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Your Ref:

Our Ref:

22 November 2017

The Honourable Chairperson
Portfolio Committee Rural Development and Land Reform
Ms Phumuzile Ngwenya-Mabila
pngwenya-mabila@parliament.gov.za

Attention: Adv. Ms Phumla Nyamza
Parliament Cape Town

Dear Madam

RE: CPA amendment bill: B12 of 2017

COMMUNAL PROPERTY ASSOCIATIONS AMENDMENT BILL, 2101

1. Thank you for inviting us to your public hearings first scheduled for last week. Unfortunately we cannot attend today due to a long standing scheduled meeting with members of the Umgungundlovu community of Xolobeni today and tomorrow, and cannot address you in person this morning.

2. We hereby :
 - a) Reiterate our concern that Bill B12 [CPAAA] cannot be considered in isolation of the draft bill of the DEPARTMENT OF RURAL DEVELOPMENT AND LAND REFORM NOTICE 510 of 2017 "COMMUNAL LAND TENURE BILL" or draft CLTB. The two processes should have been aligned and should still be aligned as much as possible.

- b) Refer to your Parliament's Motlanthe High Level Panel report [REPORT OF THE HIGH LEVEL PANEL ON THE ASSESSMENT OF KEY LEGISLATION AND THE ACCELERATION OF FUNDAMENTAL CHANGE dated yesterday 21 November 2017 or "the HLP report"] that emphasises coordinated and land reform laws and lawmaking that are deliberately aimed at achieving meaningful outcomes for people on the ground.
3. The HLP report proposes that a new land reform framework bill be developed, that a land recording system and law be designed and that the current CPA amendment bill process be "put on hold": [page 554]
- 1) *The Land Framework Bill proposal attempts to provide a comprehensive 'catch-all' response to problems besetting land reform. The Panel recommends that it be fully considered before current Bills affecting land reform are processed.*
 - 2) *Restitution Amendment Bill: At the heart of the controversies surrounding restitution is whether there is the budget and capacity to deliver on the expectations created by the now-repealed 2014 Amendment Act. ...*
 - 3) *Communal Property Associations Amendment Bill: This Bill should be put on hold as recommended under 1 above. The Panel makes far-reaching recommendations about CPAs as per the Land Records Bill proposals. ...*
4. Both the CPAA and the draft CLTB face the challenge of strengthening family or household right and giving meaningful roles and functions for governance structures, whether it is the a CPA committee or a recognized, reconstructed and partly elected traditional council. Another route it to focus on strengthening individual and family rights through the augmentation of the Interim Protection of Informal Land Rights Act, and

we believe that not enough has been done to promote the self executing IPILRA with appropriate regulations supporting it to address certain of the shortcomings of the CPAAA and the draft CLTB. We note that the Motlanthe HLP report similarly proposes that IPILRA be strengthened and that a “Land Records Act” be developed to address tenure security on all communal land including, in our reading, CPA land.

5. The Motlanthe HLP report goes much further. It makes specific proposals for the amendment of the restitution bill, which can be found at the following link

https://www.parliament.gov.za/storage/app/media/Pages/2017/october/High_Level_Panel/Commissioned_reports_for_triple_challenges_of_poverty_unemployment_and_inequality/Restitution_of_Land_Rights_General_Amendment_Bill.pdf

that also involves the restructuring of existing land reform projects and the unbundling of dysfunctional CPAs. Clearly the CPA amendment bill falls short on this important aspect. The amendment bill proposed by the Motlanthe HLP is far reaching and requires your committee’s immediate attention in the light of the private member’s bill currently being considered by your committee.

6. We made extensive submissions to the DRDLR on the then draft CPAAA in June 2016 and a very inadequate and misdirected SEIA that accompanied it. We attach our submissions of 2015 because they are still very relevant as our well motivated submissions, including constitutional problems with the bill, have still not been addressed. In our submission on the bill to you dated 12 July 2017 we also deal with the SEIA dated December 2016 when the Presidency and the DPME produced a much improved final SEIA. We quote from the problem statement of the SEIA because it departs significantly from the problem statement presented to you portfolio committee by the department in when your committee was first briefed about the bill.

- a) *The creation of Community Property Associations (CPAs) has resulted in families and communities with no relationship or joint history being bound together under this form of land holding structure;*
- b) *Some CPAs were created on the basis of interim establishment provisions that have resulted in challenges of improperly verified beneficiaries;*
- c) *There are no mechanisms to control who comes and settles in the community;*
- d) *Where CPAs have been established in areas administered by Traditional Authorities, tensions and conflicts have surfaced; and,*
- e) *There is increased tenure insecurity for more vulnerable individuals (i.e. youth, women, the elderly and other persons already residing on land acquired by CPAs).*

7. We notice a significant departure from the DRDLR’s findings that the CPAs problems are self inflicted, compared to the DPME’s recognition that there are often design and establishment issues that set these entities up to fail.

