

# **Decentralisation and Natural Resource Management in Rural South Africa: Problems and Prospects<sup>1</sup>**

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## **Introduction**

One of the aims of decentralization is to increase public participation in local-decision making. The claim is that public participation, coupled with locally accountable representatives with real public powers will increase efficiency and equity in the use of public resources (Agrawal and Ribot 1999). Since the advent of democracy in 1994, South Africa has embarked on its own version of decentralization in a range of areas. For example, the White Paper on Sustainable Forest Development in South Africa describes the category of “community forestry” as “implemented by, or with the participation of, communities.” (Department of Water Affairs and Forestry 1997:20). With regard to the environmental management policy, the National Environmental Management Act of 1998 advocates a strong role for civil society participation in environmental governance (see also Turner and Meer 1999:12). In this paper, the issue of decentralization and natural resource management will be interrogated primarily through a focus on local government reform and land administration. This focus illuminates problems that are on the horizon for other natural resources, such as forests, wildlife and fisheries, especially as these latter resources are to be managed through similar structures that are being constructed and contested in the local government and land policy arenas. Within this context, the role of traditional authorities (chiefs of various ranks) and municipal councillors will be assessed.

Section 40(1) of the Constitution of the Republic of South Africa establishes three “spheres of government which are distinctive, interdependent and interrelated,” to wit, national, provincial and local government. The local sphere of government, in terms of Section 151(1), “consists of municipalities, “which must be established for the whole of the territory of the Republic.” Section 151(4) states: “The national or a provincial government may not compromise or impede a municipality’s ability or right to exercise its powers or perform its function.” The constitution and White Paper on Local Government define post-1994 local government as ‘developmental’ local government,

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involving integrated development planning. This requires municipalities to co-ordinate all development activities within their areas of jurisdiction (Pycroft 1998:151).

Developmental local government thus seeks not only to democratize local government, by introducing the notion of elected representatives even in rural areas, but also to transform local governance, with a new focus on improving the standard of living and quality of life of previously disadvantaged sectors of the community (Pycroft 1998:155). In addition, developmental local government requires that citizens should actively participate in development initiatives in their areas (see section 152(1)(e) of the Constitution; also, African National Congress 1994:2-3; Ntsebeza 1999; 2000; 2001).

A legacy of the colonial and apartheid periods is that most land in the rural areas of the former Bantustans is owned by the state and the Development Trust, and administered and managed, (during the apartheid period) by government created tribal authorities. Although rural inhabitants are the *de facto* owners of land, in the sense that they have lived in these areas for long periods of time, landholding based on the permit to occupy (PTO) system does not provide them with legally secure title comparable to freehold title. It is, above all, this insecurity of tenure that has created conditions for the exclusion of rural inhabitants from the administration and management of what is essentially their land. Land tenure reform aims to correct these imbalances.

According to section 25(6) of the South African Constitution: “A person or community whose tenure of land is legally insecure as a result of past racially discriminatory laws or practices is entitled, to the extent provided by an Act of Parliament, either to tenure which is legally secure or to comparable redress.” Parliament is further obligated to enact legislation. These constitutional provisions, coupled with the democratic principles enshrined in the Constitution and various pieces of post-1994 legislation, establish conditions to set up new democratic and accountable structures, with significant community participation, as far as land administration and management are concerned. The new structures will not necessarily be the new developmental local government. However, whether land administration functions are performed by local government or not, local government will still be obliged to play its traditional regulatory and control role and, since 1994, fulfill its developmental mandate.

The focus of this paper is on the institutional arrangements that have been put in place to give effect to decentralization and its impact on natural resource management in the rural areas of the old Transkei, South Africa. The paper will pay attention to the various actors who hold power over natural resources, the kinds of powers they hold, the degree of community participation and accountability relations and mechanisms of accountability to which these actors are subject. Of critical importance will be a discussion of the role of traditional authorities in post-1994 South Africa, particularly how they have responded current policies and laws. At the heart of the discussion will be an assessment of the relationship between theory and practice and implications for natural resource management.

