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A bulletin tracking land reform in South Africa

UNIVERSITY of the WESTERN CAPE School of Government • EMS Faculty

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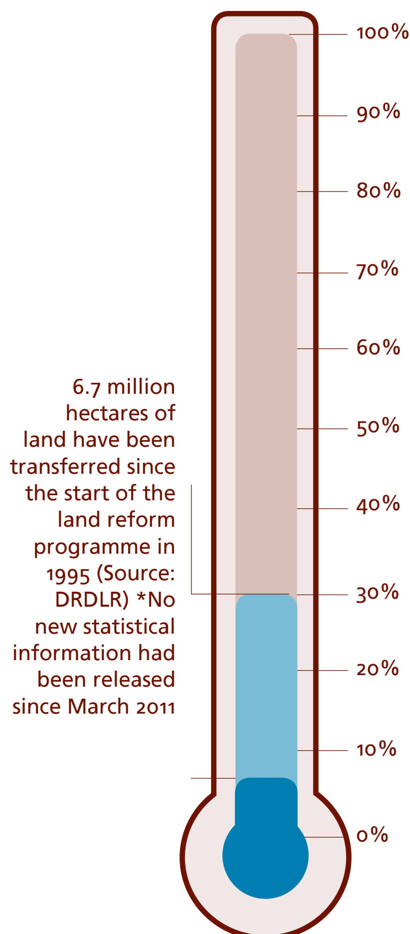
LAND BAROMETER



Source: DLDLR, April 2010

SPECIAL EDITION: REINTRODUCING THE CONTENTIOUS TRADITIONAL COURTS BILL

When the Traditional Courts Bill [B15-2008] was first introduced in 2008 it was widely criticised for the nature and extent of judicial functions consigned to senior traditional leaders — and for the extent to which the vesting of such power in traditional leaders would deny constitutional justice for people living under customary law. Under public pressure the Bill was withdrawn from the National Assembly in June 2011. In mid-December the Bill's reintroduction in the National Council of Provinces (NCOP) was announced and it was tabled on 26 January 2012 as the Traditional Courts Bill [B1-2012]. The tabling was followed by public comments until the 15 February 2012.

In the October 2008 edition of *Umhlaba Wethu* (No *6*) I asked Robert Ndala (community leader, Kalkfontein Communal Trust) *'How do you think the Traditional Courts Bill could impact on your community?'* He responded tellingly: *'I have heard there is a new law that will change the traditional courts; that the chiefs will have more powers and their rulings will be final. My community does not have a traditional relationship. Those are not our chiefs but we will have to abide by their rules.'* Critics opposing the Bill highlighted the *de facto* perpetuation of Apartheid-era policy by placing African communities under the jurisdiction of traditional authorities, irrespective of whether or not they had any historical ties to those authorities; many traditional leaders assumed that this gave them control in their designated boundaries.

The same questionable powers and functions of traditional authorities in the re-introduced (and practically unchanged) Bill are still highly controversial and widely debated. This special edition of *Umhlaba Wethu* discusses mainly the weaknesses and shortcomings of the Traditional Courts Bill and its implications when passed in its current form. It aims to inform a wide range of civil society organisations and social actors debating the Bill with the intention to reshape the regulation of the traditional justice system.

I thank those who made valuable contributions to this edition and I look forward to further vibrant interaction through the *Umhlaba Wethu* Newsletter in 2012.

Karin Kleinbooi, Editor. PLAAS

Courting Unconstitutionality: The Traditional Courts Bill And How It Strips Rural People Of Their Citizenship

The Traditional Courts Bill (B1-2012) is the government's attempt to reform the regulation of traditional courts, which remain subject to the Black Administration Act (Act 38 of 1927) to this day. The Bill was reintroduced to the National Council of Provinces last month after having been withdrawn from the National Assembly where it provoked an outcry when it was first introduced in May 2008.

Why were civil society and rural people so opposed to the Bill? Surely customary courts have an important part to play in ensuring access to justice to rural people. There is agreement that they play such an important role that ordinary rural people should be given a voice in determining how traditional courts are reformed to make it *more* accessible and suitable to the needs of those who rely on them.

The main objection was that the Bill had been drafted in consultation with traditional leaders and no ordinary rural people were consulted in drafting the Bill. This flawed process is reflected in the Bill's content: it grants traditional leaders a significant amount of power while eroding indigenous mechanisms and protections available to ordinary people to hold this power to account. It consequently threatens to undo the promise of full citizenship and democratic rights that the dawn of democracy held for 17 million South Africans living in rural areas.

