



**rural development
& land reform**

Department:
Rural Development and Land Reform
REPUBLIC OF SOUTH AFRICA

**COMMUNAL PROPERTY ASSOCIATIONS A/BILL
PUBLIC COMMENTS AND RESPONSES**

Following hereunder are comments made by members of the public and organisations on the Communal Property Associations Amendment Bill, 2017, during public hearings conducted by the Portfolio Committee throughout the provinces. Comments follow the order of the provisions / clauses of the Bill. We also provide our response to the comments.

The Public		
Clause	Comment	Response
1 <i>Definitions</i>	Definition of "community" does not distinguish between the actual beneficiaries and other community members	"Community" must be understood to mean beneficiaries as it refers to persons having rights to a particular communal

	<p>who may have subsequently joined the beneficiaries to form a community.</p>	<p>property. In terms of the Schedule to the Act, item 5, the persons (beneficiaries) must be identified by name, qualification or principle for identification. The definition is not new but is simply amended.</p>
<p>2 Application of Act</p>	<p>The Bill/Act must not apply to areas under the jurisdiction of traditional councils.</p>	<p>The Act applies throughout the Republic as a law of general application. Communities, including traditional communities, have the right to determine how their privately owned land is to be administered. In the Bakgatla Ba Kgafela case, the Constitutional Court ruled that <i>where a traditional community or the majority of its members have chosen the democratic route (by establishing a CPA), effect must be given to the wishes of the majority</i>. Besides, nothing in the Act prevents members of traditional councils from becoming members of CPAs.</p>
	<p>How do/can labour tenants establish a CPA? The comment/question arose from the view that labour tenants are awarded land as individuals and therefore</p>	<p>The provision simply enables labour tenants to form a CPA should they so desire. It does not compel them to establish one. The rationale being that holding property in common</p>

	should not be compelled to hold their individual properties in common in the form of a CPA.	would facilitate access to resources for development eg state grants, infrastructure support, etc.
3 (2A(5)) Registration of property	Why is property required to be registered in the name of the "community" and not "claimant" as contemplated in sec 42A of Act No. 22 of 1994 (Restitution of Land Rights Act) which requires such land to be transferred to a claimant.	There have been instances where individuals claimed land for communities and after a successful claim, it is transferred in the name of a claimant. This resulted in individuals claiming ownership of community property and even disposing of such property as their property.
(2D) Functions of Registrar	The functions of the Registrar, eg, ensuring compliance by CPAs with Act, keeping records of CPAs bank accounts are too onerous and also interfere with the autonomy of CPAs.	The functions are deliberate as they seek to protect members against unscrupulous committee members who sometimes take advantage of CPAs' autonomy to engage in acts of impropriety in relation to community property.
6 Drafting of Constitutions	There must be a standard constitution that must serve as reference for drafting constitutions to assist communities.	Section 6(1) requires the Registrar to assist communities in the drafting of constitutions. As an operational measure, practically, the Registrar shall develop a standard constitution as a reference document which communities can adapt to their individual circumstances.

<p>7 (a) <i>Adoption of Constitutions</i></p>	<p>The 60% threshold for adopting constitutions is onerous. 50+1% must be considered. It is not easy to get all members in a meeting.</p>	<p>60% of beneficiary/claimant households are deliberate to ensure greater consensus in adopting a constitution.</p>
<p>8 (b) <i>Registration of Associations</i></p>	<p>The main object of an association changed from holding property to administering and managing community property, why?</p>	<p>The change is deliberate to make it clear that the property is not owned by an association in isolation from the community. This serves to ensure accountability by committee members to community.</p>
<p>9 (d) <i>Principles in Constitution</i></p>	<p>The requirement in section 9(1)(iii) that an association can only open a Bank account upon receipt of a letter from the Registrar confirming compliance by CPA is onerous and interferes with CPA autonomy.</p>	<p>The requirement is deliberate to ensure accountability. Committee members would open separate accounts from those known by members and divert funds to avoid accountability and engage in acts of impropriety.</p>
<p>11(6) <i>Monitoring & Inspection</i></p>	<p>The power of the Registrar to dissolve a CPA committee or relieve a committee member of his/her duties amounts to interference into affairs of CPA and militates against its autonomy.</p>	<p>The power is deliberate as it seeks to protect members against undesirable committees or its members. The power can only be exercised on good cause shown and the affected party must first be heard (in accordance with</p>

		administrative justice principles).
12 <i>Approval of transactions</i>	The 60% threshold required for approval to sell community property is cumbersome.	The threshold is deliberate as it seeks to protect members against unscrupulous acts by committee members including acts of disposing of community property without involving members.
14 <i>Offences</i>	The offence of breaching the constitution of the CPA provisions relating to finances amounts to overreaction. Breach of such provisions does not warrant criminal sanction.	Ordinarily, aggrieved members of CPAs who suffer financial loss should sue the perpetrator to recover loss. However, in the case of CPAs, victims are usually vulnerable and require protection by criminalising such acts so that the state can proactively prosecute allegations of impropriety.
18 <i>Fees</i>	It is unfair of the state to require payment of fees for services provided under the Act.	CPAs operate as business entities and the requirement for payment of fees is not unusual. The fees are published for comment first and if they are exorbitant members of the public can express their concerns.