### **Decentralisation: key concepts**

An outline of two key concepts, “political/democratic decentralization” and “decentralized despotism” is useful in order to understand South Africa’s dilemma of attempting to democratize rural areas whilst at the same time recognizing hereditary traditional authorities.

Mamdani’s (1996) thesis is that the colonial state in Africa was “bifurcated,” with different modes of rule for urban “citizens” and rural “subjects.” The colonial strategy of “divide and rule” took two related forms: an enforced division of Africans along ethnic lines, on the one hand, and an enforced division between town and countryside. According to Mamdani, the African was “containerised,” not as a native or indigenous African, but as a “tribesperson.” Colonialists justified “indirect rule” on the basis that “tradition” and “custom” were indigenous forms of social organization. But, they reinforced and used these identities to divide and manage rural Africans. In order to enforce their dual policy of “ethnic pluralism” and urban-rural division, colonialists, Mamdani asserts, exercised “force to an unusual degree.” In this way, colonial despotism was highly decentralized (1996:22-4).

The chief, according to Mamdani, was pivotal in the local state, the Native Authority. His authority was rooted in the fusion of various powers, judicial, legislative, executive and administrative, in his office, rather than the classic liberal democratic notion of a separation thereof. Mamdani uses the analogy of a “clenched fist” to delineate this concentration of power. Native Authorities, according to him, were protected from any external threat. Their officials were appointed from above and never elected. They had no term of office, and remained therein for as long as they enjoyed the confidence of their superiors.

Mamdani argues that the colonial legacy was reproduced after independence. However, no nationalist government was content to reproduce the colonial legacy uncritically. Each attempted to reform the colonial state, but in doing so reproduced a part of that legacy, thereby creating its own variety of despotism. Post-colonial African states, whether conservative or radical, deracialised the colonial state, but, according to Mamdani, did not democratise it. On democratic transformation, Mamdani proposes “nothing less than dismantling” the “bifurcated state.” This will entail “an endeavour to link the urban and the rural – and thereby a series of related binary opposites such as rights and custom, representation and participation, centralisation and decentralisation, civil society and community – in ways that have yet to be done” (1996:34).

These features of Native Authorities aptly capture the central features of Tribal Authorities that were set up during the apartheid period in South Africa. It is arguably in response to these that the post-apartheid state is making efforts to “dismantle” Tribal Authorities. It is not clear, however, how far these new local political-administrative arrangements move away from the system of “decentralized despotism” and toward a more democratic form of rural governance. The constitutional recognition of the hereditary “institution of traditional leadership” without any clarity as to its roles,

functions and powers makes these questions about democratizing rural governance even more urgent.

“Political/democratic decentralization” is said to occur when powers and resources are transferred to authorities that are “downwardly accountable to local populations” (Agrawal and Ribot 1999). The aim is to increase public participation in local decision-making. Advocates of this kind of arrangement believe that locally accountable representatives with real public powers and greater community participation will increase efficiency and equity in the use of public resources. This notion of decentralization can be contrasted with other kinds of decentralization reforms taking place in the name of democratization and development. For example, deconcentration or administrative decentralization, and privatization, which are not democratic in nature, often accompany or take place in the name of democratic decentralization reforms. Deconcentration occurs when the central state transfers some responsibilities to its local branches. In this regard, local branches are primarily upwardly accountable to the central state, and not necessarily downwardly accountable to the communities they are serving. Proponents of democratic decentralization consider this form of decentralization as “weak” precisely because it is not downwardly accountable and therefore democratic.

Whether privatization could be regarded as a form of decentralization is a hotly debated issue. Those in dispute argue that decentralization concerns public resources, while privatization entails transferring public resources to private groups and individuals that may or may not serve public interests. As with deconcentration, these groups and individuals are not necessarily obliged to be “downwardly accountable” to the communities they serve. Also, the logic of privatization is quite different from that of decentralization.