This article introduces readers to some of the core problems with the Traditional Courts Bill (hereinafter, TCB or the Bill). These include:

- failing to consult ordinary rural people in the drafting process;
- centralising power in 'presiding officers' — thus contravening the separation of powers in the Constitution;
- relying on apartheid-established territorial jurisdiction and refusal of right to opt out;
- empowering traditional leaders to impose coercive sanctions; and
- failing to guarantee women basic and equal protection such as self-representation in courts.

Clearly the TCB in its current form is founded on too flawed a framework — assuming that traditional courts *are* top-down institutions primarily formed by traditional leaders — to remedy it by mere amendments by the legislature. Based on this argument, the article ends with a handful of suggestions for a framework to better regulate customary courts in a way that is consistent with the progressive elements of customary law — as appreciated by the people who observe it — and the values of the Constitution.

Failure to consult ordinary people

The consultation process around the drafting of the TCB has been widely criticised as flawed, since there was no consultation with the people who would be most affected by the bill —– the ordinary people whom it would govern. Only traditional leaders were widely consulted. The lack of public consultation is problematic as the Constitutional Court says that people should be included in making laws that affect their lives. Moreover, there are doubts as to whether this can be remedied by consultations at the parliamentary stage of the process because only very limited contributions can be made by the public in the process that is biased toward minor amendments.

Lack of consultation with ordinary people can be seen in the Bill's failure to fully provide the necessary protections for vulnerable groups. For instance, while women make up 58% of people living in rural areas, they were not consulted as a separate interest group; consequently, the Bill does not address the problem of the male-dominated nature of the traditional court system. The Bill therefore presents serious challenges to equitable access to justice for women in rural South Africa.

It puzzles many that even though the South African Law Reform Commission (SALRC) conducted extensive research around a Bill to reform the traditional court system and consulted widely with relevant stakeholders, the TCB seems to bear no resemblance to the SALRC draft bill.

Centralisation of power in traditional leaders

Another troubling aspect of the Bill is the manner in which it centralises power in the traditional leader who is given the role of *'presiding officer'*. The idea of a single presiding officer is not a true reflection of how customary courts function in real life. More than that, such an invention would grant traditional leaders executive, legislative and judicial powers simultaneously.

Our constitutional democracy adheres to the doctrine of the separation of powers — a principle that plays an important role in curbing abuse of power. However, if the TCB were passed, traditional leaders would be officially exempt from this; they would effectively become the sole determinants of customary law, as well as being the adjudicators. Since traditional leaders are conceived by government to be responsible for land allocation and eligible

for a significant array of administrative powers under section 20 of the Traditional Leadership and Governance Framework Act (Act 41 of 2003) (TLGFA), the TCB would result in a dangerous concentration of power.

Such concentration of power is not a feature of the customary court system as it is practiced today. Empirical evidence confirms that customary dispute resolution is more often than not conducted by a community-in-council. In other words, ordinary members of the community (though typically men) are able to participate in the hearing, questioning and deliberation that takes place in the context of customary dispute resolution.

Apartheid jurisdictional boundaries and denial of opting out

Some of the most contentious aspects of the Bill are those that deal with the jurisdiction of the courts. The Bill entrenches territorial boundaries established by the Black Authorities Act (Act 68 of 1951). These old Apartheid homeland boundaries are perpetuated by the TLGFA and the TCB reinforces these with serious consequences. Groups that were not naturally associated with a particular traditional leader would fall under the legal and judicial authority of such a traditional leader, though they may not recognise him (or, rarely, her).

This imposition of authority is further aggravated since, under the TCB, people cannot opt out of the jurisdiction of the traditional leader's court. In fact, section 20(c) makes any person's failure to appear before the traditional court when summoned a punishable offence. Even a passer-by who violated a law, while unknowingly finding themself within the traditional authority's jurisdiction, would be subject to this provision.

