



Portfolio Committee on Rural Development and Land Reform
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Submission on the Communal Property Association Amendment Bill (B12-2017)

1. Background

The Alliance for Rural Democracy (ARD) is a dynamic grouping of civil society organizations and communities which come together voluntarily whenever there is a need to contest policy and legislation that threatens to dilute the rights of rural citizens living in the former homeland areas. Such laws and practices distort customary law, undermine security of tenure and rights in land while entrenching the powers of traditional authorities, The ARD has challenged these undemocratic practices and proposed laws on the ground and through the courts.

- The ARD has mobilized for review of the Traditional Leadership and Governance Framework Act which prevented rural people from democratically transforming their lived realities and addressing the complex legacies of the apartheid Bantustans, recently the Department has introduced the amendment act to give a lifespan to the existing Traditional Council who are mostly illegal.
- Together with its legal advisors the Alliance successfully contested the implementation of the Communal Land Rights Act (CLRA) in 20014, and the Restitution of land rights amendment bill in 2016 through Land Access Movement of South Africa (LAMOSA and others) which was struck down by the Constitutional Court.
- The ARD campaigned tirelessly against the Traditional Courts Bill from 2008 to 2012, this resulted in a vote against the government-sponsored draft law in parliament's National Council of Provinces (NCOP). The Department has re-introduced it again in 2016, and we need to campaign vigorously against it.

Throughout the policy debates and submissions, The ARD succeeded in amplifying the voices of rural women who have been at the forefront of opposition to the TCB, arguing that it would create a separate legal system for the 17 million people living in the former Bantustans and render them as subjects of traditional leaders with second class rights in the South African democracy.

Submission

The Alliance for Rural Democracy supports the Communal Property Association as a viable option for land holding legal entity for communal areas. We are also in agreement that there was a need for amendment to strengthen rights of individual households who are deemed members of the communal property association to be enforceable and protected against unscrupulous elites and big business.

The CPA Act of 1996 Act provided for Juristic person to perform following functions:

- Acquire, hold, administer and manage property
- CPA Amendment bill provides for CPA to administer and manage property. This takes away the power of ownership that was the original intention behind the formation of CPAs

The important sections of the constitution we need to note are the following

Section 25 (5)

Section 25 (6) Allowing for the proposed amendments would be violating community's property rights as according to these sections.

We have noted the following Establishment weaknesses in the current Communal Property Act of 1998

- Establishment and Lack of Support:
- Clustering of multiple claimant communities into artificial entities, consolidation of disparate claims
- Grouping of individuals with undetermined rights;
- No specification of rights in founding documents;
- Trusts registered as CPA's;
- Non-Recognition of customary law;
- Under-resourced and lack of oversight;
- Accountability (internal and external); and
- Isolation of CPA's and elite capture

Amendment Act proposes the following new changes

1. Establishment CPAs office and Registrar: extends the application of the Act to:
 - Land restituted by order of any other competent court and not only the land claims court
 - Land Restituted to labour tenants
2. Empower Minister: Inserts new sections 2A, 2B, 2C and 2D which provide for:
 - The transfer of properties to CPAs
 - General plans for properties
 - Establishment of the CPA office
3. Appointment of a Registrar of CPA office and the functions of the Registrar

Our Concerns

- The limitations of CPA's from been owners of the land, to just administration and management of land as opposed to ownership as per the current CPA Act of 1996
- The powers given to the Minister where CPA will never be able to develop anything without the Minister's Consent.
- The restriction of people's right to choose the landholding entity, opt out or withdraw – Land claimants who are living in Traditional authorities should have the right to choose how they want to hold and manage their land without any restrictions.
- Lack of clarity on the proposed institutional support in terms of functions, budget

Our Proposals

- Dedicate a budget and costed plan with clear capacity requirements and performance indicators;
- Develop a bill which addresses all land holding options for groups, that includes Trust and Register all land holding entities in land reform as CPAs;

- Department must guide a process which enables the community to determine their preferred land use, user right allocation and /or confirmation, rights management and administration systems and structures;
- Refine land administration system; and foster for rights recordal system

We welcome the CPA Office and Registrar of CPAs (with increased functions including providing support with the land use plan, office infrastructure, staff, governance support to the management committee including training);

- Develop A modular staff training programme for officials
- Foster Requirement of annual report including financials; and perhaps put in a compliance with Financial Services Board Act of 1990
- Allow CPAs to acquire of shares from un-listed companies;
- Clarity of functions of the Registrar when CPA is placed under administration – Who is paying administrator? What is the involvement of FSB or CIPC;
- The administrator’s tenure must result in a Business Rescue plan of CPAs
- Create a CPA Ombudsman and/ or CPA Council so that communities can be mutually supportive and have voice

Insert a clause to deal with Unbundling and Withdrawal; It must be made possible for individuals or group members request to leave a CPI, when there is agreement amongst most members that this should take place. This can only be made possible if the rights are unbundled.

Some of the Registrar’s function could be to provide support to the CPA to do the following:

- Assessment of the relative rights and assets of the different parties
- Preparation of the unbundled solution
- Facilitation of the agreement on solution within the of the CPA
- Support the implementation of the agreement (transfer of property, assistance with setting up an alternative CPA if required, etc.)

Conclusion We want to applaud the Department for its commitment to improve the lives of people within CPA’s. We are also concerned that the current form of the amendment act cannot be considered in isolation from the Communal Land Tenure Bill that the DRDLR is currently considering. 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 a CPA committee or a recognized, reconstructed and partly elected traditional council. Both attempt to address the challenge of a structure managing the land of potentially tens of thousands of people – the Bakgatla is a very good example of how big a community can be that is expected to make decisions as a community. Secondly, the ongoing tensions between a CPA and a traditional leader/traditional council. Developing the two pieces of legislation in isolation does nothing to help addressing this tension. This was also noted by the Department of Planning, Monitoring and Evaluation in their Socio-Economic Impact Assessment of December 2016. It criticized the CPAA Bill for not aligning with the Communal Land Tenure Bill

We appreciate this opportunity

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