Manor (2001:2) has recently argued that studies of democratic decentralization point out three essential conditions for democratic local government: substantial resources (especially financial resources) from higher levels of government; substantial powers to be devolved to local authorities and mechanisms to ensure that bureaucrats are accountable to elected representatives, on the one hand, and mechanisms to ensure that elected representatives are accountable to voters, on the other hand.

Through the lens of local government and land tenure and control, this paper investigates the degree to which rural political-administration is shifting away from the closed fist policies of colonial and apartheid decentralized despotism towards more democratic and enfranchising forms of rural authority.

### **From “decentralized despotism” to democratization? Policy on rural local government and land administration**

Decentralisation in rural South Africa must be understood within its historical context. Prior to the introduction of democracy in South Africa in 1994, especially during the apartheid period, local government and land administration were concentrated or fused in tribal authorities. These structures were imposed on resisting rural inhabitants and were

an extended arm of the central state. They were, not surprisingly, undemocratic, unaccountable, autocratic, and, in many instances, feared (Ntsebeza 2001, 1999; Manona 1998; Mbeki 1984; Lodge 1983). The post-1994 ANC-led South African government attempts to separate, amongst others, local government, land ownership and administration functions and powers, and decentralize them to democratically accountable local institutions, with an emphasis on the active participation of communities in decision-making processes. The tension though, as will be seen below, is that the same government also recognizes the hereditary “institution of traditional authorities” without seemingly questioning its role during the colonial and apartheid periods, on the one hand, and clarifying its roles, functions, and powers in post-1994 developmental local government and land administration and management, on the other hand.

### *Rural local government*

The local sphere of government, according to the constitution, consists of municipalities, established throughout the country, including rural areas. A “transitional” policy on rural local government in the former Bantustans was initially established 1995. The 1995 law established a two level structure, consisting of a district council at a sub-regional level, and a range of possible structures at local (primary) level.<sup>2</sup> In rural areas, the primary structures, established at magisterial district level, would either be transitional rural councils (TRCs), or transitional representative councils (TrepCs). The main difference between TRCs and TrepCs was that the former were accorded the powers of a fully-fledged local authority, while TrepCs were accorded far less powers, and were seen as fulfilling representative and brokering functions. The District Council performed local authority functions on behalf of TrepCs. In theory, TrepCs could eventually evolve into effective and democratic local authorities. In practice, however, these structures never, at the end of the transitional period in 2000, evolved into local authorities. This is an important point to keep in mind given that almost all the rural areas in the former Bantustans had TrepCs.

An integral aspect of developmental local government is integrated development planning, which requires municipalities, in addition to providing services, to coordinate all development activities within their area of jurisdiction in order to seek to improve the standard of living and quality of life of previously disadvantaged sectors of the community. In this regard, all municipalities are required to produce Integrated Development Plans (IDPs) and Land Development Objectives (LDOs). In terms of the White Paper on Local Government, the LDOs should be seen as part of the IDPs and not as a separate planning process. Both the constitution and legislation emphasise the need for community participation in the formulation of IDPs to ensure that these plans are expressive of the needs and priorities of local people, rather than central government.

The role of traditional authorities (chiefs of various ranks) in a post-1994 democracy, including local government, was never explicitly stated from the beginning of the

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<sup>2</sup> The sub-regional level consisted of a couple of magisterial districts. A magisterial district consisted of a district town and a number of administrative areas.

political negotiation process that led to the first democratic election in 1994. In the past, these authorities enjoyed unrivalled powers over a range of activities in the rural areas of the former Bantustans. Both the interim and final constitutions merely incorporated a clause recognizing “the institution of traditional leadership” without any clarity or guidelines as to its roles, functions and powers. The Local Government Transitional Act of 1993, as amended in 1995, provided an extremely limited, if not vague, role for traditional authorities in local government. Defining them as an “interest group” along with women and farm workers, the Act gave traditional authorities not more than 10% representation in an *ex officio* capacity.

