

# COMMUNAL LAND INDABA

## Summary of Recommendations

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rural development  
& land reform

Department:  
Rural Development and Land Reform  
**REPUBLIC OF SOUTH AFRICA**

# POLICY ISSUES

- Meaningful and substantive rights, state to consider broad spectrum of land rights
- No agreement to exceed 10yr lease with the potential investor
- No legislation/policy for people without people – consultation is key
- Practical mechanisms must be put in place to prevent elites or minorities from appropriating the resources and benefits that belong to the majority
- Reconsideration of 1ha/per household model for diversity
- There should be rights to opt in, in a particular policy and to opt out
- There should be no downgrading of (land) rights – i.e. real and substantive rights of people
- Serious cognizance of the land rights of Khoisan communities
- The state should consider a broad spectrum of tenure systems on communal land.
- Government needs to address boundaries that were created by colonial and apartheid legislation by Black Administration Act of 1927 and Black Authorities Act of 1951. Land enquiry will have to entail issue of determination of boundaries.

# POLICY ISSUES

- The DRDLR, please engage COGTA on the issue of speeding up resolution of question of legitimate and illegitimate traditional leaders.
- Land belonging to communities and owners who have title or otherwise that is still being held in Trust by the government needs to be handed back to the owners for their self-government.
- There should be a moratorium on the State doing anything or granting any use of the State-owned land that is to be restored to its rightful owners (rather than administering it however it pleases, and not giving the rightful owners the benefit of the land use).
- There should be rezoning of areas, that there shouldn't be residential allocation in wetlands, for instance, or because it is disturbing services, for example.
- Government needs to make sure that Trusts, CPAs and Traditional Authorities are NOT able to sell land without meaningfully and effectively consulting the community.

# POLICY ISSUES

- More land should be allocated to women – giving land to women is safer and women produce 80% of the food in Africa.
- Title deeds – people should have title deeds with legal content that can be recognized by the bank – for security and can be used as collateral;
- Strengthen the existing customary rights without necessarily having to obtain a title deed to enable access to development;
- Alternative access to development funding without necessarily using commercial banks;
- Potential for conflict in the case of individual household title deed. An example was given that should title deeds be given, and someone a loan that they can't repay, the bank should take the house and leave the land;
- There was a strong sense that individual household title deed in communal land threatens to dilute the sense of community;
- The rights should be capable of being bequeathed, e.g. through wills.
- Policy should ensure that there's equitable benefit for all the households in communal land.

# POLICY ISSUES

- 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.
- Promoting cooperation amongst different stakeholders and intervening to prevent abuse of power by other stakeholders
- 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 issue of moral authority vs. power needs to be addressed.
- 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.

# CAPACITY DEVELOPMENT/ EMPOWERMENT

- Device support programme that will nurture CPAs – to eliminate future frictions
- CPAs must drive business to create employment and wealth
- Adaptation of computing systems for monitoring and evaluation of progress.
- Devise support programmes for structures – consultation eliminates friction where there is overlapping of interests between CPAs & Traditional Leaders
- Deepen democracy so that people participate, and not leave everything to TL, TL should consult people
- Government must also capacitate these institutions so that they know what they are signing when entering into contracts regarding community-owned land.
- CPAs must also be capacitated to adhere to CPA Act, their constitutions and not sign away rights of community without knowing.
- Let it be a requirement, not an option, that before the land is given to people, the people should be capacitated so that they are skilled and able to use the land they are given productively and it doesn't end up lying fallow.

# CAPACITY DEVELOPMENT/ EMPOWERMENT

- Extensive consultation with communities;
- Community must also be educated so that if there is any problem, they can hold the CPAs and Traditional Council accountable and intervene with effective solutions.
- Consultation following the processes prescribed by the Interim Protection of Informal Land Rights Act;
- Land rights enquiry;
- Communities should be present when allocations of land are made;
- The DRDLR must build the capacity to monitor land administration by outer- boundary title holders such as CPAs.
- Measures that enhance social cohesion are key.
- CPAs must be capacitated through both physical and human resource provision by the state.
- Institutional capacity must be enhanced, with effective monitoring and evaluation mechanisms put in place, and accountability of structures ensured.