Organizations			
Name of Organization	Clause	Comment	Response
Legal Resources Centre	7(a)	Clause 7(a) at odds with section 8(2)(f)	Comment accepted. Consequential amendment required in section 8(2)(f) to ensure consistency with 60% beneficiary/claimant households majority.
	1(d)	Definition of "community" suggests that a community already has a constitution when it claims land and therefore this makes little sense.	Firstly, the definition is not a new insertion in the Bill. The term is defined in the context within which it is referred to in the Act/Bill. The context is, when one has regard to section 2 which provides for the <i>Application of the Act</i> , that the community must form a CPA after receiving land. For a community to establish a CPA, it must adopt a constitution. It is not a matter of which one comes first, the community or the constitution.
	2	Application of Bill/Act to labour tenants is problematic and therefore it must not be compulsory for labour tenants to be required	Comment accepted. A condition by the Minister that a CPA must be formed is dependant on a community itself taking a decision to form a CPA in terms of clause 2(7).

		to form CPAs.	It is therefore not compulsory.
3	The provisions on <i>General Plans</i> puzzling. The Department will be required to produce more than 1 500 general plans within 2 years for land to be duly registered. The provision is onerous and undermines property rights of communities.	The comment is accepted. It is correct that it creates a huge responsibility for the Department in the implementation of the Act. However, planning in communal areas is part of general spatial planning and land use management. Towns are developing in some communal areas and planning is not only necessary but inevitable.	
7	A CPA managing/administering property and no longer solely owning it deprives a CPA of ownership of property.	On face value comment is valid. However, a CPA never owned property for itself as a legal entity. It manages/administers property on behalf of beneficiaries (community). The Bill seeks to draw that distinction to make it clear that it is the beneficiaries (community) who are the owners and not a legal entity on its own.	
12	The 60% majority required to sell the property is impractically high and unprecedented in	The 60% beneficiary/claimant households are deliberate and seek to protect community members against	

		<p>corporate law.</p>	<p>unscrupulous committee members from making decisions that are not in the best interests of communities including selling land without the knowledge of community members.</p>
		<p>The requirement that the Minister must first consent to a sale of land by a CPA and that the Department must be given the right of first refusal violates the right of ownership by a CPA.</p> <p>The requirement is also discriminatory.</p>	<p>The conditions/provisos are deliberate to protect community members against committee members' possible acts of impropriety.</p> <p>On discrimination relating to the right of first refusal, the land was paid for by the State in the first instance. It is therefore only fair that when the community seeks to dispose of it, the State must be given preference.</p>
n/a		<p>The Bill/Act must recognise that CPAs also</p>	<p>The Act/Bill does not exclude the application of</p>

Studies		
	<p>7</p> <p>The change in the Bill that CPAs will no longer hold land suggests that black South Africans should not be allowed to own land, and this position is rejected.</p> <p>It also amounts to expropriation.</p> <p>It also deprives labour tenants of right to own property.</p>	<p>The suggestion is incorrect. The community will continue to own land. CPAs never owned land for themselves, they hold land for communities. The Bill seeks to make this clear, that it is communities/beneficiaries that actually own the land.</p> <p>There is no expropriation; the state does not become the owner.</p> <p>The Bill reinforces the right of labour tenants to own property.</p>
	<p>12</p> <p>The Minister's power to consent to certain transactions undermines the right of communities to make decisions on matters relating to their land. This also amounts to expropriation because essentially the Minister decides whether land can be sold or not.</p>	<p>The consent of the Minister only serves to ensure that the decision to sell is well considered and the interests of all affected parties taken into account before land can be sold. The Minister would have no reason to withhold consent where there is consensus through the requisite majority that land is to be sold.</p>

<p>Nkuzi Development Association</p>	1	<p>The Bill must define beneficiaries and communities.</p>	<p>The constitution of a CPA must have a list of names of beneficiaries and how beneficiaries are identified eg by qualification or principle of identification. It is therefore not necessary to define beneficiaries as the Act refers to a community.</p>
	3	<p>The requirement for general plans takes us back to apartheid planning where blacks did not have a say in land use and development schemes.</p>	<p>Spatial planning and land use management in communal land must be seen in a broader context of land reform. Towns are being developed in communal areas and planning is not only necessary but inevitable.</p>
	7	<p>Bill takes away the right of CPA to own land and by extension takes away the right of black people to own property.</p>	<p>The view is not correct. Communities will continue to own their properties. The Bill simply seeks to correct an anomaly that a legal entity can dispose of property that does not belong to it.</p>

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