

## **Things you should know about land and the Traditional and Khoi-San Leadership Bill**

The TKLB won't mean much to people in towns and cities if it becomes law in its current form, but it will have a massive impact on the lives of the 18 million people who live in South Africa's former homelands.

### ***The people own the land***

- Most black people were denied the right to own land under colonialism and apartheid;
- The rights they have now derive from customary law and past possession, not from title deeds;
- The Constitution promises security of tenure in section 25(6) and the Interim Protection of Informal Land Rights (IPILRA, 1996) enforces that right. It says people cannot be deprived of informal land rights without their consent, except by expropriation;
- The 1997 White Paper on Land Reform acknowledges that people own the land their families have occupied and used under customary law. This was confirmed when the Richtersveld community took Alexkor to court in 2003. The Constitutional Court said indigenous ownership amounted to full ownership even where people had been denied title deeds.

### ***The Traditional Leadership and Governance Framework Act (TLGFA, 2003) and the Communal Land Rights Act (CLRA, 2004) tried to deny these rights***

- The TLGFA confirmed the traditional leaders and tribal boundaries that were created under the infamous Bantu Authorities Act of 1951. The tribes that are recognized today and the land they occupy were determined by the apartheid government between 1951 and 1980. Those who opposed these "Bantu Authorities" remain locked out of official recognition, or consigned to tiny areas;
- The TLGFA ignores pre-existing rights and identities by re-imposing the tribal boundaries that were rejected during anti-Bantustan rebellions;
- The Communal Land Rights Act of 2004 said the government had to transfer title deeds from the state to "tribes", now renamed "traditional councils". It also said the Minister could give land transferred to Trusts and CPAs in terms of land reform to the larger tribes that exist around restitution and redistribution farms;
- Rural groups challenged the CLRA because it undermined their land rights and security of tenure. They won in 2010, when the Constitutional Court declared the CLRA invalid.

### ***Now the government says the 'outer boundaries' of communal land should be transferred to apartheid defined tribes***

- This policy denies the ownership rights of groups who managed to buy or secure land before, or despite, the 1913 Land Act. There are many such groups in the former Transvaal, KZN and Eastern Cape;
- It denies the history of mission settlements and others who preferred local control without traditional leaders, such as former labour tenants on SADT farms, and many clan-based groups throughout the country;

- Centralising ownership and control at the level of the senior traditional leader contradicts the layered decision making power of family-based and village-level structures that ensure customary accountability;
- The TLGFA imposes a one-size-fits-all construct of tribal identity on groups who often have much older identities and historical land rights. Now the TKLB proposes to consolidate that model;
- Many groups forced into superimposed tribal boundaries in the 1960s, 70s and 80s have land rights from older sources such as customary law, quitrent titles, PTOs and the Upgrading of Land Tenure Rights Act. These would be lost in the state transfers freehold title to tribes.

***The TKLB replaces the TLGFA and makes some of these problems even worse.***

- Many chiefs claim they have the sole authority to represent people living within their tribal jurisdiction. The Constitutional Court rejected this claim in the *Pilane v Pilane* case;
- Now the TKLB says traditional leaders should negotiate investment and mining deals on communal land on behalf of rural communities;
- While seeking to empower traditional leaders, the Bill does not once require them to consult the people whose land rights would be directly affected by their decisions.

***In the face of strong opposition the Minister of Rural Development has recently made some small concessions about the transfer policy***

- Rural people have insisted that their land belongs to them, and that it would be a betrayal to transfer title of their land to traditional leaders;
- The government has responded by saying that individual or family 'use rights' can be registered within the 'outer boundaries' of tribal ownership;
- King Goodwill Zwelithini has gone so far as to say that the Ingonyama Trust will give families title deeds.

**But this doesn't solve the problem**

- People will get rights only to their homestead plots, thereby forfeiting their customary right to fields, grazing land and forests;
- Individual titling is so complex that the government has not even been able to give urban people title deeds to their RDP houses;
- Individual title often benefits the strong at the expense of the vulnerable, men at the expense of women, and the rich at the expense of the poor;
- Title deeds make people vulnerable to debt foreclosure and to selling land as the only means to raise money for emergencies.

As Deputy Chief Justice Dikgang Moseneke said during the CLRA hearing in 2010. There is a "crying need for land reform" in SA, but "to use the Bantu Authorities Act of 1951 as a platform for reform after 1994 is simply incredible".