans. The National Party introduced a land reform programme, containing two proposals that would effectively eliminate PTOs - transferring land to 'tribes' and upgrading the PTO to full individual title, with a preference in policy for the latter¹⁵.

¹² 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 reserve to region: apartheid and social change in the Keikammahoek District of (former) Ciskei, 1950-1990*. (Grahamstown. SER); Manona, C. (1990) The big lip of Sebe has fallen. *Indicator South Africa*. Quarterly Report, Vol 8 (1).

¹³ Annual reports of Calusa and Health Care Trust (1990-1997), two NGOs operating in the Xhalanga magisterial district, Eastern Cape.

¹⁴ Interview with Mgweba 18 August 1998

¹⁵ National Party thinking here was undoubtedly influenced by the World Bank which linked

The National Party position came under attack from the National Land Committee (NLC), its affiliates and other critics. One of the shortcomings was that the National Party ignored critical realities on the ground, namely, the problem of issuing title where there could be overlapping land rights. Secondly, the emphasis on individual, and rejection of ‘communal’ or group title was challenged.

It is against this background that the Department of Land Affairs (DLA) attempted to formulate and implement its land reform programme.

POST 1994 DEVELOPMENTS, LAND TENURE REFORM, TRADITIONAL LEADERS AND ELECTED COUNCILLORS

Unlike restitution and redistribution, land tenure reform in the former Bantustans has been slow to emerge. It was only in 1998 that a law drafting team was assembled. Hence it is unlikely that the proposed Land Rights Bill will be law before 2000. One of the major challenges facing the DLA is how to formulate policies and legislation that balance the constitutional requirements of democratically elected representation on the one hand, with the recognition of an institution based on hereditary rule, with decades of collaboration with colonial, segregation and apartheid regimes on the other.

One of the first targets of the DLA was to amend the 1991 Upgrading of Land Tenure Rights Act in 1996. This involved amending the definition of ‘tribal resolution’ which is substituted by the following definition:

Tribal resolution, in relation to a tribe, means a resolution passed by the tribe democratically and in accordance with the indigenous law or customs of the tribe.

In April 1997, the DLA launched its White Paper on Land Policy and at the beginning of 1998 it unveiled the following principles to guide its legislative and implementation framework¹⁶.

tenure security with individual title deed.

¹⁶ Thomas, G. et al (1998) “Current Developments in South Africa’s Land Tenure Policy”. A memo issued by DLA.

- It is necessary to recognise the underlying land rights, which belong to individuals, and groups (e.g. tribes) on most land which is nominally state owned.
- These rights should vest 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 people and in other cases to individuals or families. Where the rights to be confirmed exist on a group basis, the rights holders must have a choice about 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. Government must have access to members of group-held systems in order to ascertain their views and wishes in respect of 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.

Earlier on, in October 1997, the Minister of Land Affairs, addressing a congress of CONTRALESA, an association of traditional leaders, made the following point most emphatically:

This means that no level of government, whether national, provincial or local can disregard the views and concerns of the groups, tribes or individuals who have underlying historical land rights to land which is registered as state owned. Any actions to simply disregard the rights holders in such areas and dispose of or develop the land as state owned are unlawful.

Two implications of the above position must be highlighted. First, a distinction is drawn between land ownership and governance. Members of particular communities (as co-owners), where they opt for transfer of land, will be regarded as the owners of land. This is a land ownership issue. It will be up to them to decide on how they want their land to be administered. The latter is a governance issue, which involves land administration. It is important to note that during colonial and apartheid periods, no such distinction was made. The

state was both the owner and administrator of land. Traditional leaders never legally owned the land, but were given certain administrative powers by central government. Bantustans that opted for “independence” also did not make the distinction, as communal land remained state land. The guidelines and the Minister insist on democracy in future decision making processes, including the decision on who should administer ‘group’ land.

The consequence of this is a separation of powers, in contrast to the fusion of authority that existed in the past. Three main actors are suggested, namely, land owners, land administrators and local government. The latter will not be the owners of land, and will not necessarily have the right to allocate land, unless specifically asked by the land owners to do so. However, no land rights are absolute, either in urban or rural areas. As a body representing public interests, local government, through the TrepCs, will have control and regulatory functions. Further, service delivery will continue to be the function of local government and in both instances, land owners are bound, legally and constitutionally, to cooperate with the TrepCs. In addition to its service delivery, control and regulatory roles, local government has been granted ‘development functions’ by the Constitution. Local government must “structure and manage its administration and budgeting and planning process to the basic needs of the community and to promote the social and economic development of the community”. The powers and functions of local government have thereby been enhanced to support socio-economic and local economic development. In this regard, the Transitional Local Government Act and the Development Facilitation Act provide two tools to implement the constitutional provisions, namely, Integrated Development Plan (IDP) and Land Development Objectives (LDO).