Not being able to opt out of the traditional court system is a severe restriction on rural people's democratic right to freedom of association and the individual right 'to participate in the cultural life ***of their choice***' (section 30 of the Bill) and to ***choose*** 'to enjoy their culture … and to form, join and maintain cultural … associations' (section 31). Moreover, given that legal representatives would be excluded from traditional courts, even in criminal cases, rural people's constitutional right to such representation when accused of a crime (under section 35) would be violated. While acknowledging the merits of the argument against allowing legal representation — that it will add complications and costs to a relatively simple and inexpensive system — the Bill cannot compel people to use traditional courts and yet deny them the right to legal representation. To conform to the Constitution, the Bill must allow people to choose between traditional courts, forgoing the right to legal representation, and state courts with the aid of legal representation.

Under the TCB, rural people would primarily be subject to a distinct system of law — simply because they live in the former homelands — with no means of escaping it or holding its officers accountable. They would also have no means of accessing the state system and civil law unless (i) their case falls outside of the substantive jurisdiction of the traditional courts or (ii) they are granted leave by the traditional leader or Magistrate. These examples demonstrate that, if passed, the Bill would undermine the citizenship of millions of South Africans who would lose many of the liberties that people in urban areas possess.

Coercive sanctioning powers

Traditional courts are empowered by the Bill to handle both criminal and civil matters. Section 10(2) deals with the sanctions and orders that the traditional court may prescribe. These include: 'an order requiring one of the parties, or any other person, to perform some form of service for, or provide some benefit to, a specified victim or for the benefit of the community'. The phrases 'or any other person' and 'some form of service or provide some form of benefit' are cause for concern because its vagueness allows for its content to be determined by the traditional leader, opening up opportunities for potential abuse.

As women and children make up the majority of people permanently present in rural areas and who already bear the brunt of manual labour in these areas, this form of sanction could very easily be applied to them, even when they are not party to the dispute. Moreover, given that some traditional leaders publicly proclaim that it is customary for their 'subjects' to provide labour in the 'fields of the realm' and royal kraals, community service could be interpreted to mean exactly this. This order of community service is also not appealable as people would have no way of holding the traditional leader to account except by challenging the legislation as unconstitutional for preventing them from doing so.

Matters specifically affecting women

In many ways, the traditional justice system is male-dominated and it is often difficult for women to participate equally within it. The courts themselves are usually in or near kraals or similar spaces into which women are not allowed to enter. Thus women are often not allowed to approach the traditional courts themselves but must rather speak through a male relative. Women also do not often form part of the councils that hear the cases — whether in the family court, ward council, headman's court or chief's court — and so, even when women are permitted to present their own cases, they can be intimidated by the fact that the members of traditional courts are often exclusively males. This can cause particular difficulties when it comes to traditional courts dealing with problems that affect women particularly.

The lack of consultation with women as a distinct interest group means that the Bill does not adequately address these specific issues; it fails to guarantee women the right to represent themselves. Section 9(3)(*b*) gives the outward appearance of formal equality but is substantively unequal. It says that men can be represented by women and women by men, 'in accordance with

customary law'. Given the male-dominated nature of customary law, this provision permits the practice of denying women the option to represent themselves in traditional courts, and the seemingly progressive provision will enable this practice to continue.

Granted, section 9(2)(*a*)(i) mandates the presiding officer to ensure that women are afforded equal participation in proceedings. However, this section does not provide clear guidance or relief for women in terms of well-known problems that they face in traditional courts. Moreover, it only deals with women as litigants and not as members of the court. A provision is needed that expressly provides for the inclusion of women in the composition of traditional courts. Furthermore, this provision only places the obligation on the senior traditional leader as presiding officer – not the remainder of people who would typically form part of a customary court. This provision, juxtaposed with the Bill's failure to secure women self-representation and participation as members constituting the formation of traditional courts, is rendered somewhat hollow.

What would a solution look like?

It is important to reiterate the place and need for the traditional courts system as a significant pathway to justice for about 17 million South Africans. Yet, the kind of regulation needed must acknowledge and incorporate the way customary courts actually work whilst addressing their flaws. Such legislation would therefore have to specifically allow customary courts to function as the shared and inclusive consultative spaces that they often are in practice. However, they would also have to ensure that women are able to participate fully by being members of the court and being able to enter court spaces and represent themselves in cases.

The Apartheid-established jurisdictional boundaries renewed by the TLGFA are obviously problematic and constitute part of a wider debate about how traditional communities are formed — by a bottom-up process of self-selection or by a top-down process of imposed boundaries. That controversial debate can be completely avoided by adopting a framework that simply allows people to choose their courts — both within the traditional justice system and outside of it — based on what forum they perceive to be legitimate and suitable to their needs in the particular case at issue. Implicit in this is that the legislation should recognise the layered nature of the traditional justice system, which includes family, clan, ward, headmen, village and chiefs' councils and courts, among other even less formal gatherings.

