

250317 Rural Development.



## rural development & land reform

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Rural Development and Land Reform  
REPUBLIC OF SOUTH AFRICA

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### **REPORT TO THE PORTFOLIO COMMITTEE ON RURAL DEVELOPMENT AND LAND REFORM: CONSULTATIONS ON THE COMMUNAL PROPERTY ASSOCIATIONS AMENDMENT BILL**

#### **1. PURPOSE**

To report to the Portfolio Committee on Rural Development and Land Reform on the Communal Property Associations Act consultation sessions undertaken by the Department of Rural Development and Land Reform.

#### **2. BACKGROUND**

The Department seeks to effect technical amendments to the Communal Property Associations Act, Act 28 of 1996. These amendments will enable the creation of capacity within the Department as well as enable better monitoring and oversight of Communal Property Associations. On 29 April 2016 the Communal Property Associations Amendment Bill was published for public comments and consultation.

#### **3. DISCUSSION**

##### **3.1 PREPARATIONS**

A Consultation Plan was developed by the Department in order to document how stakeholders and members of the public will be engaged. In order to ensure that there is wide reach in the consultations, the Consultation Plan envisaged the rollout of the public consultations to all nine provinces. All provinces held the public consultations except the Free State.

##### **3.2 CONSULTATIONS**

###### **3.2.1 Eastern Cape**

The consultation session in Eastern Cape was held in East London on 30 May 2016. Comments were as follows:

- (a) Definition of property is not clear. Is it communal land or association property?
- (b) Who will administer the General Plans?
- (c) Submission of documents should also include submission to SARS.
- (d) Definition of household with ownership rights or leasehold rights: Clause is unconstitutional because the CPA has no right to decide on their land without the approval of the Minister.

### 3.2.2 Free State

The Free State did not hold a consultation session.

### 3.2.3 Gauteng

The Gauteng consultation was held on 18 May 2016 at St Georges Hotel. The invitation was extended to the CPAs, CPA District Forums, local government, organised agriculture and Department of Agriculture Forestry and Fisheries. Members of the public also participated in the session. The majority of speakers made inputs that were irrelevant to the CPA Amendment Bill. Some of the irrelevant matters that were raised were eviction disputes and some speakers were interested in applying for the position of Registrar.

Relevant inputs received are the following:

- (a) What role is the Registrar going to play and whether all CPAs will be under his direct control?
- (b) Where and how will the rights of the various individuals be registered as contemplated in the provisions relating to the General Plans?
- (c) The 60% quorum is a challenge to some CPAs.

### 3.2.4 KwaZulu-Natal

In KwaZulu-Natal the consultation session was held at the Provincial Shared Services Centre office in Pietermaritzburg on 27 May 2016. The consultation was attended by AFRA, LPM and community members. The workshop was not very well attended.

The following comments were made:

- (a) The concept of the Office of the Registrar is welcome but there is concern about the practicality of budget that will be set aside for this purpose.
- (b) There should be a clause that limits the powers of the Registrar.
- (c) Who is going to hold the institutionalised rights on behalf of the household?

### 3.2.5 Limpopo

The consultation session in Limpopo was held at Bolivia lodge on 23 May 2016. The session was mainly attended by Communal Property Associations District Forum representatives.

The following comments were made:

- (a) Clause 2B is highly commendable.
- (b) Clause 2E: the Bill must introduce punitive measures.
- (c) Clause 2E(f) is ambitious given lack of capacity of the Department to monitor CPAs.
- (d) Clause 7: the clause regarding verification of legitimate members must be included.
- (e) Clause 7(4): Individuals should not be allowed to lodge complaints with the Registrar.
- (f) Clause 7(5): Will there ever be an exit point where CPAs are allowed to operate on their own without being supervised by the Department?
- (g) Clause 8: A provision should be introduced to enable CPAs to convert into other types of entities like Trusts or Co-operatives.
- (h) Clause 9(d)(ii): Land should be used communally. Individual allotments should be prohibited.
- (i) Clause 9(d)(iii): An association must be able to use land as collateral.
- (j) Clause 10(2): The CPA Office and the Registrar must recognise the CPA District Forums.
- (k) Clause 10(4): The conciliator must be a member of the CPA District Forum.
- (l) Clause 10(6): Instead of spending money on service provided, the Registrar must procure the services of the CPA District Forums
- (m) Clause 11(1): Non-compliant CPAs must be punished.
- (n) Clause 11(e) (ii): It is unrealistic to expect the Department to have an official sitting as an interim committee member because of capacity.
- (o) Clause 16: Any aggrieved person must firstly inform members of through the committee that he is unhappy with their decision. The committee shall be mandated to appeal the matter with the Registrar.
- (p) Provinces should be required to table provincial reports.
- (q) The Act must enforce payment of CPA committee members.

