

## Book Review

Claassens, A. and B. Cousins (eds.) 2009. *Land, Power & Custom: Controversies generated by South Africa's Communal Land Rights Act*. Athens, OH: Ohio University Press.

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Given that land dispossession of Africans was central to colonialism, African struggles against colonialism focused on loss of land as a form and symbol of conquest. South Africa, like many other postcolonial African countries, has invested financial and political capital in the restoration of land rights to societies whose rights were violated. Since 1994 South African land reform has involved land redistribution, restitution and tenure reform. Much has been done in terms of policy and legislation concerning, as well as written about, all three aspects of land reform over the last 14 years since the end of apartheid. Yet the edited volume by Claassens and Cousins is arguably the first comprehensive, treatment of the land tenure reform aspect. Written by 13 contributors in 14 chapters, plus a very informative foreword and an accompanying CD, the book arises out of the Traditional Leadership and Governance Framework Act 41 of 2004 and the Communal Land Rights Act 11 of 2004; affecting over 21 million people living in the former Bantustans of the country. During apartheid these areas, which comprised about 13 percent of the country, is where traditional authorities played key roles in local governance, including land administration. The traditional authorities have since the democratic elections of 1994 fought against the system of elected local government in rural areas, demanding a framework that would allow them to continue being in control of rural local governance, including land allocation.

The book draws primarily on work done in preparation for a legal challenge against the state by four communities – Kalkfontein, Dixie, Mayaeyane and Makuleke. These communities argue that the Communal Land Rights Act 11 of 2004 is unconstitutional and that it will likely render land rights of rural

communities, especially vulnerable groups such as women, insecure. At issue is the Communal Land Rights Act's strengthening of the power that traditional authorities have on the land. Contributors in this book criticize the Act, arguing that, through vesting power in centralized 'traditional councils', it reinforces the tribal authority system that bolstered apartheid in rural areas, and thereby bypass all other democratic structures of accountability (e.g. village councils and development committees).

The specific chapters are based on research findings and expert witnesses' accounts in support of the applicant communities. The contributions range from providing background information about the historical dynamics of African communal land tenure systems, traditional authority systems, and land tenure legislation, to specific legal flaws of, and potential problems that could result from the implementation of the Communal Land Rights Act 11 of 2004. Just about all the chapters are well-written and extremely informative. The book will without doubt serve as an excellent resource for scholars and policy makers of land reform and rural local governance systems throughout Africa. While awkward to read in tandem with the printed manuscript, the CD containing state responses and opposing expert witness statements to the legal challenge is a novel idea that has potential to meet one of the aims of the book, which is to 'promote public debate' about the Communal Land Rights Act. However, given technological dynamics and accessibility issues, the long-term utility of the CD to the wider public remains a question.

There are two issues raised in the book that I feel deserve special discussion in this review. These form the basis for my slight disappointment with what I feel has not been covered sufficiently in the volume. First, in several chapters some authors make a point of mentioning that the current Communal Land Rights Act is not based on an earlier Bill, which they characterize as good, which was drawn in 1999, but on a later one drawn from 2001 and was apparently flawed. The second issue concerns the excellent point-by-point summary of post-apartheid land policy dilemmas, discussed in chapter 1 by Cousins. Cousins asks appropriate questions that constitute policy dilemmas for law-makers, including where to vest rights to land; which level of community should have primary decision-making powers in relation to land; how to create local land administration institutions with a strongly democratic character; how tenure reform can contribute to social and economic development and most importantly, how to provide for secure land rights in the short and medium term given great complexity and limited government capacity. Cousins and others argue that the current Communal Land Rights Act does not quite provide adequate responses to these questions. Thus, my first slight disappointment with the volume is the fact that, despite praising — by implication — the Bill from 1999, the authors have not discussed it extensively. In particular, they have not provided a clear hint that it could have addressed all the law-maker's dilemma mentioned above. It would have been interesting to know whether the earlier Bill could have successfully mitigated limited government

capacity, as well as ensured that tenure reform contributes to social and economic development.

My second slight disappointment with the volume concerns process. While the volume makes it clear that the applicant communities approached legal representatives with their intentions to challenge the state, the details about the nature and origins of the research that make up the volume are not made clear. I argue that had these issues been clarified, it would have provided context for a rather dismissive statement (see CD) by Dr Sibanda, on behalf of the Minister of Land Affairs, in their response, when he claims 'the aim of the application is an attack on the traditional leadership by a small group of dissident intellectuals and NGOs who use the applicants and the Communal Land Rights Act as a means of attacking one of the pillars of customary law, namely the institution of traditional leadership'.

Despite these two queries, I strongly recommend this book. Very few volumes have interrogated land reform legislation as this volume has done. If the CD can last long enough, the combination of the book and the accompanying CD could serve a powerful historical read.