It is important for people to be able to choose to use customary courts. Allowing this conforms to both the constitutional right of people to choose their cultural system and the flexibility and consensus-based nature of customary law itself. Permitting people to choose also serves as a form of accountability as this forms part of ensuring that the courts dispense a kind of justice that the people they serve recognise to be customary. Put differently, if people are not satisfied with the way in which the traditional court they subscribe to is functioning then they will access justice by other means. Since customary law is what the people develop in their practice as they adapt to their changing circumstances — as the Constitutional Court has told us — it is important for ordinary people to actively participate in the forum that formally announces their customary law. To deprive people of the ability to choose their courts is therefore to deprive them of a mechanism to show their disapproval.

If customary courts are grounded in the African spirit of restorative justice and not retributive justice then they ought not to have the ability to impose coercive punishments, as are allowed by the TCB. Rather – as the Bill of Rights sets out in section 25, for example – people's land rights should be comprehensively protected from arbitrary deprivation by a single actor who may not be impartial.

In the end, any legislation that would replace the TCB would need to be based on a sound consultation process with all stakeholders who will be affected by the law. This requirement was most recently confirmed by the Constitutional Court in *Tongoane and Others vs. Minister for Agriculture and Land Affairs and Others* (Case CCT 100/09, 2010). The legislature would do well not to ignore it.

Sindiso Mnisi Weeks, Senior Researcher, Law, Race and Gender Research Unit and Senior Lecturer, Department of Private Law, University of Cape Town

Nolundi Luwaya, Researcher, Law, Race and Gender Research Unit, University of Cape Town

Constitutional tensions in the Traditional Courts Bill

Much can be said about the flawed process of drafting and consulting on the Traditional Courts Bill. Perhaps the most disturbing aspect is that – by their own admission – the only constituency potentially affected by the Bill who was consulted in its drafting was the group of (senior) traditional leaders. This is unfortunate — and indeed potentially unlawful.

The Constitution recognises living customary law as a separate and independent source of law. Section 39(3) provides that the 'Bill of Rights does not deny the existence of any other rights or freedoms that are recognised or conferred by […] customary law […], to the extent that they are consistent with the Bill'. Section 211(2) provides that 'The courts must apply customary law when that law is applicable, subject to the Constitution and any legislation that specifically deals with customary law'. The Traditional Court Bill, if it is to be enacted, will qualify as 'legislation that specifically deals with customary law'. This provision assumes an uncomplicated relationship between living customary law and legislation that deals with it — an assumption that the Bill throws into question.

The Bill must be seen as an attempt to codify the custom pertaining to traditional courts. In terms of section 211(2), this codification will extinguish all other customary aspects of these courts. Unfortunately, this codification suffers from various serious defects. It disregards the fact that custom: varies greatly across South Africa; is contested even within communities — largely as a result of the artificial Apartheid boundaries of traditional communities entrenched by the TLGFA; and, importantly, is recognised by the Constitutional Court as a living, evolving system that can by its very nature not be captured in a way that solidifies it.

Perhaps most importantly, however, is the tension that the Bill represents between section 211(2), as quoted above, and section 39(2) of the Constitution which provides for customary law development to promote the spirit, purpose and object of the Bill of Rights. As many have argued, the Bill in its current form infringes upon the rights of women to: non-discrimination; legal representation; access to justice; and to culture — if the culture of the traditional community where a person happens to find themself is not the culture of their choice. In addition, the fact that only a single level of customary law dispute resolution mechanisms are recognised by the Bill — contrary to the custom as actually practiced on the ground — not only violates the constitutional recognition of customary law, but also flies in the face of the most important democratic principles of accountability that are entrenched in customary law.

As such, codification of custom as pertaining to traditional courts — that the Bill represents — not only denies some current characteristics of custom that are in line with the Bill of Rights, but also completely denies custom the opportunity to develop and be developed by courts to increasingly promote the spirit of the Bill of Rights. The Bill as legislation dealing with customary law and given superior status (in terms of section 211(2)) will deny courts and communities their rights (in terms of section 39(2)).