### 3.2.6 Mpumalanga

The session for Mpumalanga was held in Nelspruit on 25 May 2016. The issues raised and comments made were the following:

- (a) The General Plan should not be a condition for transferring land.
- (b) Insert a provision in the Bill that will make it a requirement for the CPA constitution to be written in English and a local language.
- (c) Section 11(7) must be consistent with the provisions of the Constitution of the Republic.

### 3.2.7 Northern Cape

- (a) How long can a CPA be placed under administration?
- (b) The General Plan is supported but individuals should not be allowed to sell their individual portion to non-members.
- (c) What intervention can the Department make in CPAs that misuse or mismanage their property?
- (d) Does the Registrar have the power to mediate where necessary?
- (e) If 60% of the households agree to sell their land what will happen to the 40% of households that do not want to sell?

- (f) Must CPAs change their constitutions to be in line with the new quorum in the Bill?

### 3.2.8 North West

In North West the consultation session was held at Mmabatho Palms on 25 May 2016. The meeting was attended by members of the CPA District Forum, CPAs members, local government and members of the public. The following comments were made:

- (a) Where property is sold there should be approval by 60% of the CPA members.
- (b) There should be agreement before a CPA is liquidated.
- (c) There must be a definition of members and membership.
- (d) There must be a clause relating to mining rights.

### 3.2.9 Western Cape

Two consultation sessions were held in the Western Cape, one was held in George on 26 May 2016, the other was held in Paarl on 27 May 2016. The consultation sessions were attended by local government, CPA members, TRANCRAA area representatives District Land Reform Committees, academics and NGO. Issues raised and contributions were:

- (a) The Bill does not state who will provide financial support to CPAs.
- (b) Does the 60% quorum refer to households or individuals?
- (c) General Plans constitutes township establishment.
- (d) The 60% quorum should be lowered. The quorum must be 15% because people do not attend meetings.
- (e) The Bill does not provide the mechanism for appeals.

## 3.3 NATIONAL CONSULTATION

### 3.3.1 Clause 1

- (a) Definition of "association" – It does not make sense to suggest that labour tenants who have been awarded land constitute an association or community. *AFRA*
- (b) Insert definition of "Department". *Western Cape Department of Economic Opportunities.*
- (c) Include "Traditional Council" in definition of "similar entity". *Bakgatla ba Kgafela*
- (d) Include "Traditional Council" in definition of "community". *Bakgatla ba Kgafela*

### 3.3.2 Clause 2

- (a) Extension of application of Act to labour tenants is misdirected. *Legal Resources Centre*
- (b) Clause 2(6): Labour tenants do not only acquire land through Sec 22 of Act 3 but also through Sections 18 and 26 of the same Act and Sec 4 of ESTA. *Legal Resources Centre*
- (c) Labour tenants must be able to choose whether to own land communally or individually. *Legal Resources Centre*

- (d) Clause 2(1)(b) the Minister cannot order the formation of a CPA but can only agree with the community that a CPA be formed by a community entitled to Restitution. *AGRISA*

### 3.3.3 Clause 3

- (a) The General Plan must first be recommended or approved by the relevant community. *Centre for Constitutional Rights*
- (b) Transfer property must be in the name of a CPA and not a community. *AFRA*
- (c) Devise local registration systems as well, such as a register of communal rights. *AFRA*
- (d) The Department must pay the costs of registration of institutionalised rights and it must be clear from the Act. *AFRA*
- (e) Clause 2A requires the community to be the owner of land. Clarify role of CPA on ownership. *Legal Resources Centre*
- (f) If a community becomes the owner of land, what about the CPAs that currently own land? *Legal Resources Centre & Kingwill*
- (g) It is possible to map the various spatial zones and parcels as an alternative to a General Plan. *Kingwill*
- (h) Create “family/household” as opposed to individual title. *AFRA & Kingwill*

### 3.3.4 Clause 4

No comments.

