Engaging the Communal Land Rights Bill

A workshop hosted by Midnet, AFRA and Leap
26th and 27th June 2002
Pietermaritzburg

1 Introduction

The Department of Land Affairs gazetted the Communal Land Rights Bill in September 2002 after six years of stop-start drafting and redrafting this final piece of major land reform legislation. In order to prepare for the consultation process following the gazetting, the Midnet Land Reform Interest Group together with the Association for Rural Advancement (AFRA) and the Legal Entity Assessment Project (LEAP) invited NGOs, CBOs, academics and practitioners to a workshop to engage with draft eight of the Bill. The engagement in Pietermaritzburg took the form of sharing experiences of securing tenure in common property systems as a basis for analysing the draft and developing recommendations. Senior members of the Department of Land Affairs also attended and participated.

The Communal Land Rights Bill deals with tenure issues, which are difficult to understand and discuss in a useful way. The first day gave participants the opportunity to prepare for discussions on the Bill itself. To take participants into the complex issues around the Bill, the workshop started with an input on the questions and dilemmas faced by the people who had worked on the first draft, followed by an input on practices for securing tenure in traditional systems. The subsequent inputs on case studies were structured under indicators of tenure security developed by the Legal Entity Assessment Project, which offered both further experience and concepts to help think about the Bill. The second day focussed on the Bill itself with perspectives from four speakers, followed by plenary discussion. The workshop ended with discussion of government and NGO plans for the way forward.

2 Programme for Day One

Welcome, introductions, and workshop objectives
Session 1 – Choices and constraints facing legal drafters
Session 2 - Practices for securing tenure under traditional systems
Session 3 – Poster presentations on indicators of tenure security

- Indicator 1 People have clear rights, they know what their rights are, and they can defend them
- Indicator 2 Land administration processes are clear, known and used
- Indicator 3 These processes do not discriminate unfairly against any group or person
- Indicator 4 Authority in these processes is clear, known and used
- Indicator 5 There are places to go for recourse in terms of these processes and these are known and used
- Indicator 6 The actual practice and legal requirements in terms of these processes are the same
- Indicator 7 Benefits, services and infrastructure are as available to communal property institutions and their members as to any person living under different tenure arrangements

3 “Choices and constraints facing drafters of tenure legislation:

experience from the 1999 draft Land Rights Bill"

3.1 Input by Ben Cousins

This input is based on experience gained during the four-year process of developing tenure policy and drafting the previous Land Rights Bill. It may be useful to share the problem statement that was developed and some of the dilemmas and constraints that emerged during the process. They illustrate the challenges facing the drafters of tenure legislation for South Africa.

Tenure reform has to address a range of problems that can be divided into various categories. The first category of problems pertains to the **status of land rights**. This includes:

- Communal land is owned by the state and existing occupiers have weaker secondary rights by means of permits.
- Rights are 'strong' on the ground (often legitimate and stable) but weak in law (eg. PTOs), creating a gap between *de facto* realities and *de jure* status.
- Due to forced removals, dumping and 'enforced jurisdiction', rights in many cases derive from *existing occupation and use* rather than 'community' membership.
- Traditional systems are 'nested' (eg. tribe/nation - chieftaincy – ward/headman's area – village – sub-village) and people have rights at different levels depending on the resource or decision in question.
- Forced removals, dumping and 'squatting' mean that many rights are overlapping and conflict with one another.
- Some groups purchased land but were never allowed to own it.
- Women's land rights are weak and insecure.

Another range of problems pertains to land administration or land rights management This includes:

- The PTO system has broken down or is dysfunctional in many areas.
- Some traditional authorities are corrupt and abusive.
- In some areas local committees undertake land administration but are not recognized by law.
- The role of elected local government is unclear.
- Land rights in communal areas cannot be registered in the Deeds Registry.

Tenure reform must also address endemic conflicts over land rights and authority. The conflicts involve the following:

- Disputes arising from overlapping rights where people who were forcibly removed may have been dumped on land where others had prior rights, or people with independent ownership of land may have been placed under the jurisdiction of traditional authorities whom they do not recognize.
- Disputes over resource use between groups within a 'nested' system.
- Authority over 'state' land is disputed between traditional authorities and

local/provincial government.

Tenure legislation needs to meet the following criteria. It must be consistent with the White Paper on Land Reform and with the Constitution and the Bill of Rights, specifically Section 25 (6). It must secure land rights for all people, not only some people (otherwise it would create the danger of a second wave of post-apartheid dispossession). It must allow for choice and change over time. It should avoid the mistakes of compulsory titling and registration elsewhere in Africa (for example in Kenya). It should build on the lessons learnt from the implementation of the Restitution Act, the Extension of Security of Tenure Act (ESTA), the Land Reform (Labour Tenants) Act, the Communal Property Associations' Act (CPA) and TRANCRAA. It must take account of state capacity and be possible to implement. It should build on local institutional capacity. It should facilitate investment and development.

Early in the process of drafting the previous Land Rights Bill, a paradigm of problems and potential solutions was developed. This is set out in the accompanying chart. However, some aspects of this paradigm were found to be more complex and nuanced than originally anticipated. They are marked with an asterix. Some of these will be dealt with in a later presentation.

PROBLEMS AND POTENTIAL SOLUTIONS

Problem	Potential solutions
Communal land is owned by the state and existing occupiers have weaker, secondary rights by means of permits.	* Transfer ownership of 'state' land to its rightful owners.
Rights are 'strong' on the ground (often legitimate and stable) but weak in law (eg. PTOs): a gap between *de facto* realities and *de jure* status.	* Recognise in law what obtains on the ground (but also bring in line with the Constitution).
Due to forced removals, dumping and 'forced jurisdiction', rights (in many cases) derive from existing occupation and use rather than community membership.	Basis for claiming rights is existing legitimate occupation and use rather than community membership.
Communal systems are 'nested' (eg. tribe/nation - chieftaincy – ward – village – sub-village) and people have rights at different levels depending on the resource or decision in question.	Retain flexibility of traditional systems in relation to boundaries and decisions.
Forced removals, dumping and 'squatting' mean that many rights are overlapping and conflicting.	Rights inquiries and redress awards to unpack situations of forced overcrowding.
Some groups purchased land but were never allowed to own it.	Provide an option for transfer in full ownership of land to groups with clear boundaries and membership.
Women's land rights are weak and insecure. Some traditional authorities are corrupt and abusive.	Provide 'bottom line' protections for all land rights holders – democracy, transparency, equality – in line with the Constitution. Provide mechanisms and dedicated

	institutional support for claiming rights and redress.
Some traditional authorities are corrupt and abusive. In some areas local committees undertake land administration but are not recognized by law	Distinguish between rights and administrative functions. Rights holders to select the land administration system of their choice. The state to provide dedicated institutional support to local land administration structures.
Land rights in communal areas cannot be registered in the Deeds Registry.	Provide a land rights registration system which is: • Optional not compulsory. • Not the only basis for asserting or validating a land right. • Affordable and cost-effective.