### *Land administration*

Attempts to empower rural residents by involving them in decision-making processes on land issues were given a boost with the launch of the White Paper on Land Policy in April 1997. The White Paper drew a crucial distinction between “ownership” and “governance” in land issues in rural areas. This distinction was blurred in the colonial and apartheid eras, as the state was both legal owner and administrator of land. By drawing the distinction, the White Paper introduced a separation of the functions of ownership and governance, “so that ownership can be transferred from the state to the communities and individuals on land” (1997:93).

By the beginning of 1998, the Department of Land Affairs (DLA) had developed principles that would guide its legislative and implementation framework. These included that:

- 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 groups 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 (Thomas et. Al. 1998:528).

Three issues need to be highlighted in this regard. First, we should consider the distinction between land ownership and governance. Following the DLA principles, members of particular communities become co-owners of land. This is an ownership issue. As co-owners, the principles imply, it will be up to them to decide how they want

their land to be administered. The latter is an issue of governance. It is precisely the blurring of this distinction that was at the heart of colonial and apartheid rule. Bantustans that opted for “independence,” such as the Transkei, also did not make this distinction, as communal land remained state land.

A further implication of this distinction is that the concentration or fusion of power in tribal authorities would be undermined. There would, instead, be a clear separation of powers. The four main actors are: landowners (the broad community), land administrators or managers (the officials/bureaucrats), traditional authorities, and local government. The latter two will not be the owners of land, and will not necessarily have the right to allocate land, unless specifically asked by the landowners to do so. With regard to local government, however, it is important to note that no land rights are absolute, either in urban or rural areas. As a body representing public interests and given that, in terms of the Constitution, municipalities should be established throughout the country, local government has control, regulatory and (in terms of the Constitution) development functions.

Lastly, it is quite clear from the above that the Department of Land Affairs intended to subject traditional authorities to a system that would make them more representative and accountable to their communities. However, establishing democratic and accountable structures while recognising an undemocratic and unaccountable institution of traditional leadership, especially in the form it has been inherited from the apartheid past, is a fundamental contradiction. I develop this further below.

Law that would give effect to the above policies laid down in the White Paper on Land Policy has yet to see the light of the day. The unresolved question of the role of traditional authorities in local government and land reform seems central to this delay.

### **Traditional authorities and government shift**

#### *The reaction of traditional authorities*

Traditional authorities are vehemently opposed to the moves of the ANC-led government to introduce decentralisation and democratisation in rural areas under their jurisdiction. What is striking about the post-1994 period is that traditional authorities, despite earlier divisions, seem to be drawing closer and closer to one another (Ntsebeza 2001; 1999). While the initial collaboration was around local government, it is quite clear that the main issue that brings traditional authorities together is their opposition to the notion of separation of powers. They would be happy to preserve the concentration of power they enjoyed under apartheid. Not only are they opposed to the idea of the separation of powers, they are also opposed to any attempt to introduce alternative structures that would compete with them. With regard to land tenure reform, traditional authorities agree with government that land in the rural areas of the former Bantustans should not be the property of the state. However, they reject the notion that where land is held on a group basis, it should be transferred to democratically constituted and accountable legal entities such as Communal Property Associations.

Government seems to have succumbed to the above pressure exerted by traditional authorities. As we have seen, policy and legislation in the immediate post-1994 period seemed, on the whole, to have been driven by a commitment to extending participatory and representative notions of democracy to rural areas. An expression of this radicalism was the promulgation of the Regulation of Development in Rural Areas Act, 1997 by the Eastern Cape Legislature. This Act sought to divest traditional authorities of all their development functions and transfer these to elected councillors. This, of course, was in line with new functions of local government. However, since the end of 1997, the pendulum seems to have swung in favour of traditional authorities (Ntsebeza 2001). The White Paper on Local Government published in March 1998 makes broad and sweeping statements about the possible role that traditional authorities can play. Traditional “leadership” is assigned “a role closest to the people.” On the issue of development, a task that has been added to local government by the Constitution, the White Paper (1998:77) boldly asserts: “There is no doubt that the important role that traditional leaders have played in the development of their communities should be continued.”

