

# COMMUNAL LAND INDABA

30 MAY 2015

## Commission 2: Communal Land Governance and Institutional Arrangements



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**REPUBLIC OF SOUTH AFRICA**

# PART 1: BROAD OVERVIEW



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# THEME 1: CPAs & TAs - Differing Scenarios and Related Issues

- Our discussions were informed by the Wagon Wheel Model
- Issue of Variance: We have a number of scenarios that define governance relationships in communal areas.
- For instance, Co-existence of CPA and TA on same land: The CPA, whose land was restored in 2008, is working in harmony with the TA.
- In cases where CPAs and TA work together, the TA will deal with land administration, and the CPA deals with issues of development
- We also have cases where CPAs deals with land administration in context where TAs were present
- In case of KZN, the land is held by the ITB, and the role of Amakhosi is to manage the allocation of the land



# THEME 1: CPAs & TAs - Differing Scenarios and Related Issues

- SANCO body, TA and CPA all exist in the same space.
  - CSO and municipal government are both allocating land in collusion with private sector actors for the purposes of developing a mall complex.
  - Numerous institutions with various roles are operating in the same space, with sometimes conflicting relationships and processes;
  - Role of communities associated with the different structures is unclear;
  - Non-standard financial implications as a result of multiple institutions;
  - Some community members want to be part of municipality and SANCO, but not TC.



# THEME 1 (cont'd)

- Local municipality is delivering services to residents of unorganised TRANCRAA community lacking any legal entity (not yet gazetted).
  - People do not want to pay for services due to questions regarding the legal authority of local government structure;
  - Community members report that by-laws are ineffective;
  - What is the role of the municipality?
- There is chaotic land administration in certain areas, in which land is being sold to powerful foreign/ outside without community consultation.
- Illegal invasions of state land by outsiders is taking place.



# THEME 1 (cont'd)

- Lack of clarity surrounding authority over state land sometimes results in land invasions by outsiders.
- Governance challenges with respect to church land: Clarifying roles between municipality, traditional structures and community structures. E.g. the allocation of grave sites on the church land.
- Tackling the myriad of challenges concerning communal land and reaching consensus on roles and rules to guide interventions is an extremely complex task.
- What is the best vehicle to facilitate the clarity and effectiveness regarding institutional roles and relationships?



# THEME 2: Institutional Relationships – Issues /Concerns Raised

- In some cases, the multiple institutions operating in communal spaces (CPAs, TCs, Municipalities, CSOs, ITB etc.) leads to a multitude of legal discrepancies and conflicts.
- Concerning the issue of real rights in land, how will rights be secured and enforced (especially when title deeds are transferred)? Who can rights holders turn to (recourse) in case of rights being infringed upon?
- How will land rights be registered?
- In the case of the Makuleke community, these Communal Area residents were able to redefine their social and geographic boundaries.
- The role of CSOs is clear, including to facilitate development, to manage and secure the rights of households, and to interface with Government.



## THEME 2 (cont'd)

- The critical challenge in addressing the land question is to ensure a sustainable future.
- The most fertile land is being allocated by chiefs to people outside the community. The allocation of fertile agricultural land for residential purposes without due regard to land use potential (SPLUMA)
- If CPAs are accountable to Parliament via the DRDLR (DG), who do TAs account to?
- The resolution of disputes between communities and TA often reaches a deadlock, and result in individuals and households being victimised by the TA.
- How will the unequal power balance between Government agencies and communities be addressed? Sometimes, government agencies decisions do potentially infringe on community decisions.



## THEME 2 (cont'd)

- TCs often do not comply with the TLGF Act, especially concerning the 60/40 % representation. How will Government improve compliance with the law going forward?



# PART 2: STAKEHOLDER PROPOSALS ADVANCED IN COMMISSION 2



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# Stakeholder Proposals

- A land tribunal is needed to resolve disputes involving communal land.
- Considering the varying scenarios and arrangements, a one-size-fits-all approach is inappropriate.
- Communities and people must be given choice of landholding structures, with interventions tailored to their needs and social norms.
- The DRDLR must build the capacity to monitor land administration by outer-boundary title holders such as CPAs.
- We need to strike a balance between individual rights and the rights of groups.
- The issue of moral authority vs. power needs to be addressed.
- There must be clearly defined roles and responsibilities for all actors.



# Stakeholder Proposals (cont'd)

- Relevant local authorities (CPAs, TAs, municipalities) should all be involved in land and economic development.
- Measures that enhance social cohesion are key.
- CoGTA must ensure there is accountability amongst the various layers of traditional leadership in order for these structures to be accredited.
- Recognition of households land rights from “bottom up”
- Equal representation of women (especially within land administration structures) is crucial for effective communal land reform.
- Traditional Councils should only deal with minor issues falling within the inner boundaries of their jurisdictions.