3.2 Input by Aninka Claassens

The previous process to develop tenure legislation for communal areas began with the assumption that the key imperative was to transfer title of communal land from the state to the people and groups who are the rightful users and historical owners of the land. This position was staunchly defended on the basis that private ownership of land has become the dominant paradigm in South Africa and it should thus be extended equally to all South Africans. Anything else would confirm and entrench the system of 'second class' land rights for black rural South Africans.

The early policy documents referred to the imperative of transferring “state land” to tribes and other groupings who are the rightful historical owners of much communal land. They also posited a 'rights enquiry process' as the key mechanism to establish the rightful owners of land prior to transfer. The rights enquiry process would adjudicate claims and award compensation in situations of overlapping or conflicting rights.

A fundamental re-think of aspects of this paradigm resulted from experience with tenure “test cases” and from the implementation of other land reform measures during the 3-year process of policy formation and legal drafting.

In the first place the process of transferring title was found to elicit a series of disputes and problems. The transfer of title requires both that owner of the land be defined and that the extent and location of the land be surveyed and described. In the second place, major disputes erupted around who the owner of communal land should be. Headman and chiefs who operate at different levels of traditional systems had different interests and different views. So too did ANC branches and people living in the areas affected. The prospect of land transfers also elicited or exacerbated boundary disputes between different communal areas.

Transfer processes create very high stakes at particular moments in time. These high stakes inevitably lead to disputes of power. Powerful people and elites attempt to seize the process to gain power and win resources. The transfer process begins to have less to do with tenure security for vulnerable people and more to do with power battles between elites.

Because of the high stakes involved and the finality of land transfers, the process of consultation around land transfers becomes critical. If transfer is envisaged as the primary mechanism of tenure reform, time consuming consultation processes with occupiers throughout the ex-homeland provinces will be necessary in order to prevent inequitable and unfair outcomes. The experience from implementing land reform legislation, particularly the Restitution Act, indicates that it would take a very long time, probably centuries, to complete the process of reaching consensus on the delimitation of boundaries and the definition of owners throughout the ex-homeland provinces. The alternative is secret or unilateral transfers, like those that occurred in parts of Lebowa, which would create conflicts or disputes on an unprecedented scale.

The 'rights enquiry' paradigm was found to have similar problems. Like the restitution process it would be time and resource hungry. It was decided that tenure reform should rather be designed primarily to focus on securing rights for the vulnerable at scale and facilitating development. The government would be creating a trap for itself if it were to repeat the mistakes of the past and design programmes that are very difficult to implement within the limits of the current land reform budgets.

As a result of these experiences and constraints, there was a shift to a system of statutory rights that would come into being by the enactment of a law protecting established patterns of occupation and use. The law would vest rights in individuals. The initial content of the rights would provide users with recognition and protection of their current uses of the land. The law would provide that as groups became more organised they could add content to the rights and also register the rights. It would also provide that groups or individuals could apply for transfer of title. However, this would be the final stage and only possible on the basis of agreement of those whose (now protected) rights were affected.

This approach envisaged land rights officials in all communal areas whose function would be to support local processes to further define, administer and register land rights. A key aim of tenure reform is to facilitate development. One of the functions of land rights officers would be to assist communities in clarifying land rights sufficiently to expedite local development, another would be to assist communities in negotiations with third party developers. They would also provide recourse and support to rights holders whose statutory rights were being undermined by others.

The thrust of tenure reform would shift from once-off interventions around rights enquiries and land transfers, to ongoing support to enable land rights holders to protect, define, register and develop their rights and to enhance systems for administering and managing communal land.

Rights enquiries and transfers of title would remain on the agenda. They would clearly fulfil a key role in certain instances. However, they would no longer be the first and priority intervention for tenure reform. Furthermore when they did happen, those involved would be guaranteed a role

as stakeholders on the basis of their statutory rights to land.

4 Practices for securing tenure in traditional systems

Input by Nkosi Phatakile Holomisa

This input is based on experience from Thembuland – Mqanduli in particular. The system of land allocation in Thembuland is similar in many respects to allocation systems under other traditional systems.

There is a king or chief of Thembuland. Under the chief are headmen who are responsible for administrative areas. These, in turn, are divided into wards, which are headed by sub-headmen. The wards are made up of one (family-based) clan and the sub headmen have councils made up of family heads.

When a person wants land he approaches the sub- headman via an intermediary. The sub-headman will call together people who live in the immediate vicinity to decide/witness the allocation. The decision from the sub-headman will go to the headman (a hereditary position). The headman's council is made up of sub-headmen and royal family from his house/family (uncles and brothers). (Influential people in the community gravitate to positions on the council.) The headman will visit the site to satisfy himself that the recommendation is in order. His site visit will be an occasion for feasting. Thus the applicant must provide an animal to slaughter, usually a sheep, and some liquor, usually a bottle of brandy. He will also contribute an amount of money, of about R60. These contributions are partly for the feast and partly so that the headman has something to take back home. The rationale is that, since he left home to do this job, he should take something back home to compensate for his contribution of time.

At the next meeting of the traditional authority the headman will report that the allocation has taken place. A sum of money must be paid for the traditional authority to record and formalise the allocation. The applicant will get a receipt for this fee. After that, the application may be referred to the government for it to issue a PTO to the applicant. Or the process may stop before the PTO stage. In either case the land allocation will have been made.

People who qualify for land allocation are responsible people who need the land and will be responsible members of the community. Generally, responsible people are defined as people who have dependants. It is assumed that when people marry they will have children. Thus marriage has been used as a 'short hand' measure of qualification for land allocation. Generally men are eligible for land allocation when they marry.

This practice appears to discriminate against women. It gives the impression that women do not qualify for land rights on the same basis as men. However, unmarried women who have dependant children should also qualify for land allocation under proper customary practices. It is a corruption of the system when unmarried women with children are denied a land allocation.