# CAPACITY DEVELOPMENT/ EMPOWERMENT

- 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.
- 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.
- Communities need assistance in negotiating development arrangements and fair compensation in which their wealth is protected and they are primary beneficiaries of such developments.



# INSTITUTIONAL ARRANGEMENTS

- Intergration of community structures with relevant government departments
- Government must be main role player in each of these entities – and hold them accountable, and make sure that people are consulted and their land rights protected.
- When it comes to mineral deals, Minister of Mining and Minister of DRDLR should communicate with each other and communicate clearly with the community because Min. of Mining is the trustee of the community.
- Relevant local authorities (CPAs, TAs, municipalities) should all be involved in land and economic development.
- CoGTA must ensure there is accountability amongst the various layers of traditional leadership in order for these structures to be accredited.
- As land is a national competence, the DRDLR must play an oversight role, with the Minister assuming full control over all land issues.

# INSTITUTIONAL ARRANGEMENTS

- 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.

# LEGISLATION

- The development of legislation to enforce a working relationship between all stakeholders;
- The rights in communal areas should be categorized and during consultations consider who will be affected;
- Strengthen the existing customary rights instead of issuing title deeds for households;
- A land tribunal is needed to resolve disputes involving communal land.
- We need to strike a balance between individual rights and the rights of groups.
- There must be clearly defined roles and responsibilities for all actors.
- Aggrieved parties must be protected and provided with recourse for infringement of their rights.
- There should be clear delineation of roles/ responsibilities, with TAs, CPAs etc. acting within the bounds of the designated functions.

# LEGISLATION

- 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.
- The legislation that DRDLR is developing must hold that land governance structure to account

# PROCESSES FOR LAND ADMINISTRATION

- Communal tenure policy should treat everyone equally – i.e. meaningful equality in terms of the law – principle of equality of everybody – principle of one nation, one law
- Government should have put in structures to prevent undemocratic leases on communal land – the Constitution should be re-looked in terms of how people are living in rural areas
- Draw lessons from other African countries where TL have facilitated ‘land grabbing’ leases by foreign capital at the detriment of the rural poor
- Promotion of a sense of ownership, by the poor in particular
- Deepen democracy so that people participate, and not leave everything to TL, TL should consult people
- The development of legislation to enforce a working relationship between all stakeholders

# PROCESSES FOR LAND ADMINISTRATION

- Government should have put in structures to prevent undemocratic leases on communal land – the Constitution should be re-looked in terms of how people are living in rural areas.
- Land Administration Forum must be formed to oversee, monitor and evaluate, and make sure that people are not allowed to build where natural disasters will kill them.
- Amakhosi Traditional Council should be required to recognise CPAs and work with them according to law. About Traditional Institution involvement in land administration:
  - Communities that did not have traditional leaders before do not want to have traditional leaders imposed on them to manage the land.
  - For land acquired through restitution processes, recommended that traditional leaders and councils must not be involved in administering that.

# PROCESSES FOR LAND ADMINISTRATION

- There should be clear and agreed processes followed by land governance institutions
- Municipalities must take on the role of service providers and land governance structures (e.g. TA, CPA) must be responsible for land allocation.
- 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.

# PROCESSES FOR LAND ADMINISTRATION

- 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.
- 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.
  - A task team should be established within the DRDLR that receives and investigates complaints against TCs, CPAs or municipal councilors.



# PROCESSES FOR LAND ADMINISTRATION

- 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
- 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.

# INFORMATION DISSEMINATION/COMMUNICATION

- The state should engage communities in vernacular languages, and prepare documents in vernacular languages
- Draw lessons from other African countries where TL have facilitated 'land grabbing' leases by foreign capital at the detriment of the rural poor
- Promotion of a sense of ownership, by the poor in particular