The recommendation in the White Paper that “the institution of traditional leadership” should “play a role closest to the people” flies in the face of the recommendation of the 1994 ANC election manifesto, the Reconstruction and Development Programme (RDP). The RDP was emphatic that democratically elected local government structures should play this role. The White Paper thus marks a major shift in government policy, and has grave consequences for the possibility of democracy in rural areas. Similarly, the Constitution has explicitly added development functions to democratically elected local government structures. Yet, the White Paper recommends that traditional authorities should continue performing these tasks. Moreover, the statement that traditional authorities played an important role in development among their communities must be viewed with suspicion. No evidence is adduced to support this statement. Existing evidence shows that traditional authorities were never directly involved in development projects. These projects were implemented by government line-departments. Where traditional authorities acted as a link between government departments and their communities, research has shown that they have often been corrupt. An example is the illegal taxes traditional authorities imposed in the process of land allocation (Ntsebeza 1999).<sup>3</sup>

The issue of the role of traditional authorities was the subject of much discussion and negotiation in the run-up to the second democratic local government election in December 2000. It was instrumental in causing the postponement of announcing the date for the election. The position of the government was, in the run up to the election, still ambivalent. After a series of meetings between the government and traditional authorities, the government made some concessions. The first significant concession was the amendment of the Municipal Structures Act that was successfully rushed through Parliament just before the local government elections. The amendment increases the

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<sup>3</sup> This shift in ANC thinking regarding traditional authorities should be seen against the backdrop of a wider conservative shift in the ANC soon after the 1994 election. The announcement of the Growth, Employment and Redistribution (GEAR) economic policy was the first major expression of this shift (Fine and Padayachee 2001; Aliber 2001; Bond 2000; Marais 1998).



representation of traditional authorities from 10% to 20% of the total number of councillors. Further, traditional authorities would not only be represented at a local government level, but also at a District and, in the case of KwaZulu Natal, Metropolitan level. Traditional authorities, though, would not have the right to vote.

This concession seemed to have encouraged traditional authorities to ask for more. They rejected the 20% increase. They wanted nothing short of amending the Constitution and legislation flowing from it regarding municipalities in rural areas in the former Bantustans. They wanted municipalities to be scrapped in these areas in favour of apartheid era Tribal Authorities as the primary local government structures. Traditional authorities have claimed that the President had promised them, in word and in writing, that their powers would not be tempered with. If anything, they would be increased.<sup>4</sup> On his part, the President has neither denied nor endorsed the traditional authorities claim. This makes it difficult to know the implications of this statement in terms of policy, law and practice.

The manner in which this vexed issue of the role of traditional authorities in a post-1994 democratic South Africa is handled and negotiated is intriguing. In so far as local government issues are concerned, traditional authorities fall under the Department of Provincial and Local Government. In practice, though, traditional authorities do not seem to be recognising this Department. They prefer that the President and the Deputy President handle their matters. For example, traditional authorities have submitted almost all their requests to the Office of the President. They seem to think that the Minister of Provincial and Local Government is not as favourably disposed towards them as the President. Alternatively, this might be a deliberate strategy to pit the President against the Minister.

The response of government was, for the second time in as many months, to present a Bill to parliament to amend the Municipal Structures Act. The Bill did not address the central demand of traditional authorities, the scrapping of municipalities in rural areas in favour of Tribal Authorities. The Bill merely sought to give local government powers to delegate certain powers and functions to traditional authorities. In addition, a range of peripheral duties would be assigned to traditional authorities. Predictably, traditional authorities rejected the Bill and threatened to boycott the 2000 local government election. They also threatened that there would be violence in their areas if their demands were not met. The Bill was subsequently withdrawn on a technicality. It would seem that the President made some undertakings, given that traditional authorities eventually participated in the election.

A much shorter draft amendment of the Municipal Structures Act was published on 20 November 2000 for public comment. It seems clear from this draft amendment that a trade-off is proposed. The government has resisted amending the Constitution regarding municipalities in rural areas. However, the draft amendment to the Municipal Structures Act gives traditional authorities control over the allocation of land in so-called communal areas. According to section 81(1) (a) of the Municipal Structures Second Amendment Bill:

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<sup>4</sup> It has not been possible for me to get a copy of, or to verify this commitment on the part of the President.