Some people argue that the fact that land is allocated to the husband and not to the wife is

discriminatory against woman. They say that women can only access land via men. However, under customary law the land should be allocated for the use of the woman and her children. Divorce is generally not recognised by the family. Thus a divorced wife should continue to be allowed to reside in her house and cultivate her land. If the woman chooses to leave, her children should get the land and house she leaves behind. It should not revert to her husband. A second wife should use a different house and a different field. However, in practice, some chiefs do expel divorced women and award their land and houses to the husband. This is a corruption of the system because it is not consistent with customary law.

It is correct to state that the people are the rightful owners of the land. But they never owned the land in a vacuum. There has always been a structure to hold the land. Thus, our position as traditional leaders is that land should be transferred to the institution of traditional leadership. After all, this institution is a legitimate structure that existed long before the colonial governments we now accept as legitimate.

To address the problem that abuse can, and does, happen under all systems, including traditional systems, a law should be introduced which requires transparency, accountability and participation.

Traditional leaders do not have the right or the power to veto decisions of the tribal council. Traditional systems seek consensus. There is no need for our people to be put in a difficult situation where they have to choose between traditional structures and new structures. Here is an indigenous African system of land holding. Why not go with it?

In response to questions, the following points were added. We do need a law to secure land rights in communal areas. A law is necessary because the rights that currently exist in practice need to be secured in law. We need to address the discrepancy between people's own perceptions of their rights and the actual legal status of the land, which is held by the state. Clarity around the status of land rights is also important for development purposes. There are major development delays at present because of confusion about the status of land rights in communal areas.

Another reason we need tenure legislation is to provide for the registration of individual land rights. Individuals need to be able to register their land rights, not least in order to expedite development.

It is unAfrican for communal land to belong to an individual. Our traditional kings never owned land on the same basis as European royalty. We never had serfs.

5 Assessing tenure security

In order to be able to assess the effectiveness of various interventions around tenure reform, Leap developed seven indicators to measure tenure security. These indicators describe an ideal situation which, if it were in place, would indicate that the group and individuals in the group have secure tenure. A key question for the workshop to consider is whether the current draft of the Communal Land Rights Bill will enhance tenure security or not. To ground the discussion, it

was decided to focus a series of poster presentations on the indicators of tenure security. Presenters were requested to discuss case studies that focus attention on the different indicators.

5.1 Indicator 1

People have clear rights, they know what their rights are and they can defend them.

This presentation by Ndabe Ziqubu focussed on AFRA's work at Ekuthuleni, a parcel of state land that occupiers have lived on for many generations in some cases. The owner, the Department of Land Affairs, is in the process of transferring this land to a communal property association (CPA). People at Ekuthuleni have chosen a local process to record rights within the boundaries of the CPA. The process of recording rights and defining processes is seen as being of value in three ways. One, it clarifies the nature of the rights that people have to land and resources in order to secure the tenure of individuals against neighbours and the administrative structure. Two, it is envisaged that the records of rights will serve as an economic base for development by facilitating access to credit. The records will also serve as an information base for the municipality to provide services. Thirdly, the records will help clarify the claims that daughters and grand-daughters have to the land of their parents.

People at Ekuthuleni have chosen a local option rather than individual titling because of the immediate and long-term costs of titling, the inaccessibility of the current registration model and a desire for the formalisation and recognition of their own systems of land administration. The process of recording these rights is designed to build on local practices and institutions rather than to replace them. Thus, one of the objectives of the project has been to integrate current practices with new processes to define and record rights. For example, local practice on demarcation involves the family that holds the primary rights together with the head of the family being allocated a portion. The induna points out the boundary markers in the presence of the neighbours. All these participants in allocation would also be called in the event of a boundary dispute. These current practices are then recorded and new information management systems set up to maintain the records.

The project works with three categories of rights: community rights, household rights and individual rights as well as key processes relating to these rights, such as allocation, transactions and use of rights. The project has focussed on describing both procedural rights, such as attending community meetings and substantive rights, such as the allocation of residential or arable land.

5.2 Indicator 2

Land administration processes are clear, known and used

This presentation by Dylan Rawlins was about the Border Rural Committee's work with the Gasela community in the Eastern Cape. In order for the community of 58 families to convince the DLA to agree to transfer the 142 hectare farm to them, they had to prove that the settlement could and would be viable and self sufficient from its own resources. The systems developed to allocate, record and administer land rights were explicitly focussed on ensuring productive land use and economic viability for the community. A successful local system of land allocation and land administration was developed and has been sustained. Rights to arable land are linked to the productive use of the land and to the maintenance of proper records. This may be a factor in the success of the system of land administration in the area.

A similar system was attempted in Chata and in Thornhill but it has not worked successfully. Various factors are put forward as contributing to Gasela's success. It is a small community and thus direct representation in community meetings is possible. It is a 'greenfields' project and so did not have to grapple with the complexity of previous underlying land rights in the area. The leadership is uncontested and representative. People derive direct financial benefit from the land administration system: the system was developed to enhance livelihoods not only to "secure tenure". BRC has given intensive hands on support and is maintaining the register of land rights.

Is it realistic to anticipate this level of support from government in all communal areas?

5.3 Indicator 3

These processes do not discriminate unfairly against any group or person

Kobus Pienaar described the LRC experience with CPAs. In many instances the rights of CPA members are neither sufficiently strong nor sufficiently clear. For example some CPA constitutions do not adequately differentiate between the rights that members derive from their membership of the CPA and their rights to use part of the property of the CPA. Because the rights of members are not strong or clear, members are more vulnerable than they would be if there were certainty about the nature of both their procedural rights and their substantive rights (to use, bequeath or transact specific areas of land within the boundaries of the CPA). Lack of clarity about the content of rights leads to "self help" actions. Often stronger people dominate "self help" processes. This leads to discrimination against more vulnerable groupings within CPAs. The problem with defining the exact content of members' rights was ascribed to the sections of the CPA act that govern the disposal and encumbrance of land. These sections place procedural restrictions on a CPA's rights to "dispose of" or encumber its land. In order to grant strong use rights to members, the CPA would have to comply with these strict provisions. This restricts CPAs' capacity to create strong and defined land rights for members to areas within the boundaries of the CPA.

In discussion concern was expressed that experience with CPA's so far has indicated serious problems with the definition and understanding of membership and user rights. Some people attributed these problems to the inadequate support provided to CPAs while others attributed them to flaws in the CPA act. However, both groupings were concerned that the CLRB will repeat and expand these mistakes, whether by cutting and pasting sections of the CPA act or in

the implementation stage. It was reiterated that the DLA, having failed to provide adequate support to 450 CPAs, is unlikely to be able to provide support to the tens of thousands of communities potentially affected by the CLRB.

