

## **The Power of traditional leaders, the politics of land use and tenure insecurity in rural areas: What has law got to do with it?**

President Jacob Zuma in his address at the annual opening of the National House of Traditional leaders in February 2016 urged traditional leaders to combine and rationalise their efforts in claiming land on behalf of the communities they lead rather than lodging competing claims. This is similar to plans revealed by King Goodwill Zwelithini to lodge a claim that extends beyond KwaZulu-Natal on behalf of the 'Zulu nation' instead of communities lodging land claims individually and establishing Communal Property Associations (CPA) as envisaged by legislation.

The assumption that traditional leaders have the best interests of the people at heart is challenging and is not a sufficient reason to give them power. This feeds into the existing and problematic general belief that land belongs to traditional leaders. When there are opportunities for wealth accumulation, some traditional leaders abuse their power to advance the interest of business while compromising the livelihoods of community inhabitants. In some cases these leaders resort to coercive means to advance commercial interests.

In the process they disregard the laws that aim to protect the customary land rights of rural citizens. Such laws include firstly the **Interim Protection of Informal Land Rights Act (IPILRA) of 1996** aimed at providing protection for people living in the former Bantustans, most of whom were affected by forced removals and do not have documentary proof of their land rights. Secondly, exclusive to KwaZulu-Natal is the **Ingonyama Trust Act of 1994** enacted by the KwaZulu Legislative Assembly which obliges the Trust not to enter into any land agreements such as leases that would marginalise people living on that land. Thirdly the **Communal Property Association (CPA) Act of 1996** which stipulates how government should register CPAs. The Act enables members of a community to choose the type of legal entity to hold the land that they have successfully claimed back.

In reality there is a disconnect between theory and practice. Examples abound and include the on-going fight by the people of Makhasaneni village near Melmoth against the operation of the Jindal mining company which was granted prospecting permission by the local chief Thandazani Zulu without written consent of the community. Another is the Bakgatla Ba Kgafela CPA vs BaKgafela baKgafela Tribal Authority case which dealt with the existence of a provisional CPA and its ability to hold land. Here Chief Pilane wanted the tribal authority to form a Trust to hold the land whereas the community opted for a CPA. King Zwelithini's encouragement of traditional leaders in Kwa-Zulu Natal to take a leading role in mining deals regardless of people raising problems caused by mining in their areas is another case in point.

Activists in Makhasaneni, Mtubatuba and many other mining-affected communities in Northern KwaZulu-Natal and the North West have faced acts of intimidation by members of their respective traditional councils for trying to protect their land rights. Recently in Makhasaneni a few members of the community had to flee their homes after they heard of threats to kill them for resisting the operation of Jindal mining company which employs some of the brothers of the local chief. This shows that people's customary land rights are only protected when there are no competing business interests.

The situation is further complicated when the government proposes bills and policies that advance the powers of traditional leaders at the expense of the customary land rights of ordinary rural

citizens. Such bills and policies include ***the Communal Land Tenure Policy of September 2014 (CLTP)*** which would inform the Communal Land Bill, and proposes transferring land in the former Bantustans to Traditional Councils. The newly introduced **Traditional and Khoisan Leadership Bill of 2015 (TKLB)** gives National and Provincial government the authority to allocate powers to traditional leaders and councils.

These developments and the laws and policies that enable them raise the question: if it is so easy for traditional leaders to disregard the laws that protect the land rights of citizens, what would happen should the policies and proposed bills that give them greater power were to become law?

The observation here is that the government is using land to keep traditional leaders in control as it is believed that their constituencies make up a substantive number of rural votes. If traditional leaders get control over land then they would have real power. Added to the fact that traditional leaders are gatekeepers to business opportunities such as mining in rural areas, and where people are not always aware of their land rights. Favouring traditional leaders over ordinary rural citizens by implementing policies that promotes the transfer of land titles to chiefs is in contradiction of and inconsistent with the Constitution which promises land to those who were deprived of it.

*Mbongiseni Buthelezi and Stha Yeni will be presenting a paper on Traditional Leadership in South Africa at a Forum to be hosted by CASAC and the Nelson Mandela Foundation on 12 April*