Lack of wider consultation

As little effort was made by the Department to ensure that the rural communities of the former homelands (the people who are to be affected by the legislation) were aware of the Bill and its contents and their rights to make submissions, civil society was forced to step in. Within two months, NGOs mobilised CBOs and community leaders from the provinces affected in a last ditch effort to ensure that as many rural people as possible were made aware of the Bill and its consequences, and understood the submission process. There can be little doubt that whatever submissions reached the NCOP on 15 February, this process did not represent the one envisioned by the drafters of section 72 of the Constitution which enjoins the legislator to 'facilitate public involvement' in its processes.

This worrying feature of the Bill is in part a result of only senior traditional leaders being consulted in its drafting and therefore the Bill is skewed in favour of asserting their powers. Given that the TLGFA already precludes communities from challenging the powers of the chiefs using the mechanisms customarily available to them, this development does not bode well for rural communities. Allowing traditional leaders to write the Bill from which their powers as presiding officers in these courts will be sourced, effectively allows them to define their own powers. This is something that the Constitution could not have envisioned when, in section 212, it provides that '(n)ational legislation may provide for a role for traditional leadership as an institution at local level on matters affecting local communities'.

While there are many disconcerting aspects of the various provisions of the Bill, the general direction it represents in terms of constitutional recognition of living customary law as an independent source of law and of traditional leadership, suggest that there is no intention to honour customary law as a living, evolving system which finds its content in the actual practices of communities on the ground. If that is the case, constitutional recognition of living customary law, so boldly asserted by the Constitutional Court in various decisions, will soon be a relic of the past.

Wilmien Wicomb, Legal Resources Centre, Cape Town

The democratic left front calls for a new law to regulate customary access to justice

As in 2008, civil society vehemently opposed the Traditional Courts Bill. The Democratic Left Front (DLF) rejects the Bill in its entirety and calls for a new law.

The DLF calls on the National Council of Provinces, the National Assembly and government to create adequate opportunity for all rural people to be consulted on, and make their views heard on this Bill. This Bill is anti-democratic in both content and process. It is unacceptable that through the TCB close to 17 million South Africans living in the former homelands are about to be stripped of their constitutional rights. This Bill will create a separate legal regime under the jurisdiction of unaccountable traditional leaders: rural dwellers in former homeland areas will effectively become subjects yet again. In our analysis, the Bill embodies the increasingly autocratic and patriarchal approach of government — making it virtually impossible for rural people to be heard in their own right without the mediation of unaccountable and unelected traditional leaders. In this way, government renders rural women and other rural dwellers essentially voiceless. Already, many traditional leaders are mired in corrupt mining and land deals in the poorest parts of South Africa. This has been done in ways that violate the rights and interests of broader communities. If passed, this Bill will reinforce the power and such practices of unaccountable traditional leaders.

The DLF calls for a new law to govern community-based access to justice mechanisms that would be deeply democratic in content and process. Such a law must establish a broad national legal framework to standardise common systems, principles and procedures for community-based access to justice that are fundamentally founded on promoting, advancing and deepening justice, gender equality, democracy, accountability and human rights. Such a law must ensure access to justice through mechanisms that are democratic, accountable and challengeable. This therefore means that such mechanisms must not be reduced and integrated with the powers of chiefs. Gender equality must be effectively integrated and actively promoted in content and practice. People's customs and practices must be respected while also harnessed to be consistent with the freedoms of association and expression as well as the rights to equality, non-discrimination, legal representation and other democratic rights. Community-based mechanisms or customary law must not be used to limit and hollow out democracy, human rights, gender equality, non-discrimination, and the freedoms of association and expression.

Policy updates

Traditional Courts Bill [B 1—2012]

The reintroduction of the Traditional Courts Bill (B1-2012) was announced in the National Council of Provinces (NCOP) in mid-December 2011. The Bill was tabled on 26 January 2012. A short period for public comments commenced until 15 February 2012. The Committee's proposed programme of action suggested provinces would begin public hearings from 9 May 2012. However, various members complained about the short time frames allowed and questioned the urgency of the current process in light of the hiatus since 2009. An alternative timeframe was proposed. A programme for the second term, in which the TCB is to be dealt with and finalised, was confirmed. The provincial consultation period was extended from 12 March until 25 May 2012. Provincial committees therefore have 11 weeks — 5 weeks from 12 March–13 April and a constituency period of 6 weeks from 17 April–25 May — to conduct provincial public hearings on the TCB.