The discussion highlighted the need not only for defining the content of member rights, but also for clarifying whom membership rights should vest in. Concern was expressed that member rights should not vest in "households" but in two spouses with the household having veto rights on certain transactions. It was noted that there is a need to define terms such as "household" and "rights holder".

There was also discussion about whether it is desirable or practical for the entire community, or membership of a CPA to participate in certain decisions (as in the disposal and encumbrance provisions). Advocate Holomisa expressed the view that a general meeting (or imbizo) is necessary only to renew the committee's mandate and for certain critical issues. Executive decisions can, and should, be taken in between.

5.4 Indicator 4

Authority in these processes is clear, known and used.

Thelma Trench discussed the example of Msikazi, which illustrates divided authority. There was a strong history of traditional authority in land administration at Msikazi and yet the land was transferred to the community via a CPA without integrating existing authority. There is now a disjuncture between the accepted practice in Msikazi (the induna allocating land) and the formal legal authority of the CPA committee to carry out this function. This has caused confusion within the community – contributing to a potential decrease in tenure security. Outside agencies also recognise different forms of authority within Msikazi, for example the DLA recognises the CPA and community general meetings as having authority while the broader membership recognises the role of the induna.

The lessons from Msikazi and other areas where CPAs have been imposed on traditional communities include the following:

- The key problem is un-harmonised and competing structures making decisions about the same land administration processes in the same space.
- It doesn't work to ignore authorities familiar to people when setting up communal property institutions as legal entities. When new CPIs are established care should be taken to ensure that existing structures and practices around authority that are functional and familiar to people are recognised, valued and incorporated into new arrangements and documents. All practices and institutions, including traditional ones and current ones, perpetually undergo processes of change. The integration of current and new processes should be built on an understanding, not only of the inevitability of change, but also of its potentially beneficial consequences.
- Authority for land administration needs to remain continuously clear in transitions. Setting up new CPIs should not create gaps in authority for land administration or leave them unattended to when they develop.

- CPA constitutions are a legal record of where authority lies. Many CPA constitutions are internally inconsistent and written in English "legalese", which leads to further confusion and leaves people without direction when they get into difficulties. They should be written in plain local language and set out clearly land administration authorities and procedures.

5.5 Indicator 5

There are places to go for recourse in terms of these processes, and these are known and used

Louise du Plessis of the LRC in Pretoria discussed the example of Doornkop.

Here the LRC clients are in a minority in a CPA. The majority of the CPA decided to evict the LRC's clients. Because the CPA constitution does not provide clear substantive rights for members, the minority group did not have adequate legal means to protect themselves from the proposed eviction. The CPA constitution provides only for procedural rights for members and supports majority decision-making processes. Thus the CPA constitution did not provide adequate recourse for the Doornkop minority group. They applied to the Department of Land Affairs to appoint a mediator in terms of the CPA act. However the mediator was physically threatened and had to flee the area under police protection. Thus the provisions of the CPA act also did not provide effective recourse for the Doornkop minority. The LRC has now applied to court to have the CPA liquidated.

The fundamental problem is considered to be that the CPA constitution did not provide for clear, defined, substantive land rights for members. Nor has the mediation mechanism in the CPA act been effective.

In another case in an area that previously fell under the KwaNdebele homeland, a chief is selling land that is privately owned by a group of people. He asserts that he has the right to sell the land because the area falls within his area of "tribal jurisdiction". The landowners have applied to court to have the chief's jurisdiction over their land set aside. They had previously litigated but the chief has continued to sell rights to the land in contravention of this previous court order. This is also a case in which people have struggled to protect or assert their land rights. Despite their efforts and legal intervention on their behalf, they have not had access to adequate recourse. The courts are now being used but it remains to be seen how effective they will be as a means to resolve the current problems.

5.6 Indicator 6

The actual practice and legal requirements in terms of these processes are the same

Nondumisu Mqadi presented LEAP's experience, which indicates that actual practice and legal

requirements are generally not the same. The lack of consistency between practice and legal requirements is partly a result of the way in which CPAs and trusts are established. It is not general practice for officials and service providers to work adaptively with what exists. They do not examine or attempt to understand existing land uses and land rights or land administration practices.

Another problem is that lawyers and service providers draft constitutions that are inappropriate and inaccessible to the members of the CPA. They tend to understand the requirements of the CPA act as prescriptive rather than interpretative.

The consequence of the gap between practice and law are serious. The gap can divide communities with one grouping following the path of the new constitution, while another grouping allies itself with the old structures and traditional leaders. This leads to uncertainty and confusion over land practices, procedures, authorities and recourse - at best, nothing changes, and at worst, violent conflict ensues. Stronger people or groupings take advantage of the confusion to assert their interests at the expense of more vulnerable people. Land reform objectives to secure tenure and improve livelihoods are not achieved.

How to close the gap?

- We need a national land administration that works immediately.
- A national land administration system must accommodate existing local practices, rules and structures.
- Legal entities are an attempt to bridge the gap. They can be effective only if they build on local land administration systems.
- Common property has rules about governance (procedural rights) and rules about land (substantive rights). CPIs should clearly set out rules in relation to both. The rules should incorporate and clarify adaptations from current practice in relation both to procedural and substantive rights.
- Hybrid institutions focusing on land administration procedures should be fostered.

CPA constitutions can be helpful if:

- They constitute a record of agreements people have made.
- They are written in a language and style that is accessible and can be used.
- They address issues people need to have addressed (e.g. land administration).

The best way to work towards securing the principles enshrined in the national constitution (for example democracy, equality for women, fair processes) in CPIs is to:

- Raise the issues during discussions (for example, question whether an existing practice is democratic or fair) as a basis for adaptation from current practice.
- Do not force people into apparent agreements that they have no intention of abiding by.
- Let people decide on adaptations and let these rules/agreements be recorded in constitutions.

5.7 Indicator 7

Benefits, services and infrastructure are as available to communal property institutions and their members as to any person living under different tenure arrangements

Donna Hornby discussed the uneven support provided to different tenure systems in South Africa. The Deeds Registry and the Surveyor General's office provides extensive support to the system of private ownership that exists in parts of South Africa. The Deeds Registry and SG create and store evidence of tenure rights. This evidence fulfils key functions that transcend merely securing tenure rights. The information and certainty provided by the Deeds Registry and SG systems enables and facilitates key developmental functions. For example it underpins the systems of mortgage finance, it enables systems of cost recovery, which, in turn, enable the provision of services. It also facilitates infra-structural development and land use management systems. Communal areas do not enjoy the same levels of support. For example in most communal areas there is no recorded certainty about the outer boundaries of the area, nor are there records of the extent of internal rights within the area. There is also no clarity about the legal status and financial accountability of governance structures in communal areas. This all contributes to weak spatial information for implementing cost recovery for services, which, in turn, mitigates against service provision and development.