Despite anything contained in any other law, a traditional authority observing a system of customary law continues to exist and to exercise powers and perform functions conferred upon it in terms of indigenous law, customs and statutory law, which powers and functions include – (a) the right to administer communal land ....”

The South African Legal Resources Centre has, with justice, objected to this clause. In its submission to the Portfolio Committee on Provincial and Local Government, the Legal Resources Centre has pointed out that the phrase, “Despite anything contained in any other law,” has the effect of overriding “a vast but undeterminable number of laws in a vast but undeterminable number of areas of our national life.” The Legal Resources Centre interpreted the phrase to mean that, “as far as development and the management and use of natural resources are concerned, this Act over-rides the requirements of other critical national laws.”<sup>5</sup> These national laws would include laws on environmental affairs and local government. These laws insist that citizens should be accorded the right to democratic participation in decisions that affect them. At the time of writing this paper, however, the draft amendment had not been discussed in the Portfolio Committee. In this Committee, the public is given an opportunity to make an input before the Bill is presented to Parliament.

### **Decentralisation in rural South Africa: what type?**

It is difficult to neatly classify decentralization in rural South Africa into any of the categories described above: decentralized despotism and democratic/political decentralization. There is a sense in which it could be argued that by insisting on decentralized representative and participatory structures, post-1994 policies on local government and land reform, for example, meet the requirements of political decentralization. Problems, though, arise when the thorny issue of the role, functions and powers of traditional authorities has to be considered, especially given the constitutional recognition of the “institution of traditional leadership.” The key question that needs to be addressed is whether the institution of traditional leadership is compatible with democratic decentralization or not.

The Department of Land Affairs has attempted to marry the two systems by suggesting that there may be examples of a “popular and democratic tribal system.” However, given that no examples of these “tribal systems” are provided, it is not clear what this statement means in late-twentieth-century South Africa. If the “tribal systems” referred to incorporate the “institution of traditional leaders,” I would argue that it is not possible to marry the two systems. The institution of traditional leadership can be democratic in one important respect: the involvement of rural residents in decision-making processes. This was indeed the hallmark of governance in most southern African societies at the advent

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<sup>5</sup> Submission by the Legal Resources Centre to the Portfolio Committee on Provincial and Local Government, 18 January 2001.

of colonialism.<sup>6</sup> However, there is a critical sense in which the institution in South Africa cannot be democratic. In so far as so-called traditional leadership is based on ascribed, hereditary rule, the possibility of rural residents having the freedom to choose which institution and/or individuals should rule them is automatically excluded. Yet, it is precisely this right upon which the South African constitution is based.

It is possible to argue that the proposed accommodation of popular and functioning “tribal systems” was a pragmatic move, especially given the war in mainly rural KwaZulu Natal in the 1980s and 1990s and considering that government does not have the capacity to set up and monitor new structures. Even if this were the case, the issue of the meaning of democracy in post-1994 rural South Africa would stand. More specifically, whether rural residents should continue to be “subjects” after 1994, when their counterparts in urban areas enjoy citizenship rights, would still haunt us. My position is that democracy should, at least, be both participatory and representative, rather than one or the other. Ensuring that rural residents enjoy the right to choose their representatives remains one of the key challenges of the ANC-led, post-1994 government.

It is important to note that the issue of traditional authorities is not the only stumbling block to achieving democratic decentralization in South Africa’s countryside. The system of electing representatives is another problem. During the transition period, the system adopted was proportional representation. After the transition in 2000, this system still applies, although voting for some seats is based on a constituency basis. According to the proportional representation system, rural people vote for political parties. The main problem with this system is that councilors are prone to be primarily accountable to their political parties, or the leadership thereof rather than downwardly accountable to voters. We have seen that “downward accountability” is considered by commentators such as Manor (2001) and Agrawal and Ribot (1999) as an essential element of democratic decentralization.

