



The Failed Promise of Tenure Security: Customary Land Rights and Dispossession Land Conference 2022

Press Release

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Citizens of rural communities across the country who are fighting for their land rights are outraged at the government's treatment of them - likening it to apartheid and colonialism.

That was just one of the key points that came out from the [land conference](#) titled *The Failed Promise of Tenure Security: Customary Land Rights and Dispossession* ([see programme](#)). The conference took place over three days from 17-19 August in KwaZulu-Natal, Gauteng and the Eastern Cape, while approximately 450 people participated online.

Over the past three days we, as rural residents, and leaders from across the country, our assessment is that the state is dysfunctional and corrupt and cannot be trusted to enact progressive laws, let alone to implement existing laws. The government and officials tasked with implementation are not only unable to help people to defend their land rights, but often either collude with chiefs and companies to dispossess people. We cannot fix our problems by talking to the state. This is what we have been doing for more than a quarter of a century since the dawn of democracy. This democracy is not working for us if the government does not listen. It has not listened in Mokopane in Limpopo where Anglo and other mining companies have opted to meet only with traditional leaders and activists have been threatened and imprisoned for protecting their land rights. It has not listened in Gwatyu in the Eastern Cape where the former farm dwellers are victims of repeated violations on the farms they have occupied for generations whilst the state would prefer to lease out their land to others from under their feet. It has not listened at Matshansundu in KwaZulu-Natal where women are forced out of their homes at night in fear of being attacked for opposing mining on their land.

Not a commodity

“We don’t see land as a commodity, we don’t see land as something that can be sold”, said Nonhle Mbuthuma of the Amadiba Crisis Committee at Xolobeni, Eastern Cape.

Mbuthuma, a human rights activist, was speaking on one of the prevailing themes of the conference - the concept of government officials and traditional leaders selling land without addressing the international legal principle of free, prior and informed consent (FPIC). She said the point of FPIC is for indigenous communities to be able to say no and have veto power.

Communal Land Tenure Bill

Zenande Booi, the executive director at the Center on Race, Law and Justice at Fordham University in the USA (formerly at the Land and Accountability Research Centre at UCT) said the 2017 Bill did not realise the hopes of the people. There is still no comprehensive legal framework in existence, as per the requirement in section 25(6) of the Constitution.

“The legislature is not dealing with the reality that exists on the ground. Nothing in CLTB will provide any recourse to communities,” Booi said.

Ingonyama Trust

In the Ingonyama Trust case of 2021, the Trust’s imposition of leases on the people who already own the land was ruled to be illegal. More than a year later, people want to be reimbursed for the rent they were forced to pay to the Trust to remain on their own customary land. We will defend this victory and the travesty of the creation of this Trust which acts as if it is the owner of our own customary land.

Expropriation Bill

Constance Mogale, land activist and national coordinator of the Alliance for Rural Democracy. Rural Democracy, said that any laws which deal with governance must be applicable to the whole country. People living in the former Bantustans already experience expropriation without compensation at the hands of chiefs, companies and the government. “The Expropriation Bill will be debated soon, and we must ensure that customary land rights of people are protected in this Bill,” Mogale said.

Women and land

Women are at the forefront of struggles to defend family and community land in the ‘communal areas’ of South Africa and gave testimony to the violence and intimidation they face when doing so, and when challenging chiefs, companies and government officials.

Learning from the region

From 1990-2017, 32 new land laws were introduced across Sub-Saharan Africa, many of them focused on formalising customary land rights. In theory, these laws are progressive, but in practice, women are disproportionately discriminated against when it comes to accessing communal land. Researchers from the Institute for Poverty, Land and Agrarian Studies (PLAAS) Phillan Zamchiya and Chilombo Musa shared their research findings from Mozambique, Zambia, Zimbabwe and South Africa.

Titling is not the answer for women

In South Africa, as elsewhere in the region, the commodification of communal land is becoming common. Traditional land is being sold by chiefs. Women who are connected to local elites tend to benefit from the registration of customary land holding certificates. Violence perpetrated against women and 'sextortion' against women is linked to access to land. In a study by PLAAS, 65% of our respondents were asked to pay exorbitant fees in order to be able to register land. Women said they cannot access registration. What women say they prefer is to live on communal land - but patriarchal practices are an excluding factor. There need to be measures taken to combat these issues that stem from patriarchy within customary systems - rather than replacing customary systems with formalisation.