It would be prohibitively expensive and time consuming to extend the current cadastral system (of surveyed and registered rights) to all communal areas. An alternative that is under consideration in other developing countries is the development of a "Spatial Data Infrastructure" based on cadastral and non cadastral parcels. Spatial Data Infrastructures exist internationally and in South Africa, but they only use the cadastre as foundation data. In many areas of Africa and especially in the rural former homelands of South Africa there is no cadastral data to serve as foundation/core data. Instead alternative foundation data needs to be developed for these areas such as for example existing records such as PTOs, cost recovery records from service providers such as Telkom, Eskom and Umgeni water, and information from other government departments, for example from the Dept of Health or Central Statistics. In some situations, cadastral information may be used to define and record the outer boundaries of an area, whilst other data is used to build up records of family based rights within the area. These systems would also need to record what local structure has authority to administer, manage and take responsibility for land rights within the outer boundaries of an area. These records are critical for development purposes. Once these records (for example Eskom and Telkom) are created, stored and updated regularly they can also be used to contribute to a process of improving the evidence of rights, and thereby enhancing tenure security.

However, just as the system of private ownership receives extensive state support from the Deeds Registries and the Surveyor Generals offices, so would this alternative system of Spatial Data Infrastructure need state support to be established and maintained. It is unrealistic to assume that communities could create and maintain such records without state support and guarantees.

6 Day Two - Programme to focus on CLRB

- **Comments on the Bill - 4 perspectives**
  - **Western Cape Group analysis**
  - **AFRA perspective**
  - **Cheryl Walker's comments**
  - **Clarissa Fourie - perspectives arising from experience in other countries**
- **Plenary comments on the Bill**
- **Comments and response from government people present at the workshop**
- **Plenary session noting both the potentially positive and negative consequences of the CLRB. What would people want to see in the CLRB? What dangers would they want to see avoided?**
- **Discussion of way forward with regard to consultation and enactment of the CLRB.**
  Government plans
  NGO plans
- **Wrap-up comments from participants**

7 Comments on the CLRB

It was noted that commentators prepared their input from different drafts of the Bill. Some had worked from draft four, some from draft five, relatively few people had had the opportunity to read draft six before the workshop.

7.1 Analysis by Western Cape Group (based on draft six)

- In general the draft Bill is difficult to understand. Key aspects of the Bill are found in different sections. It is difficult to understand any one section without referring to many other sections. The objectives of the Bill are not adequately explained nor is it possible to work them out from reading the Bill**.**

- The overarching paradigm of the Bill is the transfer of state land to communities. This is a controversial paradigm. It will not be beneficial in all situations and would generate boundary disputes and undermine rights in some situations, yet section 17 is not worded in a way that provides for Ministerial discretion with regard to transfers. It states that the Minister **shall** transfer in full ownership.

- Section 18 provides for applications for transfer. This section does not set out the process whereby a community would come to the decision to apply for transfer. It states each community would apply through its administrative structure. This reflects an incorrect assumption that every community has an accepted representative structure. Another section provides that communities **shall** appoint an administrative structure. This type of mandatory and prescriptive approach is unrealistic given the reality on the ground in many situations; it would lead to problems and contradictions at the implementation stage. The Bill provides in 18 (f) for a community resolution prior to transfer. However

there are no procedures and requirements in this section to ensure that the majority of the community participates in, or supports, the resolution.

- Section 5 of Chapter III is an attempt to deal with the nature of land rights prior to transfer. Unfortunately it is neither adequate nor clear. It is premised on the notion of community, which does not apply in all situations. It provides for secure tenure "as contemplated in this Bill". It is not clear what this is. It provides for the recognition of PTO type rights under the category of "putative land tenure rights". The putative rights section does not provide a full description of who would qualify. The reader has to refer to the section on definitions.

- Section 6 and section 77 provide for protection against arbitrary deprivation of rights. Section 77 provides that the Interim Protection of Informal Land Rights Act (IPILRA) will apply to people prior to transfer or registration. Because of the scale of communal land and the fact that transfers would take place one at a time, it is inevitable that large numbers of people will remain in the pre- transfer stage for many years. Is IPILRA adequate to provide ongoing protection for millions of people over long periods? It was designed as an interim and temporary holding measure, prior to the introduction of permanent laws. It is not clear how section 6 and section 77 relate to one another.

- Section 8 deals with general principles applicable to the Bill. It has a provision around community based decisions pertaining to land rights. It specifies criteria and procedures for community meetings at which key decisions are taken. The key question is what support and oversight would be provided by the state to ensure that these provisions are adhered to? This question arises in the context of the inadequate state support provided to CPAs, which exist on a far smaller scale than the vast number of areas where the Bill would be applicable.

- Definitions. Much of the key content of the Bill, for example who would qualify for rights and the nature of the rights, is not set out clearly in the Bill. Instead the reader has to try to work things out using the definitions section. There are a series of problems in the definition section.

  For example (iv) excludes restitution land, redistribution land, CPAs and Trusts, Ingonyama land and the Coloured Reserves from the definition of communal land. This leads to different regimes for different types of communal land. The opportunity to consolidate all communal land under one system will be lost and the tradition of fragmentation and different land rights regimes will be continued.

  The definition of community in (v) is internally contradictory. In attempting to answer criticisms of the previous definition it has come up with a bizarre formulation. It is very problematic for a central concept such as community to be internally inconsistent.

  The definition of a land tenure right (xvi) is unclear and also internally

inconsistent. It is ambiguous and open to various interpretations. Without a clear and coherent definition of land tenure rights the Bill would be impossible to implement

- Chapter VI deals with the administration of communal land. It provides that communities **must** make rules with regard to land tenure rights. The rules must be adopted and the process witnessed by an authorised officer. The Bill potentially affects 2.4 million people. This implies a very large number of meetings to adopt community rules. Yet the Department is struggling (and failing) to implement its legislative responsibilities to 450 CPAs. This raises major capacity constraints in relation to DLA witnessing mandatory community processes to adopt rules in all communal areas. There has been cutting and pasting of sections from the CPA act into this chapter, but the lessons and constraints learned from the implementation of the CPA legislation do not appear to have been taken into account.