However, the amendment to the 1991 Upgrading Act and the guiding principles, both of which assume the existence of “customs”, “indigenous law” and “tribes”, reinforce, rather than attempt to resolve, the inconsistency between democratic decision-making on the one hand, and recognising an institution which does not accept the key element of democracy - elected representation - on the other.

Be that as it may, the DLA is proceeding to formulate policies on land tenure and administration that will clearly weaken the powers of traditional leaders. In the province of the Eastern Cape, a Regulation of Development in Rural Areas Act was passed towards the end of 1997. This Act effectively stripped traditional leaders in the Eastern Cape of their development duties as prescribed in the Bantu Authorities Act (as amended). These include the allocation of land, a cornerstone of chiefly power.

Tenure Options

There are currently two options for tenure security in the rural areas of the former Bantustans, namely, individual freehold and ‘group/communal’ ownership. The former exists as an option, but would be difficult to implement. The key problem is that communal land in the former Bantustans is unregistered and unsurveyed. It is estimated that the cost of surveying and registering the land would be exorbitant. Given the budget cuts and the perception that rural areas are not a priority for the state, it is unlikely that the government will commit itself to shouldering these costs. This suggests that individuals who want freehold titles must find the means themselves. As the great majority of rural people are poor, this is not a viable option for them. Further, a ‘tribal resolution’ would need to be passed by the majority of members of the particular group or community¹⁷.

Communities applying as groups for transfer of land must constitute themselves as a land-holding entity. There are a number of legal entities, for example, companies in their various forms, trusts, ‘tribes’ in terms of the Nationalist Party legislation, and so on. In 1996, the Communal Property Associations Act was promulgated and provides for the establishment of a Communal Property Association (CPA) or similar entity, primarily as a legal land holding entity. In terms of this Act, members, defined in terms of households¹⁸, must agree to a set of rules and regulations for land ownership. A majority (for example, two thirds) of the members must agree to these rules and regulations and must confirm and publicly declare them. These rules and regulations need to be written into a Constitution which will be lodged in the Department of Land Affairs.

The CPA Act does not prescribe the rules and procedures for land allocation and decision-making, nor the manner in which the CPA Committee should be constituted. This must be decided by the majority of the membership. The only condition is that the legal entity must conform with the requirements of the South African Constitution, in particular the Bill of Rights and democratic decision making. As far as registration of the CPA is concerned, a designated government official from the DLA officiates the registration process. This individual must be satisfied that all members of the community have been informed about the CPA, and that a fully representative meeting endorsed the

¹⁷ President Mandela’s application for individual title for his farm in Qunu has been held up by the “tribal resolution” which had not been put into effect.

¹⁸ It must be anticipated that there will be objections to defining membership in terms of household on the grounds that power relations within the household may be ignored.

CPA Constitution and democratically and freely elected the Committee. A two-thirds majority of those attending is required to approve the CPA and to disband it. Although the CPA was, at one point, considered by the DLA to be the preferred land holding entity, it is not the only option.

A third alternative is currently being drafted into legislation. This applies in instances where transfer of land from the state has not been applied for. In this case, the state remains the nominal owner of land, but, unlike in the past, will strengthen the land rights of occupants. The Land Rights Bill¹⁹, proposes a category of ‘protected rights’ created by law, to secure the basic rights of rural people in the former Bantustans. These rights would have the status of property rights in that the law would prohibit removal of rights except with consent or by expropriation. The draft Bill goes on to declare that every holder of a protected right on State land is entitled to make decisions regarding the management of that right, and entitled to any benefits arising from the exercise of the protected right, including, where applicable, the proceeds of any sale, lease or other disposal of the protected right. These rights are registrable in the Deeds of Registry, although this will not be compulsory, but on demand. In short, protected rights holders do not take transfer of land ownership, but their rights to land are secured by law.

Land Rights Administration

In terms of land administration, where communities opt to take transfer of land and establish a legal entity, they will choose the body to administer their land, subject to local, provincial and national government regulations. For protected rights holders, three structures are proposed. At a local level, the Bill proposes the establishment of “accredited rights holders structures”, which can be applied for by “any land rights structures”. In theory, a Tribal Authority could be such a structure. The application will be considered by a proposed Land Rights Board and will only be approved if the protected rights holders concerned have authorised the structure and the Board is satisfied that it complies with set requirements and is capable of performing the expected functions.