The ambivalence of government regarding the role of traditional authorities in a democratic dispensation and the system of election thus throw serious doubts about the prospects of democratic decentralization in rural areas. As will be seen in the next section, the unresolved question of the role of traditional authorities in particular creates a state of confusion on the ground, especially as to who has rights over land administration in rural areas between traditional authorities and rural councilors, with potentially grave implications for natural resources.

### **Implications for natural resource**

The majority of rural areas in the former Bantustans were, in the run-up to the 1994 elections, characterized by deep tensions and clashes between traditional authorities and groups in civil society led by residents associations. The most popular civil organisation that emerged from around 1993 was the South African National Civic Organisation

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<sup>6</sup> It should be pointed out, though, that only men participated in these gatherings (*iimbizo/pitso/kgotla*). Further, these systems differed, and some were more autocratic than others (Ntsebeza 1999).

(SANCO). At the centre of these struggles was control over land, in particular, land allocation. In many rural areas residents associations led by SANCO took over the land allocation functions from traditional authorities. By 1994, there was a breakdown in land administration, including the issue of PTOs, in many rural areas.

After the 1995/6 local government elections, these tensions manifested themselves as between elected rural councillors and SANCO on the one hand, and traditional authorities, on the other hand. The majority of rural councillors were drawn from SANCO activists. The confusion as to whose function it was to allocate land continued unabated. This was particularly the case in areas where civic structures and traditional authorities were almost equally represented in terms of popular support. There are two levels at which this dilemma could be understood and explained: the law and practice. The laws governing the allocation of land in the rural areas of the former Bantustans have not been repealed. In this regard, the South African constitution is clear that existing laws will remain in force until such time that they have been replaced by appropriate legislation. We have seen above that the processes of establishing legislation that would clarify questions such as land allocation in post-1994 rural South Africa have not borne any fruit. This then means that as far as the legal position is concerned, apartheid laws regarding allocation of land in rural areas remain in force.

Reality on the ground, though, is different. Most rural residents, including rural councillors themselves, and indeed many South Africans, thought that land allocation was to be one of the responsibilities of the newly elected councillors. After all, control over land was the cardinal issue in rural struggles in the early- to mid-1990s. The perception of most rural residents was that all the functions that were performed by traditional authorities, including land allocation, would be taken over by elected councillors. These residents and rural councillors in particular, got a rude shock when it turned out that the old apartheid laws were still in place. Above all, government officials still use, with minor adjustments, the apartheid procedure and do not recognise elected councillors as having the powers to allocate land. The extent of the above confusion, the dilemma of rural residents and the role of the officials of government, are best captured in the following response on the question as to who is responsible for land allocation in areas falling under the jurisdiction of traditional authorities. One resident stated:

This is the reason why we still use chiefs. Rural councilors run in circles. This makes us a laughing stock and divides us. People will tell you: "Go to your rural councilor, you won't succeed." You end up going to the chief, even if you did not want to. At the magistrate's offices they ask you about the stamp [of the Tribal Authority]. If you do not have the stamp they will say: "Don't waste our time." The land issue is complex. There is a struggle between TrepCs [elected rural councilors] and the headman. The former brought electricity and telephones, but land is in the hands of chiefs. You are forced to be flexible (*kufuneka ubemvoco*) otherwise you won't get your benefits. When we wanted land for pre-schools we were told to go to the headman, something that made the headman boastful. Sometimes you may have spoken badly about the headman, and you end up bowing down to it, as it is often necessary that you get what you want. With

chiefs and headmen it takes a few days to get what you want, whereas with rural councilors it takes months, and even then you end up not succeeding.<sup>7</sup>

The above reflects experiences in one administrative area where inhabitants were divided between supporters of the headman, on the one hand, and civic structures and rural councilors, on the other. In this area, civic structures under the auspices of SANCO demarcated land and allocated plots to its supporters. Those who were allocated plots, however, were not granted PTOs as the government officials did not recognize their process. It is partly this dilemma that the informant was referring to.<sup>8</sup>