7.2 Comments by AFRA and LEAP (based on version four)

- The Bill is not easy to read or understand. It is confusing.

- It is of concern that the Bill excludes some communal areas, for example Ingonyama land and restitution land. The Act should apply to all common property, both now and in the future.

- The act should not just be a stepping stone to private ownership. It should provide clear rights to members of groups. AFRA and LEAP are opposed to the principle of the state divesting itself of all responsibility for the administration and protection of land rights in communal areas. The state should provide institutional support to a variety of tenure options, including the registration of land rights. There is concern that the transfer paradigm is primarily a vehicle for the state to divest itself of responsibility for land administration, including regulation of the land holding structures. These structures need land administration support both now and in the future. A system of on going and consistent support for land administration is preferable to ad hoc state interventions once problems reach crisis level.

- It is better to appoint land managers to play a consistent and on-going role than to appoint ad hoc commissioners.

- AFRA and LEAP are concerned that the land transfer paradigm informing the Bill is a paradigm of once-off interventions rather than a paradigm focussing on maintenance and support. Legislation should not only provide for consistent maintenance and support for land rights systems, it should provide rights holders with access to adequate recourse when things go wrong. This recourse should not only be to provisions in a community's constitution or rules, it should include access to state assistance in dealing with problems.

- Rights without adequate recourse are meaningless. This has been proved by ESTA

- The law should recognise and protect the rights of members of common property systems. There should be a uniform law applying to all common property institutions, which should provide a variety of options for people to choose between, so that they can choose the option appropriate to their context.

- In general it is better to adapt existing systems than to create new ones. There are concerns about the Land Boards and the Commissioners. These would be new institutions.

- The Bill should provide criteria for "representation" in land rights holding structures.

- The Bill repeats the mistakes of previous land reform legislation - it fails to make proper linkages between creating and recording rights.

- Recording rights in registries is very important. Draft 4 had two different registers. This is confusing. The state's role in supporting and maintaining registers is not clear enough.

- There is concern about the "mays" and "musts" in the Bill. The "mays" apply to budgets from the state. The "musts" apply to processes that need adequate budgets and support to happen successfully. While it is mandatory that such processes take place, there is no concomitant commitment that the necessary budgets and state support will be made available. Land transfers should not be mandatory but discretionary, taking into account a variety of factors - would a particular transfer enhance or prejudice rights in the area?

- It is unclear how the Bill would integrate with other aspects of land reform. It is also unclear how it would interact with local government. Issues of devolving power do not appear to have been addressed adequately.

- The Bill does not secure current tenure rights any better than IPILRA. It does not seem to add anything that is not available in existing land laws. It appears to be a cut and paste job.

- How is the concept of commonhold in draft 4 any different from CPAs?

- It is stressed that it is highly problematic for the Ingonyama Act land to be excluded (as in drafts 5 and 6). This would create two different systems alongside one another in KwaZulu-Natal. This would create confusion and inequality between people living in communal areas.

- The functions of Land Boards are not clearly understood. What functions would they have that are different from pre-existing institutions?

7.3 Comments by Cherryl Walker (draft 5)

- The bill is difficult to understand and ambiguous. It appears that in attempting to address criticisms changes have been made that are inconsistent with the initial conception. This has led to internal inconsistencies. Because of these inconsistencies the bill is open to competing interpretations. It would thus be additionally difficult, if not impossible, to implement.

- One example of internal inconsistencies is the way in which non-discrimination provisions have been tagged on to a bill that assumes cohesive groups. Communities are defined as being historically and socially cohesive, but then required not to discriminate against or exclude new members on the grounds of various differences, including ethnicity, culture and language.

- The bill does not adequately address the key issue of vesting of rights. In whom do rights vest? The bill focuses on individuals and communities, with only passing references to households. There is no consistency in the use of such terms, nor clarity as to how household rights will be treated.

- Do the references to "spousal consent" in the bill imply that rights would not be held jointly by both spouses, but by the "head of the household"? If so, this undermines women's rights, especially in the context of the legacy and confirmation of PTO rights that were generally awarded to male household heads.

- The bill attempts to take on board some of the criticisms about the position of women. But it fails to deal with the central philosophical reality that in advocating rights for women one is challenging some aspects of traditional systems. Rights for women imply a move towards stronger individual rights.

- The bill does not unpack the differences between concepts such as customary, traditional, indigenous and communal. These terms are used interchangeably when, in fact, they refer to different things. For example in Botswana and to some extent Uganda tenure regimes have been based on customary systems, but have not assumed the role of traditional leaders.

- Hard political decisions are necessary to inform which direction should be followed. In the bill the central political choices are fudged and obscured.

- Customary systems (as opposed to traditional systems) can provide various types of value for women - access to a range of resources and localised decision-making process. However their status is undermined when marriages break down. The land rights of divorced women are vulnerable under customary systems. This is critical as instability in the institution of marriage increases.

- The bill does not adequately address the impact of AIDS on rural societies. Issues of inheritance and the protection of orphans rights need careful consideration. Once land becomes a saleable asset under the transfer paradigm - orphans and other vulnerable

groupings are at increased risk.

- The administration parallels with the restitution process need examination. The transfer process envisages many similar onerous procedures - for example the collection of ID numbers. These types of procedures are slow and require extensive capacity to implement. Are they realistic?

- Why is the Ingonyama land excluded? Again the political choices are not explained. The Ingonyama land consists of 3 million hectares of land - 18% of all the former homeland land.

- What is the intention behind the land boards? In other countries where land boards have played an active and useful role they have operated much closer to the ground. Here land boards are established in all nine provinces and provincial Houses of Traditional Leaders nominate some of their members – yet these structures do not exist in all provinces. And what would be the value and function of boards operating at the provincial level? Many functions appear to be duplicated, eg investigation. Is their purpose not largely to placate traditional leaders?

- Poor drafting leads to imprecise language and punctuation in various provisions, leading to ambiguity.

7.4 Comments by Clarissa Fourie (draft 5)

Recent experience and insights with tenure reform from other countries may be relevant for the Bill.