### 3.3.5 Clause 5

Abolition of provisional associations requires a transitional provision deeming all those in existence as registered associations. *AFRA*

### 3.3.6 Clause 6

No comments

### 3.3.7 Clause 7

- (a) Clause 7(a) reference to “households with ownership and leasehold rights” misplaced. *Legal Resources Centre*
- (b) Clause 7(b) Members of the association cannot be elected, only office bearers. *Legal Resources Centre*
- (c) Clause 7(c) A community does not need juristic personality as a CPA already has one. *Legal Resources Centre*

### 3.3.8 Clause 8

- (a) Object of Association must not only be to administer and manage communal land but continue to own land. *Legal Resources Centre*
- (b) Clause 8(2)(b) “Administration and management of communal land” does it include individual allotments. *AGRISA*
- (c) It must be clear what entity owns land; CPA or community. *Kingwill*

**3.3.9 Clause 9**

- (a) Clause 9(e) is misplaced. *Western Cape Department of Economic Opportunities & Legal Resources Centre*
- (b) Who owns property, CPA or community? Is CPA another name for community?  
*AFRA*
- (c) Amend clause 9(1)(e)(ii) to substitute "Registrar" for DG. *AGRISA*

**3.3.10 Clause 10**

10(4) The recommendation on dispute resolution cannot be made binding by legislation but by prior agreement of the parties. *AGRISA*

**3.3.11 Clause 11**

Clause 11(6)(d) Dissolution by Registrar on good cause shown must follow the rules of natural justice. *AGRISA*

**3.3.11 Clause 12**

- (a) Reference in Clause 12 to "households with ownership or leasehold rights" misplaced. *AFRA*
- (b) In clause 12(1)(a) if 60% agrees to sell why must the Minister still approve?  
*AGRISA*
- (c) In clause 12(1)(b) Only certain categories of movables acquisition must require requisite majority e.g. seeds, implements, fertilizers don't require majoritarian approval. Create categories e.g. R20 000 and the required majorities for decision.  
*AGRISA*
- (d) In clause 12(1)(c) the lease of immovable property must also require community resolution. *AGRISA*

**3.3.12 Clause 13**

Provide for more detail on the administration, liquidation and deregistration e.g. explain the process for applications, requirements for applications, duration and consequences. *AGRISA*

**3.3.13 Clause 14**

- (a) Clause 14(b)(f) regarding breach of Constitution cannot in all instances result in criminal sanctions, only serious breaches. Make distinctions and categorise accordingly. *AGRISA*
- (b) Clause 14(2) is not related to criminal offences. It must be removed. *AGRISA*

**3.3.14 Clause 15**

No comments

**3.3.16 Clause 16**

No comments

**3.3.17 Clause 17**

No comments

**3.3.18 Clause 18**

In Clause 18(3) the fee determination must be by way of regulations instead of ordinary notice. *Western Cape Department of Economic Opportunities*

**3.3.19 Clause 19**

No comments

**3.3.20 Clause 20**

Members of the association cannot be elected, only office bearers can. *Legal Resources Centre*

**3.4 NEDLAC AND OTHER DEPARTMENTS**

- 3.4.1 Besides the provincial and national consultations the statutory mandated consultation also took place at NEDLAC. During these sessions the community representatives, business, government and labour discussed the proposed amendments.
- 3.4.2 The written submissions by various sector representatives mirrored those that were articulated by their organisations in provincial and national consultations.
- 3.4.3 The Bill was presented to various departmental clusters prior to its publication for public comments.

**4. CONCLUSION**

There was very little in the form of substantive issues raised during some provincial consultations. The invitees used some sessions to raise other issues that they have. The most substantively relevant inputs were made by organised structures, through both written and oral submissions.

In order to address the illiteracy challenges, participants were encouraged to express themselves in the languages of their choice. It appeared that the communities needed to be guided in the submission of their oral and written submissions.

**Compiled by Mr Jeff Sebape**

**Director: CPIs**

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