8. The December 2016 SEIA of the DPME raises the problem of non alignment between the CPAA and the draft CLTB. In effect the ownership responsibilities and functions of the CPAs and their committees are downgraded and those of compliant Traditional Councils upgraded. The SEIA of December recommended the following clauses of provisions “to be amended.” These were ignored in the bill presented to your National Assembly:

7	References in the CPA AB of the relationship between the aim and content of the CPA AB	Insert clause providing for the relationship between the aim and content of the CPA AB and that of other existing legislation relating to
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	and that of other existing legislation relating to land reform, management and administration, as well as to traditional leadership	land reform, management and administration, as well as to traditional leadership
9	References to the possibility that a CPA may be established by traditional communities who already have traditional councils (in the case where the HF were to decide that a CPA is the LAI of choice)	INSTITUTIONS: OPTIONS FOR LAND ADMINISTRATION INSTITUTION Insert clause providing that CPA may be established those communities that already have traditional councils (in the case where the HF were to decide that a CPA is the LAI of choice)
17	17. A brief memorandum setting out the background to, and linkages between, the CPA AB and the CLB, with reference to, amongst others, similarities, principles, institutions created by the two Bills, etc.	Draft a brief focused memorandum setting out the background to, and linkages between, the CPA AB and the CLB, with reference to, amongst others, similarities, principles, institutions created by the two Bills, etc
19		REGULATIONS AND NOTICES Draft and publish regulations and notices in respect of the CPA AB whilst CPA AB is being processed internally in the Department and in government, before going to Parliament - in order to ensure that the CPA AB can be implemented immediately after enactment and sent by the President

9. The Motlahthe HLP report makes a number of references to the need to amend the CPA Act, its halfhearted implementation, and the need for alignment with other laws:

- a) Page 302: *Unfortunately, after 1994 land reform initiatives have also tended to aggregate people into large groups under Communal Property Associations. This form of group property was used to reach targets quickly and avoid the expense, complexity and delays of subdivision. But it has locked people into imposed group identities against which it has proved increasingly difficult to assert specific land rights or enforce accountability. There is an urgent need to record existing off-register rights and give them more content based on inclusive decision-making processes involving local stakeholders. The rights must be recorded in a way that reflects customary understandings of land rights as family property, and lists all family members, with special protections for women.*
- b) Page 479: *Land owned collectively through title deeds held by Traditional Councils, Trusts and Communal Property Associations is highly susceptible to abuse by leaders of these collectives, who claim ownership when their role should be that of trusteeship or custodianship on behalf of the members of the collective. The evidence strongly suggests that collective ownership tends to elicit abuse of power because it does not provide real and enforceable rights to families and individuals within the collective. Ongoing disputation and contestation has come to be associated with collectively owned land reform projects in South Africa.*
- c) Page 204: *Because of the manner in which the different aspects of land reform relate to one another as set out above, the discussion below treats the topics in the following sequence: Redistribution, Restitution and Security of Tenure (despite the different chronology of the relevant provisions as they appear in the Constitution). We propose a new Land Framework Act in the Redistribution section, which speaks to how the various parts of land reform need to articulate with one another. In the section on Restitution we propose amendments to both the Restitution of Land Rights Act and the Communal Property Associations Act.*

10. In addition we believe that the Financial Services Board and the FIPFA Act should be made applicable to CPAs and TCs under the TLGFA so that curators and statutory managers can be appointed for defaulting community commercial enterprises.

11. We propose that your portfolio committee be fully briefed by a HLP delegation, the department, the commission and civil society on the legislative programme and policies shifts proposed by the Motlanthe HLP before the CPA amendment act bill is considered in disjuncture with the proposals for IPILRA and the draft CLTB. We further propose that:

- a) The CPAA bill [B12 of 2017] be withdrawn by the minister;
- b) The portfolio committee promotes a programme of real law making that includes a framework land reform law and charter, a land records act, a strengthened PILRA and a land record statute.

We look forward to hearing from you about our proposal.

LEGAL RESOURCES CENTRE

Per:



Henk Smith, Wilmien Wicomb

Annexures to original: LRC comprehensive submission to DRDLR 2016 including legal opinion on unconstitutionality, and submission to DG on the draft CLTB

http://lrc.org.za/lrcarchive/images/pdf_downloads/Law_Policy_Reform/2017_07_12_Submission_CPA_Amendment_Act_Parliament.pdf

<http://lrc.org.za/lrcarchive/law-policy-reform/3743-submission-draft-communal-land-tenure-bill>