Green Paper on Land Reform 2011

Shortly after the release of the Green Paper on land reform in September 2011 the Minister of Rural Development and Land Reform (DRDLR) Mr Gugile Nkwinti established the National Reference Group (NAREG) as a forum to contribute to policy development. In line with proposals in the Green Paper, six working group task teams were established on: Land Management Commission; Land Rights Management; the Board Office of the Valuer-General; the Three-Tier Tenure System; Communal Tenure; and Legislative Amendments. Mr Sunday Ogunronbi coordinates the civil society engagement process. These themed working groups are part of a process that is meant to engage stakeholders, discuss the above mentioned proposals and start off engagement in the absence of the consolidated content of public submissions on each of the proposed policy areas in the Green Paper on land reform. However, no terms of reference and no timeframes have been finalised and no further official announcements were made about the ministerial date for submission to cabinet. In working groups, May 2012 was mentioned as the Minister's aim for tabling a revised Green Paper on land reform in Cabinet — this however could not be confirmed with the DRDLR.

Draft Tenure Security Bill 2010

The Draft Land Tenure Security Bill of 2010 (TSB) remains unresolved and a lack of clarity exists in civil society on its current status. Earlier in 2012 senior management indicated since submissions on the Bill on 18 March 2011, new proposals were presented to Minister Nkwinti. Those new proposals were subsequently included in the Green Paper 2011 (i.e. Land Rights Management Board). Surprisingly, the Department of Rural Development and Land Reform Annual Performance Plan 2012–2013 indicates the TCB will be submitted to cabinet in March 2012 and is planned to be tabled in Parliament in April 2012.

Mazibuko Jara, DLF

Workshops

Can land and agrarian reform in South Africa create opportunities for smallholder farmers and help reduce rural poverty?

On 28 February 2012 at the President Hotel in Cape Town the DST/NRF South African Research Chairs Initiative (SARChI) Chair at the Institute for Poverty, Land and Agrarian Studies, University of the Western Cape, together with the Human Sciences Research Council, created an opportunity for debate by hosting a small and focused workshop with 60 participants from government departments including Rural Development, Social Development and provincial administrations, experts on land and agrarian reform and independent researchers and policy analysts, several NGOs, the private sector and the media. In the light of the failure of many land reform projects to improve the incomes and livelihoods of beneficiaries (because of inadequate or poorly designed policies and support programmes, and poor links between different departments and levels of government), the discussions focused in depth on whether land and agrarian reform can create opportunities for smallholder farmers and help reduce rural poverty. The workshop considered available research evidence, discussed what it all means for policy and practice and suggested redistribution or restitution of land rights needs to be complemented by imaginative agrarian reform interventions, which support the emergence of productive, market-oriented small-scale farmers, both in land reform contexts and in the former homelands.

Rural Civil Society Engagement in the Democratic Process in South Africa

In its effort to support and build rural society policy engagement the Institute for Poverty, Land and Agrarian Studies hosted a workshop with civil society organisations in Noordhoek, Cape Town from 12 to 13 March 2012. The workshop (facilitated using the Open Space Technology approach) aimed to provide an engaging platform to discuss innovative ways to empower the democratic policy process so that rural civil society can more effectively play its critical role in articulating rural realities into rural policies. Forty-six practitioners, activists, parliamentarians, scholars, the media and donors discussed effective engagement in policy processes, and looked at relevant ways research and information can contribute to strengthening civil society policy engagement. PLAAS also shared and discussed emerging findings from research entitled: Scoping Study of Rural Civil Society and the Politics of Research and Policy Engagement in this Sector – An analysis of the current state of rural civil society in South Africa. A presentation on the report is available at: **http://www.plaas.org.za/pubs/pp/Rural%20Civil%20society.pdf.**

Publications

Customary land tenure in the modern world - rights to resources in crisis: Reviewing the fate of customary tenure in Africa - Brief #1 of 5 by Liz Alden Wiley. This is the first in a series of briefs about modern African land tenure that provides up-to-date analysis on the status of customary land rights in Sub-Saharan Africa. The series aims to inform and help structure advocacy and action to challenge the weak legal status of customary land rights in many African countries. This first brief provides a general background to customary land tenure today, concluding that customary tenure is the main tenure regime on the continent and one which is vibrantly active. Customary tenure is community-based and thus easily attuned to the concerns of present-day communities, but changes in customary land tenure also reflect often inequitable trends, including accelerating class formation and concentrating landholding. Such trends, which jeopardise the rights of the poor, increasingly have a direct effect on precious local common resources such as forests. Advocates must seek to ensure that land reforms are structured with the interests of the poor in mind.