The above quotation also says something about the performance of rural councilors. It is quite clear from interviews with many rural inhabitants across gender and generation that there was a lot of expectation that a developmental local government would transform their lives. By the end of the transition period in 2000, though, rural councilors had lost the confidence of ordinary rural residents who initially supported them. The main cause of the disgruntlement seems to have been lack of delivery of even basic services such as water and road maintenance. There are a number of reasons why performance has been poor, especially lack of adequate support from government in the form of allowances that could attract capable and skilled people, and a budget that could provide capacity building for councilors and finance essential services.<sup>9</sup> The lack of skill among councilors became evident when IDPs, so critical to developmental local government, had to be prepared. In many parts of the countryside, the IDP process was either not started, or never finalised. Where it was “completed,” consultants were the driving force behind the process and there was barely any participation of communities as required by the constitution and legislation.

Implications for natural resource management in such a state of confusion and lack of capacity outlined above are grave. In many areas, common resources such as grazing land, sand, grass, and in the case of the Wild Coast, sea resources, have been reduced to open access. Most of these resources are harvested without any control and limitations. Often these resources are controlled by the powerful, be it traditional authorities, councilors or warlords. Rotational grazing that used to be practiced is no longer in force.

## **Conclusion**

The focus of this paper has been on the institutional arrangements that have been put in place to give effect to decentralization and its impact on natural resource management in the rural areas of the old Transkei, South Africa. Proceeding from the basis that post-1994 South Africa is moving from an authoritarian apartheid regime to a post-1994 democracy that is strongly influenced by liberal democratic values that include representative government, the paper has employed two key concepts to analyse decentralization in rural South Africa: decentralized despotism (Mandani 1996) and democratic decentralization (Manor 2001; Agrawal and Ribot 1999).

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<sup>7</sup> Interview with Mr Jama, Cala, 9 September 2000.

<sup>8</sup> There are many similar cases.

<sup>9</sup> For details, see Ntsebeza 2001; 2000; 1999.

It is not possible to assess the impact of democratic decentralization in rural South Africa for the simple reason that decentralization in this sector is at best incomplete. In the area of land administration, the law that would establish a post-1994 system of land ownership and administration has not, after over seven years, been promulgated. Although laws exist to establish developmental local government, the full implementation thereof has yet to happen. I have argued that the major stumbling block is the unresolved question of the roles, powers and functions of traditional authorities in land and local government reform. Democratic decentralization, with its insistence on elected representatives, is incompatible with the recognition of a hereditary institution of traditional leadership. Apart from the problem posed by the role of traditional authorities, this paper has argued that another problem is the lack of adequate government support for the newly established democratic structures.

Both these problems have led to a state of confusion with potentially disastrous consequences for natural resources management and environmental protection. The absence of rules, formal and informal, in many rural areas in the Eastern Cape, with regard to grazing, harvesting of natural resources, raises serious questions about the future of these resources and impact on the environment.

### **Recommendations**

The post-1994 ANC-led government must resolve the question of roles, functions and powers of traditional authorities in a democracy, taking into account the incompatibility of democratic decentralization and hereditary rule that underlines traditional authority rule. As already pointed out, the central issue here is whether rural residents should continue to be subjects, when their counterparts in urban areas enjoy full rights of citizens. Ensuring that rural residents enjoy the right to choose their own representatives and leaders is thus a key challenge. In this regard, the following recommendations are made:

- Land rights should vest in the people who are holders of the land rights and not in institutions, be it tribal or local authorities.
- Where the rights to be confirmed exist on a group basis, the rights holders must have a choice about the system that will administer their land on a day-to-day basis. This will ensure that the system is directly accountable to the rights holders.
- The basic human rights of all members must be protected, including the right to democratic decision-making processes and equality.
- Existing institutions should only be used where it has been established that they enjoy the support of rural residents.
- Government must establish dedicated structures to ensure effective and efficient operationalisation of its tenure policies and laws.
- Adequate financial resources should be made available to ensure that newly created democratic structures in local government and land reform are properly trained and assisted in providing basic services.

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