A Land Rights Officer may be appointed by the Director General to monitor compliance with the proposed Act by rights holders and other persons, and report any contraventions; confirm decisions of rights holders and their structures; inform persons of their rights in terms of the proposed Act;

¹⁹ What follows is taken from “Security of Tenure Bill” dated 30 June 1998. The title was later changed to “Land Rights Bill”. There have no doubt been numerous revisions since the 30 June draft, but these are unlikely to alter the trust and principle of the Bill.

endeavour to resolve disputes between protected rights holders regarding the exercise of their rights; and advise the Land Rights Board on the performance of its functions. The proposed Land Rights Officer will be given powers to enter upon any land (at any reasonable time); investigate any relevant matter; inspect any document in the possession of any protected rights holder concerning land rights and make copies of such document; convene meetings of protected rights holders and attend any meeting of protected rights holders. Where land rights structures have not applied to be accredited, it is envisaged that the Land Rights Officer would convene a process to establish the decision of the majority of rights holders.

At a magisterial district level, it is proposed that a Land Rights Board will be established by the Minister. The proposed Board shall bring together different interest groups who would bring special expertise and experience regarding land tenure matters. The Land Rights Officer appointed for the particular district will be a member of the Board. Traditional leaders will not be excluded from the Board. Various functions are proposed for the Land Rights Board, including to safeguard the interests of protected rights holders; resolve disputes between protected rights holders; determine appeals against decisions of accredited rights holders structures; advise the land rights official and the Minister; and advise local government on zoning land for occupation, use, access and development.

This Bill, once it becomes an Act, will go a long way to protect rural people from arbitrary decisions by the state, local and tribal authorities, as in the past when people were forcibly removed, or their homes were destroyed without compensation. It will have far-reaching implications for traditional leaders, who for over four decades have not been accountable and democratic. It is expected that the Land Rights Bill will go before the Cabinet by the end of 1999, but is unlikely to become law before mid 2000. It is therefore not clear how traditional leaders will respond to the Bill, although given their view on transferring land to legal entities, particularly the Communal Property Association, it is not difficult to predict. Traditional leaders are vehemently opposed to the transfer of land to legal entities, and want land to be transferred to traditional or tribal authorities.

TRADITIONAL LEADERS AND TRANSFER OF LAND TO LEGAL ENTITIES

The response of traditional leaders to the proposed transfer of land to legal entities indicates that they will resist any effort that threatens to dismantle apartheid-based tribal authorities. At the local Tribal Authority level, however, traditional leaders are often less informed about policy and legislative issues that have been unfolding since the beginning of the 1990s. This exposes them to potential manipulation. The case study of the Tshezi communal area illustrates this contention.

The example of the Tshezi communal area in Mqanduli

The Tshezi communal area is situated along the Wild Coast in the Transkei region of the Eastern Cape. The area is one of four economic development nodes that were identified by the government-initiated Spatial Development Initiatives (SDIs). One of the requirements of the SDI for investment in communal areas, including the Tshezi area, was the need to establish legal land holding entities which would enter into negotiations and sign contracts with investors. In this regard, an SDI committee, made up of some members of the Tribal Authority and business people, comprising six men and two women, was set up. After a series of workshops on legal entities, the committee opted for a Communal Property Association (CPA). This decision was relayed to the local chief and his Tribal Authority, and received their unswerving support.

Over time, some traditional leaders, including the chief raised doubts about the CPA. Frequent mention of CONTRALESA, that is opposed to CPA and in favour of transferring land to Tribal Authorities, clearly suggested that there was a quiet campaign to influence the chief and his Tribal Authority. It later emerged that the chairperson of the SDI committee was also a member of CONTRALESA. Despite this, traditional leaders in the area were not united, and the majority of them, including the chief's son, were in favour of the CPA. The chief, after wavering for a long time, came out in opposition to the CPA.

The other resistance to the CPA came from small groups in two villages along the coast. Research revealed, however, that two individuals at the forefront of this campaign are being investigated by the Heath Special Investigation Unit for their involvement in illegal cottages²⁰. The accountability required by the CPA would not suit their interests for personal gain.

²⁰ Often resort sites acquired without having the required PTO.