Available at: http://www.rightsandresources.org/documents/files/doc_4699.pdf

Decentralised land governance: Case studies and local voices from Botswana, Madagascar and Mozambique by Rick De Satgé, Karin Kleinbooi with Christopher Tanner. Through a range of voices representative of key stakeholders in local land governance, the book aims to exchange knowledge of experiences and practices at country-level. The book is a source for land practitioners, scholars and policy makers, stimulating informed and evidence-based policy debate about the merits and demerits of decentralised land governance. Regional differences and commonalities are highlighted in lessons from the three case studies conducted in Botswana, Madagascar and Mozambique.

Available at: http://www.plaas.org.za/pubs/books/PLAAS_DECEN_BOOK_web.pdf

Individual transferable quotas, poverty alleviation and challenges for small-country fisheries policy in South Africa: MAST 10(2): 63–84 by Moenieba Isaacs. Governance reforms in South Africa's fisheries have aimed to broaden access to marine resources, maintain a stable, internationally competitive fishing industry and achieve sustainability of marine resources. This paper argues that the Individual Transferable Quota (ITQ) system of allocating fishing rights — used to maintain stability in the fishing industry, reform the sector through Black Economic Empowerment and reduce poverty through allocating small quotas to new entrants in poor fishing communities — is incompatible with achieving social justice. The allocation system failed to allocate, recognise and protect the historical and cultural rights of the artisanal and small-scale fishers to practice their livelihoods. This has neither led to social justice, nor benefited the poor, marginalised and bona fide fishers of coastal communities.

Available at: http://www.marecentre.nl/mast/documents/MAST10.2_Isaacs.pdf

Money and sociality in South Africa's informal economy: Africa 82 (1) 2012: 131–49 by David Neves and Prof Andries Du Toit, This article examines the social dimensions of money in South Africa's informal economy by considering the interplay of agency, culture and context. Focusing on survivalist self-employment and impoverished livelihoods, the article aligns itself with socio-culturalist analysis of economic action, in order to examine the imperatives and networks that underpin practices of generating, accumulating and managing wealth at the margins of the economy, in the post-apartheid distributional regime.

Available at: http://www.plaas.org.za/pubs/journal-articles/Neves-dutoit%20africa%2082.pdf

General News

Ms Barbara Tapela rejoined PLAAS in January 2012 as Senior Researcher.

New Deputy Minister of Rural Development and Land Reform Mr Leschesa Tsenoli replaced Mr Thembelani (Thulas) Nxesi who now holds the office of the Minister of Public Works. Mr Lechesa Tsenoli was a former chairperson of Parliament's Portfolio Committee on Cooperative Governance and Traditional Affairs.

Ms Dumisile Nhlengethwa has been appointed chairperson of the Parliament's Portfolio Committee on Cooperative Governance and Traditional Affairs.

Call for Abstracts: Labour in Large Scale Agriculture in Africa and Southeast Asia

Abstracts are invited for submission by 11 May 2012 for a workshop on Labour in Large Scale Agriculture in Africa and Southeast Asia, to be held in Cape Town, South Africa on 19-22 September 2012.

The overwhelming focus of the recent policy literature on LSA, both in Africa and Southeast Asia, concerns land acquisition and use, mainly in terms of their social and environmental consequences including deforestation. Although labour issues were a major concern in the first half of the 20th century, principally because of the use of indentured labour, they are less frequently addressed today against the backdrop of national states. Furthermore, in Malaysia, low pay in the agricultural sector and price fluctuations have made employment less attractive for native workers. This has created a strong demand for temporary workers and the use of labour-hire companies, acting as a pull to cheap migrant labour. Increasingly too, the exploitative employment conditions and low wage levels have led to international and national non-state actors and trade unions focusing on economic and social justice for migrant workers and the reduction of inequality.

In Indonesia, trade unions have also become more forceful in working for agricultural workers' rights. It is thus puzzling that this is less discernible in Africa, given the fact that LSA accounts for such high levels of formal employment and will represent in the medium term the main pole for formal employment's growth. On the other hand, LSA in Southeast Asia and Africa offer intellectually stimulating counterexamples to the historically dominant intellectual preoccupation with the family farm in agricultural, and a very specific case studies of large- (and some times very large-) scale hierarchical organisations.

