

## **Submission by Patrick Mashego of the Letebejane Village - Limpopo Tribal levies problem - impact of the Traditional Court Bill**

I have been a land activist and ANC comrade in Letebejane since my childhood. I worked closely with MamLydia Ngwenya who is currently an ANC MP. The first I heard of this bill was on Thursday when MamLydia showed me a copy. I am devastated that a Bill which has such direct impact on rural people's lives was not communicated to rural people and our views canvassed. Nobody that I know of in the rural area where I live has ever even heard that such a bill exists.

Currently we are experiencing a serious problem with tribal levies and the Bill will make the problem into a serious crisis if it is enacted.

Tribal levies have been controversial in Rakgwadi for a long time. The extortion of excessive levies by our kgosi, who was also finance minister of Lebow a sparked an uprising in 1986 because people were fed-up with paying large sums of money that were never properly accounted for. Our rallying cry was that rural people should not suffer double taxation - that should be equal to other South Africans.

With the change of government we believed that the problem of tribal levies was a thing of the past. Imagine our surprise when suddenly our kgosi demanded a R50 levy to buy himself a car in 2004. Rakgadi is large area composed of 23 villages of which Tsimanyane, where the hospital is based, is only one. We are talking about a lot of money. He also demanded R20 to cover the costs of the 50 year celebration of the tribe arriving at Rakgwadi. This one is very painful because when the Sekhukhune's refused to co-operate with the Bantu Authorities system, the apartheid government approached Matlala's father and he agreed to form the Matlala Bantu Authority. He was rewarded with 23 rich SADT farms near Marble Hall. This is the land which the tribe moved to in 1957. And it was to celebrate this sell-out act that we are required to pay the additional R20 levy.

Many of us objected and refused to pay - we said that compulsory tribal levies are unconstitutional. To add insult to injury our kgosi began to use the kombi he had bought with the levies he managed to collect as a taxi. We wrote to the Premier of Limpopo to complain and to ask for clarification. He sent two officials from his office who deal with traditional affairs. They told us that tribal levies have been brought back by a new law, and there is nothing we can do. We must pay. We asked for a copy of the new law and they told us they had no copy to give us or even show us.

We then approached the Legal Resources Centre who provided us with a copy of the Limpopo Traditional Leadership and Institutions Act 6 of 2005.

Section 25 is headed Levy of Traditional Council rate

It provides that "a traditional council may, with the approval of the Premier, levy a traditional council rate upon every taxpayer of the traditional area concerned". It also provides that "any taxpayer referred to in subsec60n (1), who fails to pay the traditional council levy may be dealt with in accordance with the customary laws of the traditional community concerned"

Despite the fact that the officials from the Premier's office denied having approved Matlala's levies, they did nothing to assist us when we reported the problem to them. They said there is nothing they can do about Matlala's excessive demands.

People who refuse to pay the levy are denied the proof of residence letters which are necessary to apply for ID books, social grants, car licenses or to open bank accounts. I know of people who have asked the tribal authority for the proof of residence stamp and been told that until they pay their outstanding annual tribal levies, the car levy and the celebration levy, they will not be helped. This is the tribal authority's tried-and-tested way of starving people into submission.

The problem is made even worse by the Traditional Courts Bill. The Bill ignores all the customary courts that exist at village level and concentrates power in the hands of the senior traditional leader as presiding officer of the only court that is recognised, the tribal authority court. This is completely different from existing customary practice in the villages of Rakgwadi where villagers and councillors participate in localised dispute resolution forums in the villages. Through their active participation they

manage to develop and adapt customary law to reflect the views and values of all the people engaged in the process.

The Bill enables to the presiding officer to continue to interpret customary law in a way that fulfils the narrow self interest of traditional leaders and to shut out the voices of ordinary people - just as the process around this bill has effectively shut out the voices of ordinary rural people.

It also enables the chief to demand that people attend his court. And to fine them or to make them do forced labour or strip them of their customary entitlements to land. This will be the end of people like me, who are known to be a thorn in the flesh of those who abuse power. In fact the bill gives traditional leaders more powers than they had under apartheid and during the Bantustan days. Never before has there been a provision saying that a traditional leader as presiding officer can simply strip people of their customary entitlements. This is completely contrary to customary law. It destroys the indigenous accountability mechanisms that mediate *power* and protect those who try to hold leaders accountable.

The people who have the responsibility of passing this bill need to inform themselves about the reality in rural areas. Section 9(4) says that fines charged by traditional courts must be paid to the provincial revenue fund. It is a joke to think that will ever happen.

Furthermore that section conflict with the Limpopo Act 6 of 2005. Section 24 of the Limpopo Act deals with the funds of a traditional council- it says that all fines collected by the traditional leader or council in accordance with the communities laws and customs, go to the traditional council.

There are lots of questions about who decides about what the laws and customs of the community are. Instead of those being debated in village level forums and dispute resolution processes as they have been since time immemorial, they will now simply be decided by the chief as presiding officer. What is to stop him interpreting law and custom in ways that bolster his power and undermine the customary entitlements of his "subjects"?

Of particular relevance here is section 24 (c ) of the Limpopo Act which says that "all monies derived from any property in the possession of the traditional community concerned" are funds of the traditional council. This is very worrying when you consider that the Communal Land Rights Act of 2004 provides for the transfer of title of communal land to the "traditional community". Does this mean that instead of profits and benefits from the land going to the people who have used and occupied the land for time immemorial, the benefits should go to the traditional council headed by the chief?

Now in terms of the traditional courts bill, the chief as presiding officer, will be the person to decide what the community's 'law and custom' has to say about such issues.

This Bill and laws such as the Limpopo Act destroy the dream we fought for over many years. Instead of making rural people equal citizens in a unitary South Africa, they make us subjects of chiefs who are given the coercive power to get rid of those who try to hold them to account. You may say that not all chiefs are bad. That is true, but only bad chiefs need laws like this.