1. **Botswana**

   There have been some problems with the Botswana Land Boards in peri-urban areas concerning duplicate allocations of sites, poor record keeping and lack of capacity. For example in the Mogoditshane peri-urban area over 5 000 houses have had to be demolished and the government has had to pay out for these houses. The problems have emerged since 1991. The customary tenure system is a national symbol in Botswana and the government is very committed to it. However, the problems have reached a scale where they can no longer be fixed incrementally and a major review is now taking place. The problems can be attributed to tension between the Land Boards and the "technical people". The Land Boards want a system that enables flexibility and change over time. The technical people want certainty. It has been difficult to accommodate both priorities within one system - thus the problems that have emerged. Recently the technical lobby has succeeded in getting government approval for a national technical team to develop proposed solutions.

   The Botswana Land Boards have very different functions from those envisaged for the Land Boards in the CLRB. However, lessons might be able to be learned from Botswana

about how to avoid ambiguous land administration processes in customary situations in peri-urban areas.

2. Uganda

Uganda has adopted a major new tenure law. However serious problems emerged at the stage of implementing the law. It became apparent that to implement the law would require one third of the entire government budget. Yet the Department of Lands currently is allocated only 1% of the government budget. As a result the government has had to compromise by implementing the Bill in three pilot areas only, covering 30 000 people, as opposed to the entire population of Uganda. The question arises: if the government and the NGOs had understood the capacity constraints in implementation would they have made the same political choices? The same issue arises in terms of the CLRB. If the government enacts legislation that it cannot implement, it will create a major problem for itself.

3. Namibia

Namibia has the same underlying legal system as SA - Roman Dutch title. This means that it would be easy to adapt Namibian solutions to the South African context. There were basically two systems in Namibia. There was ordinary freehold and another system that operated in Rehoboth, an area comparable with the homelands. In Rehoboth there is a system of land rights covering 25 000 people which operates without conveyancers. The Namibian government chose to adapt and extend the Rehoboth system to other areas, particularly urban and peri-urban areas. The new system - called the Flexible Land Tenure System, provides for title for the external boundary of an area. The underlying rights are "cleaned up" and the area is surveyed and transferred. Conveyancers and surveyors are used for this job. The title to the outer boundary is held in a central deeds registry.

Internal rights are recorded and registered in a local registry at local government level. There are two forms of "internal rights". The first is "starter title". This provides for recognition of current occupation in that people obtain rights and a title, but the title does not contain a description of the spatial extent of the property. The description of the rights is only relative to the outer boundary. This means that these starter titles can be given without land use planning and adjudication of boundaries having been done. The starter titles can be upgraded to the second form of internal rights - landhold titles. A local technician surveys the boundaries of landhold title areas. They can only be issued once adjudication and land use planning processes are complete.

Private professionals - surveyors and conveyancers - guarantee the outer boundary, but the state guarantees the inner titles, being the starter titles and the landhold titles. These are kept at local registries for ease of access and cost effectiveness.

This system is considered international "best practice" by Habitat.

There are some similarities with the CLRB design, and also some differences. The CLRB's envisaged Deeds of Land Tenure may well be similar to the starter on landhold title: the ideal of upgrading over time may be similar. One major difference, however is that there is no mention of the state guaranteeing the land rights. Instead there is mention of the community as a juristic person.

Insofar as the CLRB seems to confirm aspects of the Namibian design it could make a real contribution to tenure security in SA. It is flawed, but it may not be fatally flawed.

- **Comments about private sector involvement**

  In South Africa there are five custodians of the system of private ownership that applies in 87% of the country. The Deeds Registry, the Surveyor General's office, private land surveyors and private conveyancers. These four supply evidence to the fifth custodian - the courts. We should not underestimate the role and support provided by these institutions to the system of private ownership. The former two store the records and the latter two create the evidence and also guarantee the land rights of people. Who does the CLRB envisage will guarantee land rights under its proposals? Does it assume that the envisaged "juristic person" of the community will incorporate all these skills, roles and responsibilities? If so, is this realistic, is there not a danger of creating an inferior and inadequate system of second class land rights?

  The Bill may be making a mistake to exclude conveyancers and surveyors; they have a role in guaranteeing deeds. State officials do not have the same capacity, nor do the envisaged juristic persons.

8 Plenary comments after presentations

- Restitution CPAs are excluded by the CLRB, however redistribution CPAs and new CPAs would be covered.
- While IPILRA is incorporated into the CLRB, its deprivation provisions have been incorrectly copied. A consequence of incorporating IPILRA into the Bill is that IPILRA as a self-standing piece of legislation will probably not be renewed. This means that people who are not included within the application of the Bill (ie people living in urban areas) would no longer be protected by IPILRA.
- The CLRB does not take women's land rights seriously. The rights need "affirmative action" in term of specific procedures to include women and substantive rights for women. Formal equality is not sufficient to address the vulnerable status of women with respect to land rights in communal areas.
- The New Zealand example of the Maoris is instructive. Title to large areas was transferred to Maori groups. Internal rights were registered. After a few generations these internal rights had become very fragmented and small- they were referred to as "spadeful" rights. There was no incentive to register these rights down generations. Records fell into disrepair. Customary rights had been undermined during the process of

transferring and registering land rights. Both systems, formal and customary, were broken. This led to open access systems. Forestry companies wanting to invest in the land found there was no one with whom deals could be brokered. In response to this situation the New Zealand government invested large amounts of human capital in an intensive effort to convert the old use rights into benefit rights. Residential rights were retained as individual rights and all other rights were converted into benefit rights. The Boards of Directors of Maori companies then negotiated lease agreements with forestry companies. The benefits from these agreements are distributed within the communities according to the system of benefit rights.

Does the CLRB allow or enable sufficient flexibility to convert use rights to benefit rights? There appear to be contradictory clauses in terms of rights conversion processes.

- The Bill does not contain provisions that would enable a majority of residents in an area to stop a particular transfer from going through, if they objected to it. Nor is there any guarantee that potentially affected residents would be properly consulted prior to transfer. This is of concern in the light of the finding that there had not been proper tribal resolutions prior to the 1993 and 1994 Lebowa land transfers.

8.1 Response from government officials

Chief Director Vuyi Nxasana explained that the Department of Land Affairs is working under certain constraints in developing the legislation and that these should be understood.

- The Bill deals with issues that are politically sensitive. It is difficult to proceed without the government or the ruling party providing direction around certain hard political choices and dilemmas.
- There is a lack of capacity within the department with regard to legal drafting.
- More thought needs to be given to constraints on effective implementation.

The Minister has expressed similar concerns about the need for greater clarity and "flow" in the Bill. A dilemma is that the current draft seems to re-introduce a large bureaucracy, which was one of the reasons the Minister rejected the previous draft Land Rights Bill. There seem to be numerous pitfalls, lessons and problems entailed in tenure reform. It would be impossible to draft something perfect that takes account of all experience. Perhaps it is inevitable that we have to start somewhere and learn and adapt as we go.