In public meetings and interviews, the CPA is widely accepted by ordinary members of the Tshezi area. Given the high unemployment resulting largely from retrenchments in the mines over the last ten years or so, the CPA is seen as having the potential to attract investment opportunities with the potential for increased employment and rental revenue. However, the majority of the Tshezi people still look to their chief for direction. Most of them are illiterate or semi-literate. The more educated, and especially younger people, try to find employment away from home. Those who attend meetings where these crucial decisions are taken are elderly men, while the younger members, retrenched from the mines, rarely attend. Some spend most of their days in the shebeens (drinking places), which mushroomed in the late 1980s. Elderly people fear the power of the chief. This attitude derives from the apartheid period when traditional leaders were ruthless and could not be challenged. It is understandable that rural people are reluctant to challenge their chief, but their attitude is that he must be persuaded to support change. Alternatively, they argue, the King must intervene²¹.

Despite the promulgation of the Development in Rural Areas Act of 1997, which effectively transfers development functions to elected rural councillors in the Eastern Cape, these councillors have not yet implemented any development functions, mainly due to neglect at both the provincial and national levels²².

CONCLUSION

Traditional leaders are adamant that land should be transferred to Tribal Authorities. Although they have not yet presented a coherent account of how a Tribal Authority might work as a land holding legal entity, it seems they envisage Tribal Authorities as they currently exist, that is, as they were established by the 1951 Bantu Administration Act of the apartheid period. Yet government policies are explicit that it is the members of the defined group as co-owners who should be the land owners, and not traditional and local authorities. The policy guidelines state that group members must decide who should administer land on a day-to-day basis. Traditional leaders reject these policies and according to Chief Gwadiso, they do so on behalf of 'their people', without necessarily consulting them. How government deals with the current

²¹ This refers to the King of the abaThembu, one of six "Kings" in the Eastern Cape.

²² For details see Ntsebeza L (1998). "Rural Local Government in Post-Apartheid South Africa", in *African Sociological Review*, 2(1).

deadlock in the Tshezi area will reflect its commitment to the implementation of its policies.

In the Eastern Cape, traditional leaders hold a similar view with regard to local government in rural areas, namely, that Tribal Authorities should be the primary structures²³. Thus, it is clear that traditional leaders do not want their power dismantled. It is this fusion of power which Mamdani argues lies at the heart of decentralised despotism. Separation of powers, he suggests, is the necessary, but not sufficient condition for democratisation in rural areas. The need for separation of powers, and indeed, for elected representatives, is confirmed by the resistance of traditional leaders to anything that even remotely challenges Tribal Authorities.

REFERENCES

Beinstein H. (1998). Book review of “Citizen and subject: contemporary Africa and the legacy of late colonialism, by M. Mamdani. *Development and Change* Vol 29

Bernstein, H. (1998). Social change in the South African countryside? Land and production, poverty and power. *The Journal of Peasant Studies*, Vol 25 (4) July.

Drew. (1996). The theory and practice of the agrarian question in South African socialism, 1928-60. *Journal of Peasant Studies*, 23: 2-3

Hendricks, F.H. (1990) *The pillars of apartheid: land tenure, rural planning and the chieftaincy*. Upsala Studia Sociologica Upsaliensia, Upsala University, Sweden.

Mamdani, M. (1996). *Citizen and subject: contemporary Africa and the legacy of late colonialism*. Princeton University Press, Princeton.

Manona, C. (1990) The big lip of Sebe has fallen. *Indicator South Africa*. Quarterly Report, Vol 8 (1).

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 reserve to region: apartheid and social change in the Keikammahoek District of (former)*

²³Ntsebeza, L. and Hendricks (1998). Democracy and Despotism in Rural Areas.

Ciskei, 1950-1990. ISER, Grahamstown.

Mbeki, G. (1984). *South Africa: a peasants revolt*. International Defence and Aid Fund for Southern Africa; South Africa.

Ntsebeza, L. (1998). Rural local government in post-apartheid South Africa. *African Sociological Review* 2 (1).

Ntsebeza, L. and Hendricks, F.H. (1998). *A democracy and despotism in post-apartheid South Africa: the role of chiefs/traditional authorities in rural local government*. Paper presented to a conference on Comparing experiences on democratisation between South Africa and Nigeria, Centre for African Studies, University of Cape Town, 30 May - 2 June.

Stultz, N.M. (1979). *Transkei's half loaf - race separation in South Africa*. Yale University Press, New Haven.

Tabata, I.B. (1961). *The Awakening of a People*.

Thomas, G. et al (1998) "Current Developments in South Africa's Land Tenure Policy". A memo issued by DLA.

Walker, C. (1995). Women, tradition and reconstruction in South Africa. *South Asia Bulletin - comparative studies of South Asia, Africa and the Middle East*, Vol XV (1): 58