Outcomes of the conference

1. **Solidarity and connection across the country.** When we come together like this from different places, we realise that our struggles are shared by so many people in so many different places in South Africa. That makes such a difference in our own struggle and understanding. And it should mean that we get stronger as we stand together.
2. **Land cannot be reduced to a commodity:** "We don't see land as a commodity, we don't see land as something that can be sold", said Nonhle Mbuthuma of the Amadiba Crisis Committee at Xolobeni. The whole point of the international legal principle of "free, prior and informed consent" (FPIC) is for indigenous communities to be able to say NO. It should not be procedural or just about consultation. It is a veto.
3. **Inclusive laws.** "Laws that are made for traditional leaders and traditional governance, land and mining must be applied across the country, not only to Black people who were dumped in the former bantustans." stated by Constance Mogale, ARD National Coordinator.
4. **We are still colonised:** We are still not free; we remain colonised. As long as you do not have the same choices and rights because of who you are and where you were born, we are still colonial.
5. **Nothing about us without us.** Law-making must start with communities. The first principle is to understand what is happening on the ground and work from the bottom up.
6. **Land dispossession still continues.** It is not a historical problem. It is a present-day problem. "This disregard, disrespect and lack of protection of [land] rights is tantamount to dispossession" as stated by Sindiso Mnisi-Weeks.
7. **Our struggle is everyone's struggle:** Dispossession is not only about physical land, but about the resources that go with it, about the spiritual and social loss etc. We acknowledge that the land struggle is informed by other struggles for governing natural resources: land struggles are also resources struggles, climate struggles, democratic struggles.
8. **Dispossession happens in many different ways:** by the state through their actions or their laws and policies, by mining companies, by big agribusinesses, by municipalities, by conservation, by conflict with other communities equally desperate for land.

9. **What gives someone the right to transact our land rights?** Those who sit in positions of power - in government departments, in big companies, in the municipalities - we ask you: how would you feel if your community in your suburb in the city held a meeting and the people there voted that you must lose your home? Can the chairperson of a community committee, or a local councillor, decide that you will be removed and you will be compensated at a level someone else will decide? The fact that rural African people in this country continue to be treated as subjects of unelected traditional leaders is rooted in the belief that they are not worthy of dignity, self-determination and autonomy.
10. **We are already the owners:** Property rights don't need to be supervised by the government or by a chief. Communities and citizens should be treated as owners.

The answers are not straightforward. We need a lot more debate about the place of customary law within South African law. There is a persistent fear that customary law will continue to be distorted when it comes into contact with and is interpreted by the common law - and by courts. We need to promote customary law while at the same time rejecting the discriminatory practices that persist in many places, in particular with regard to women.

Action Plan

We need a broad-based social movement and divert resources there rather than focusing only on tinkering with policy at a national level. That will also facilitate writing laws from below.

1. **Khoi and San:** We need to talk to the Khoi and the San, as fellow travellers in solidarity. We should not be divided but see our struggles for land and against the KhoiSan and Traditional Leadership Act as a joint struggle.
2. **A campaign:** We will be building towards one massive campaign, with training and support for activists and strategic alliances with other social movements.
3. **We will follow the money:** We will pursue shareholders within and beyond SA, to target those who are passively benefitting from our land dispossession. This includes mining companies, pension funds and companies on stock exchanges - and we will engage them in international platforms to show what is being done.

Calls for solidarity

We call for solidarity and support from across society to join us.

We call on lawyers in South Africa, and specifically law societies in the provinces as well as Legal Aid South Africa: we need more lawyers who understand these issues of land and custom. We want to have a cadre of *pro bono lawyers* who will be our allies and readily take on

matters that affect our land rights. We want to engage with the major law firms and request them to make public what work they are doing pro bono for us, the people of the Bantustans.

We call on civil society and labour movement allies across society: We will task a delegation to move from this conference to meet key stakeholders in society, especially ones that we want to build bridges and alliances with, like in the trade union movement, the social cluster at NEDLAC, climate change organisations, poverty and land organisations such as Abahlali base Mjondolo and other urban as well as rural movements. A delegation to go and meet key stakeholders in society that we want to build bridges and alliances with trade union movements; the social cluster at NEDLAC; climate movement; social justice organisations; urban movements.

We call on academics and other researchers: We need a cadre of researchers to support struggles. People expressed that they could see a clear difference between ‘academics’ who write at a distance and those who come to the people to understand what is happening on the ground. There is still room for improvement and we need the training and support of people to do research with us and for us, to support our struggles against those in power.

A call to government

While we do not expect the government to hear us, just as they did not hear us before, we will say again, and for the record, that to us the Constitution says we have land tenure rights and we know we have these rights and yet the laws and systems do not allow us to enjoy these rights. We therefore want the government and parliament also to go back to the High Level Panel Report of 2017 and the Presidential Advisory Panel Report of 2019.

We want Parliament to make the law on informal land rights permanent. The Interim Protection of Informal Land Rights Act (IPILRA) was passed in 1996 as a holding mechanism for one year. It is only very basic. We want it to be permanent and also strengthened. Even the other tenure laws like the Extension of Security of Tenure Act (ESTA), in terms of S25(6) law, provides more - and even that is a failure. Why not IPILRA? We need to fix tenure across the *whole country*.

We demand for law making to start with the people. We are always rushing to oppose laws when the drafts come out - and government. We will now focus on writing our own laws proactively in the way we want. We want the government to listen to our demands in the Stop the Bantustan Bills campaign. <https://stopthebantustanbills.org>

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Land Conference host institutions

- [Land & Accountability Research Centre \(LARC\) at the University of Cape Town](#)
- [Alliance For Rural Democracy \(ARD\)](#)
- [Society and Work Programme \(SWOP\) at the University of the Witwatersrand](#)
- [Legal Resources Centre \(LRC\)](#)
- [Institute for Poverty, Land and Agrarian Studies \(PLAAS\) at the University of the Western Cape](#)

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