The objectives of this symposium are to both give proper recognition to the employment dimension of LSA in Africa and Southeast Asia, and to re-instate in public debate a number of aspects of the 'labour question' which, although discussed from time to time in the historical literature, are largely absent from current narratives in the press and by international organizations, NGOs and firms. The aspects in question concern processes of recruitment, stabilisation, qualification, contractualisation and control of labour, as well as the way in which work is organised and in which workers organise themselves or are supported in doing so.

The symposium will encourage contributions dealing with each of these issues, both in relation to specific modern (post-independence) cases as well as across cases, in relation to certain cross-cutting themes (see below). Cases may refer to specific crops/ sectors, farms/ plantations/ companies or countries/ regions. Social scientists from all disciplines are invited to submit abstracts of up to 200 words to the symposium's organising committee by 11 May 2012.

Shortly after the closing date for submission of abstracts the organising committee will identify papers for presentation at the symposium, and notify the authors directly by the end of May. Those selected will have to send their papers by the end of July 2012. The symposium will take place on 19-21 September 2012.

After the symposium it is intended to publish a selection of papers presented, together with an introduction and conclusion, either with an international academic publisher or in a special edition of an international peer-reviewed journal (for example, Journal of Agrarian Change).

The contact point for the organizing committee, to whom all communications should be addressed, is Peter Gibbon (Danish Institute for International Studies): pgi@diis.dk.

Public hearings on the Traditional Courts Bill underway:

Province:	Activity:	Date:	Time:	Venue:
Eastern cape	Briefing by DOJ	30 March	8am	Provincial Legislature, Bhisho
	Public Education	10 - 20 April		Not yet known
	Public Hearings	23 April	10am	Queenstown Town Hall
		24 April	10am	Lusikisiki Town Hall
		25 April	10am	Mthatha Town Hall
		26 April	10am	Mdantsane Indoor Sports Centre
Kwazulu natal	Public Education	16 April	10am	Port Shepstone Uvongo Hall
		17 April	10am	KwaDukuza Town Hall, Stanger
		23 April	10am	oSizweni Town Hall, Newcastle
		25 April	10am	uLundi Old Chamber, LA Complex
		26 April	10am	KwaMakhasa Tribal Hall, Hluhluwe
	Public Hearings	8 May	10am	Port Shepstone Town Hall
		9 May	10am	KwaDukuza Town Hall, Stanger
		11 May	10am	oSizweni Town Hall, Newcastle
		16 May	10am	KwaMakhasa Tribal Hall, Hluhluwe
		17 May	10am	uLundi Chamber, LA Complex
	Written Submissions	Closing: 18 May		
North west	Briefing	17 April		Not yet known
	Public Hearings	16 May		Ratshidi Hall, Mafikeng
				Potchefstroom Banquet Hall, Potchefstroom
		18 May		Tlhabane Community Hall, Rustenburg
				Taung Tribal Hall, Taung
Limpopo	Briefing	10 April	9am	Clubhouse, Parliamentary Village, Polokwane
Western cape	Briefing	10 April	9am- 1pm	Committee Room 2, 4th Floor WC Leg. Bldg
Gauteng	Briefing	13 April (TBC)		
Northern cape	No information	No information	No info	No information
Mpumalanga	No information	No information	No info	No information
Free state	No information	No information	No info	No information

Our blog, http://anothercountryside.wordpress.com offers a space for democratic debate on policies and other key aspects of the politics and economics of land and agrarian change in southern Africa. Please feel free to participate in discussions and let us all imagine another countryside.

If you would like to contribute content on topical debates around land and rural transformation, poverty, livelihoods, fisheries or any of PLAAS's other research areas, please contact our Information and Communication Officer, Rebecca Pointer on rpointer@plaas.org.za.

We have created this space where we – and you – can speak and argue and debate about key issues relating to land and agrarian change in the subcontinent. Let us all imagine another countryside.

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PLAAS obtained information for *Umhlaba Wethu* from a wide range of sources, including documents from the Department of Rural Development and Land Reform and the Commission on Restitution of Land Rights: http://www.ruraldevelopment.gov.za. Views expressed here do not necessarily reflect the views of PLAAS.

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Send suggestions and comments on this publication to:

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