Restitution commissioner Tozi Gwanya said he was interested to see that the workshop was not an "anti-chief" lobby. He had understood that a lot of thinking in this area was informed by an anti-chief position. He also said that he was interested that there had been so much criticism of previous land reform laws in the workshop - together with criticism of the CLRB. It is odd that many of the people who have criticisms of the CLRB are people who were involved in drafting prior legislation, which is also acknowledged to be flawed.

9 What we want and don't want in the CRLB

This section incorporates comments from the final "wrap up" plenary section

9.1 What we want to see in the Bill

- A land management or administration system that can deliver institutional support to poor people holding land rights in communal areas. This system should be accessible and affordable to poor rural people. It should provide not only for the registration of rights, but also for state support in the ongoing maintenance of the system. It should provide effective recourse to people whose rights are at risk and assist in the resolution of disputes. The system must have sufficient human capacity to assist people in making informed choices between different tenure options.

- The Bill should encompass and cater for **all** people living in communal situations. Both the design of the Bill and its implementation plan must ensure that **all** people in these areas are accommodated.

- The Bill should apply across all common property regimes and communal areas. There should be one national law governing all communal systems.

- The Bill should incorporate and build on existing customary practices rather than try to replace them. It should be clear and unambiguous about the interaction between customary practices and new legal requirements.

- The assumptions and values that underpin the Bill should be clearly stated to avoid ambiguity and contradictions.

- The Bill should focus on the provision of sustainable livelihoods for the rural poor. The Bill should recognise the value of land in rural livelihoods. The Bill should ensure that people have access to land - as a key asset in rural livelihoods. It should consider the land needs of both current and future generations. It should take into account different land uses and the relationship between them, for example individual residential rights and communal commonage rights.

- The Bill should not focus only on livelihoods at the micro-level. It should address the macro context of development. It should focus on processes that support and enable development, for example information flows and certainty. It should be “pro- poor” legislation.

- The Bill should take account of and be consistent with other land legislation and programmes, including envisaged new laws concerning registration of land rights and land use planning.

- Care should be taken to ensure that the vesting of rights in heads of households (who tend to be male) does not undermine women’s rights. The option of vesting rights jointly in husband and wife should be carefully considered. (However the danger of a prescriptive rule applying only to communal areas was also noted.)

- The Bill must provide adequate enforcement mechanisms.

- The Bill must assist in determining the nature and content of land rights. The content of rights must not be left vague and ambiguous.

- The Bill must acknowledge and provide for different kinds of land rights, supported by appropriate land administration systems. For example grazing rights are different from residential rights.

- The Bill should provide dedicated state support to assist communities in bearing the transactional costs of difficult negotiations around new tenure systems or partnerships.

- The Bill should acknowledge the central dilemma of ever increasing land shortages in communal areas. As the population grows so less land is available for members of communal systems. This intrinsic dilemma was severely exacerbated by 13% racial restriction on communal land. One possible method of acknowledging this central problem would be to create incentives for members to give up their use rights when they move away. This would enable those "left behind" to have more meaningful resources.

- Tenure legislation is urgently necessary - there are many tenure problems impacting on other areas of land reform - for example on restitution in the Eastern Cape. Tenure legislation must be developed.

9.2 Dangers we want to avoid

- The Bill as a mechanism to divest the state of responsibility for supporting the land rights of poor people in communal areas.

- Legislation passed without an implementation plan in place and without a proper budget and staffing capacity in place to implement it. Introducing change without adequate institutional support would worsen insecurity for the poor and the vulnerable.

- Legislation which is only about land transfers or land registration.

- Legislation that would strengthen some people's land rights at the expense of other people. Legislation that would exacerbate tenure insecurity for vulnerable people.

- Legislation which cannot be implemented or which is unclear and ambiguous.

- A separate regime for Ingonyama land. Land rights becoming the pawn of political deals.

- The unintended consequences of compulsory titling that have bedevilled tenure reform in other parts of Africa.

- Focussing on boundaries and thereby generating boundary disputes and undermining the flexible nature of customary rights.

- Legislation that locks people into a tenure system which pre-empts change over time and closes down future options.

- Creating tenure institutions that lock people into areas and systems and inhibit free movement and change.

- A regime that continues to undermine land rights for women. For example provisions that deem PTOs (held by men) to be permanent tenure rights.

- Losing the opportunity to respect, protect, promote and fulfil women's land rights.

- Creating a legislative regime that ignores and sidelines the problems caused by the breakdown of the PTO system. Responsibility for addressing the reality of PTO problems falling through the cracks between different levels and departments of government.

- Vesting land in institutions if this is going to prevent people being able to hold land independently in future.

- Powerful elites capturing land assets because of a legislative failure to secure the rights of ordinary people and a failure to ensure that decisions which affect land rights can only be taken with informed majority approval.

- Procedures in the Bill blocking development.

10 Discussion of way forward with regard to consultation and enactment of the CLRB.

10.1 Government plans

The Department of Land Affairs aims to gazette the Bill during July and then engage in public consultation prior to submitting it to parliament in September. However it was acknowledged that these time frames are ambitious, especially in view of the fact that the Minister is not satisfied with the current draft.

10.2 NGO plans

The National Land Committee (NLC) is planning various activities around the Bill. It is planning a symposium on comparative experience from Africa. It is also planning to pull together research on issues pertaining to the Bill. The NLC will develop accessible materials to use in discussions around the Bill. It will use these, the research and the proceedings of the

symposium as resources in convening and developing a civil society position on the Bill.

It will also conduct a consultation process in the provinces, consisting of at least ten large meetings with rural constituencies who would be affected by the Bill. The aim of these meetings is to find out the opinions of people who would be affected and to ensure they have a voice in the process. The fourth area of activity will be campaigns and lobbying work directed at parliament and the ANC.

AFRA set out the KwaZulu-Natal provincial plan. They will consult with traditional authorities who have engaged with land reform measures to find out their views in relation to the Bill. They will also engage with provincial government officials and municipal councillors. Finally they will engage with the communities they work with to find out their views in relation to the Bill. They plan to do this over the next few weeks. They will develop a simple summary of the main issues in the Bill to use in their discussions. It will not matter if the final version of the Bill is not yet available. Their aim is not to summarise what the government may produce, but to elicit views and opinions on the broad framework. They will lobby on the basis of the inputs and ideas collected during this process.

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