

## **TENURE REFORM BACK ON THE AGENDA?**

***Dr Edward Lahiff***

***Senior Lecturer at the Programme for Land and Agrarian  
Studies, University of the Western Cape***

The National Land Tenure Conference, hosted by the Department of Land Affairs (DLA) in Durban last week, marked a watershed in the debate around tenure reform in South Africa. While the government's land reform policies have attracted much negative criticism of late – particularly for the poor pace of delivery and the failure to spend the allocated budgets – tenure reform has, up to now, been the most neglected area of all. Although little of substance was achieved at the conference, the fact that it was held at all, and attracted lively input from across the social and political spectrum, suggests that this thorny issue is at last being taken seriously.

In the communal areas of the former homelands, constituting approximately 13% of the national territory and home to close to one-third of the population, the system of land administration created under apartheid is generally in chaos. There is widespread uncertainty around the validity of 'Permission to Occupy' certificates and around who may be considered the real owners of the land – the rural people themselves who use and occupy the land, the traditional leaders who allocate land, the elected local councils who oversee development or the Minister of Land Affairs who holds the title deeds. This has created insurmountable obstacles to both locals and outsiders wishing to invest on communal land, and left ordinary occupiers at the mercy of sometimes-unscrupulous traditional leaders.

On the commercial farms, the security of tenure of an estimated eight million farm workers, ex-workers and their dependents is equally precarious. Despite the introduction of legislation such as the Extension of Security of Tenure Act (ESTA) and the Labour Tenants Act (LTA), farm workers and dwellers continue to face evictions and have seen little improvement in living conditions. Where improvements have occurred, it has, with a few notable exceptions, meant occupiers leaving the commercial farms where many have lived for generations and moving to 'RDP' houses in poorly-serviced townships far from their places of employment.

The Durban conference sought to tackle the problems of both communal areas and commercial farms, amidst much jockeying for political position. Traditional leaders, having effectively lost the battle around local government reform, seem determined to dig in their heels over the control of communal land, and would appear to have the support of the Minister, Thoko Didiza, and senior officials of the DLA. While there is widespread acceptance that traditional authorities will continue to have a role in land matters, the critical issue is that of accountability and democracy – should 'custom' and 'tradition' give chiefs automatic power over land matters in communal areas, regardless of the opinions of their 'subjects', or should traditional leaders have to submit themselves to the will of the people? Given a choice, it is likely that many rural communities would opt to give traditional leaders a role in land administration, and continue to allocate and use land along customary lines. However, a sizable number of chiefs who do not enjoy the support of 'their' communities, or who were imposed by the apartheid government, are likely to be sidelined by such a process.

It was widely expected that the DLA would use the opportunity of the Durban conference to unveil the draft Land Rights Bill on which it has been working for the past four years. Indeed, the Minister is on record as promising to table such a bill before the end of 2001. Copies of a *Communal Land Rights Bill (Third Draft)* were circulated by officials in recent weeks, but it became clear during the

conference that this did not have the approval of the Department or the Minister and delegates were reduced to debating a bill which few of them had seen. It was not surprising, therefore, that a key demand of many of the groups attending the conference was for an accelerated process of public consultation that would result in an officially-approved draft bill within a reasonable timeframe.

With regard to the situation on commercial farms, there was general agreement that the rights of farm residents were not being adequately protected at present. Among the solutions proposed were legislative changes that would strengthen existing laws and a moratorium on farm evictions until effective protection for the rights of farm-dwellers is in place. It is clear, however, that many of the current problems lie not with the law itself but with the manner in which it is being implemented. The SAPS, magistrates and public prosecutors came in for particular criticism over their failure to protect the rights of farm dwellers and for alleged collusion with landowners. DLA itself was also criticised for failing to provide adequate resources for enforcement of the law and improving the lives of farm residents.

Whether on commercial farms or in the communal areas of the former homelands, the insecure land rights bequeathed by apartheid are in desperate need of reform. This will require robust political leadership that can take on the vested interests of traditional leaders and commercial farmers alike. For rights to become real, they cannot exist on paper alone, but require the allocation of substantial resources for implementation and enforcement. If tenure reform is to lead to real improvements in the livelihoods of the rural poor it must be integrated with local economic development and provision of services in previously neglected areas. Securing land rights where people currently reside is a good start, but granting real rights to all those in need will also require substantial redistribution of land currently in the hands of the privileged minority. The Department of Land Affairs has shown itself willing to open up debate on these important issues. Hopefully the Durban conference will be followed by a lively

process of public consultation and debate leading to concrete measures to safeguard the rights of some of our poorest and most marginalized communities.