# Stakeholder Proposals (cont'd)

- Municipalities must take on the role of service providers and land governance structures (e.g. TA, CPA) must be responsible for land allocation.
- CPAs must be capacitated through both physical and human resource provision by the state.
- A hybrid model should be pursued, in which TAs, CPAs, local governments and communities all have a role to play.
- In areas with TAs, there needs to be democratisation of these institutions with maximum participation of the people.
- In cases where there no TAs, Land governance committees should be established, where the will of the people takes centre stage.
- As recommended CoGTA, DRDLR, SALGA, a ministerial task team must be established to go and investigate and mediate immediate conflict
- In cases where TAs exist but the community has chosen another land governance structure such as CPA, this choice must be respected.
- The political affiliations of different institutions drive land administration. This divide must be addressed.



# Stakeholder Proposals (cont'd)

- Institutional capacity must be enhanced, with effective monitoring and evaluation mechanisms put in place, and accountability of structures ensured.
- Aggrieved parties must be protected and provided with recourse for infringement of their rights.
- Education and advocacy of both communities and structures is crucial to realising policy objectives, especially by raising awareness of democratic processes involved in the new land dispensation.
- Communities must be assisted in arriving at decisions collectively, agree on their preferred landholding structure, and the different roles and responsibilities of the various actors.
- There should be clear delineation of roles/ responsibilities, with TAs, CPAs etc. acting within the bounds of the designated functions.



# Stakeholder Proposals (cont'd)

- There should be a mechanism in place for the adjudication and resolution of local issues without going straight to the Courts.
- Inclusive dispute resolution mechanisms are needed, with clear legislative guidelines on how to resolve disputes. Guidelines should be premised on the Constitution, strengthen individual rights (households) and transform TCs.
- There must be a balance of power, with all key agencies identified and their respective powers clearly stipulated.
- All development arrangements occurring without the boundaries of land administered by TAs must be approved by the relevant TC.
- In areas without TAs, specialised structures should be created to oversee land development.



# Stakeholder Proposals (cont'd)

- A task team should be established within the DRDLR that receives and investigates complaints against TCs, CPAs or municipal councilors.
- As land is a national competence, the DRDLR must play an oversight role, with the Minister assuming full control over all land issues.
- Land committees (created delegated authority from the Minister) should be empowered to deal with all land issues, including adjudication of disputes and development-related initiatives.
- That state must ensure compliance of TCs with the TLGFA.
- In areas with legitimate TCs that are in full compliance with the TLGFA, these structures should serve as the primary governance structures to the extent that they advance transformation goals and adhere to constitutional principles.



# Stakeholder Proposals (cont'd)

- Where CPAs and TAs co-exist in harmony, they must be assisted to work together to arrive at optimal outcomes. CPAs must respect customary law and TAs must adhere to the CPA's constitution.
- Reforms need to acknowledge, strengthen and protect individual rights to land.
- The principle of choice is critical in this process.
- In areas with CPAs and TCs, these structures must enter into Service Level Agreements (SLAs) that are in alignment with municipal IDPs.
- Communities need assistance in negotiating development arrangements and fair compensation in which their wealth is protected and they are primary beneficiaries of such developments.



# Stakeholder Proposals (cont'd)

- A Technical Support Facility should be developed and established to:
  - Promote social cohesion;
  - Provide advice on land deals/ transactions;
  - Build capacity in the community (especially amongst the youth);
  - Play a financial management role; and,
  - Provide legal aid to rural residents.
- The protection of land claimants against interference of TC e.g. Tladi ya Kgatlane versus Kgosi Matlala in Limpopo.
- Cooperation between community governance structures in which they both share and separate roles will ensure success of reforms.
- Reforms must 'entrench the will of the people'.



# Stakeholder Proposals (cont'd)

- We should study existing CPAs to extract best practices and models.
- For claim free land within the TA boundary, land development should be led by communities, who must approach the TC with plans. After giving approval, the TC must then approach the Department for technical support (e.g. surveying). An agreement is then signed with the TC for common benefit.
- However, the TC must not suppress community aspirations if household members have come to a decision about the development.



# Summary: Stakeholder Proposals (cont'd)

1. People must be able to democratically choose the land governance structure and development. Support will need to be provided for an area oversight committee that deepens and further rationalises community and economic development.
2. The legislation that DRDLR is developing must hold that land governance structure to account
3. Promoting cooperation amongst different stakeholders and intervening to prevent abuse of power by other stakeholders



# Thank You



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