

Community views on the Communal Land Rights Bill



SCHOOL
of
GOVERNMENT
UNIVERSITY OF THE WESTERN CAPE

Research
report
no. 15

Aninka Claassens



Research report no. 15

Community views on the Communal Land Rights Bill

Aninka Claassens



Programme for Land
and Agrarian Studies
August 2003

Community views on the Communal Land Rights Bill

Aninka Claassens

Published by the Programme for Land and Agrarian Studies, School of Government,
University of the Western Cape, Private Bag X17, Bellville, 7535, Cape Town.

Tel: +27 21 959 3733. Fax: +27 21 959 3732. E-mail: plaas@uwc.ac.za.

Website: www.uwc.ac.za/plaas

Programme for Land and Agrarian Studies Research report; no. 15

ISBN 1-86808-589-9

August 2003

All rights reserved. No part of this publication may be reproduced or transmitted, in any form or means, without prior permission from the publisher or the author.

Copy editor: Stephen Heyns

Cover photograph: Navy Simukonde – Participants from the Mpindweni meeting.

Layout: Designs for Development

Map: Anne Westoby

Typeset in Times

Reproduction: Castle Graphics

Printing: Hansa Reprint

Contents

Acronyms	ii
Acknowledgements	iii
Chapter 1: Introduction and background	1
Chapter 2: The main provisions of the CLRБ	4
Transfer of title and opening of communal land register	4
Administrative structures	6
Women	7
Land rights boards	7
Timeframes for implementation	8
Comparable redress	8
Leases in communal areas	8
Chapter 3: Summary of proceedings of the community meetings	10
Community meeting held at Leeufontein	10
Community meeting held at Batlharos	14
Community meeting held at Tyhefu	18
Community meeting held at Mpindweni	20
Community meeting held at Mankaipaa	23
Community meeting held in Mashamba	26
Community meeting held in Pietermaritzburg	28
Chapter 4: Key themes emerging from the meetings	31
Current tenure problems	31
Comments and proposals on the CLRБ	33
Caveat to the summary	37
References	39

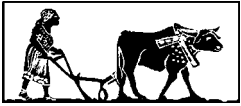
List of figures and tables

Table 1: Profile of community meetings	2
Figure 1: Map showing where community meetings were held	3



Acronyms

Afra	Association for Rural Advancement
ANC	African National Congress
Ancra	Association for Northern Cape Rural Advancement
CPA	communal property association
CRLB	Draft Communal Land Rights Bill
DFID	Department for International Development of the UK government
DLA	Department of Land Affairs
IDC	Industrial Development Corporation
IDP	integrated development plan
Leap	Legal Entity Assessment Project
LRB	land rights board
NLC	National Land Committee
PLAAS	Programme for Land and Agrarian Studies
PTOs	Permission to Occupy certificates
TCOE	Trust for Community Outreach and Education
Trac	The Rural Action Committee
Tralso	Transkei Land Service Organisation



Acknowledgements

The Department for International Development (DFID) of the British government is gratefully acknowledged for funding the Programme for Land and Agrarian Studies/ National Land Committee community public participation project on the Community Land Rights Bill. These funds have made it possible to organise community meetings in a variety of locations, and to publish this report. The project was undertaken in collaboration and consultation with a number of rural NGOs. The meetings held were a success largely as a result of the efforts of the following field workers and their organisations: Eddie Barnett of the

Association for Northern Cape Rural Advancement (Ancra), Mputumi Mayekiso of Masifunde, Nolulama Wakaba of the Transkei Land Service Organisation (Tralso), Moses Modise of The Rural Action Committee (Trac), Mike Nefali and Thembanani Furumele of Nkuzi Development Association, and Sizani Ngubane of the Association for Rural Advancement (Afra). In addition, one meeting was organised by Lydia Komape Ngwenya, MP. Grateful thanks to these organisations and individuals, as well as to many community members, for their detailed feedback on a first draft of this report.



Chapter 1: Introduction and background

The Programme for Land and Agrarian Studies (PLAAS) and the National Land Committee (NLC) responded to the lack of effective government consultation with communities on the draft Communal Land Rights Bill (CLRБ) by initiating a joint project to broaden civil society participation in the legislative process.

The project includes a community consultation programme, a capacity building initiative for rural NGOs, and a lobbying and advocacy component. A symposium has also been held on lessons from the African experience of tenure reform.

This report is based on the first phase of the community consultation aspect of the project – large rural meetings convened in collaboration with land NGOs. The next phase of the community consultation process involves participants from these meetings developing submissions around tenure problems and tenure proposals which they will submit to the Department of Land Affairs (DLA) and to Parliament.

The CLRБ was published for public comment in August 2002. A series of seven large consultative meetings with rural communities were held between November 2002 and April 2003 to inform rural communities affected by the Bill about its provisions, in order to enable them to participate in the legislative process.

Six of the meetings were organised jointly with provincially-based organisations that operate in rural areas. Four of the six organisations are affiliates of the NLC, one is an affiliate of the Trust for Community Outreach and Education (TCOE) and one is an independent land NGO. One meeting was convened by a member of Parliament who serves on the Portfolio Committee on Land and

Agriculture and who wanted to inform people in her constituency about the Bill. A total of 700 people attended the meetings, representing 75 different rural communities from five provinces (Table 1).

The meetings generally took place over two days, although one meeting lasted four days. Most meetings began with inputs from community participants about tenure problems they currently face. In the afternoon of the first day, the provisions of the Bill were explained, interspersed by sessions dealing with questions of clarification. The following day the meetings broke into small group discussions to assess the positive and negative aspects of the Bill and make recommendations about how it could be improved. The deliberations of the small group discussions were reported back to plenary and discussed. In most instances, representatives were chosen in the final plenary session to take the process forward by making written and oral submissions to Parliament's Portfolio Committee on Agriculture and Land Affairs.

The local partner organisations arranged for reports of the meetings to be drawn up, in most cases by regionally-based consultants and service providers. These reports are available from PLAAS or NLC. Since some of the reports are long (over 30 pages), this document summarises the main issues raised in the meetings. It focuses on two themes: the



Table 1. Profile of community meetings

Venue	Host organisation	Communities represented	Number of participants
Leeufontein, Sekhukhuniland (Limpopo)	Lydia Komape Ngwenya, MP	Leeufontein, Tsimanyane, Tafelkop, Rilokoane, Moganyaka, Luckau, Dichoeung, Mooihoek, Mamphokgo, Elandskraal, Morarela, Henloopen, Vaalbank, Groblersdal, Selebaneng, Sehlakoane, Marble Hall, Makgopye, Letebejane, Dennilton, Phetoane, Motetema	124
Battharos village near Kuruman (Northern Cape)	Association for Northern Cape Rural Advancement (Ancra)	Majeng, Dikgweng, Deerward, Tsweding, Batlaros, Cwaing	107
Tyhefu irrigation scheme (Eastern Cape)	Masifunde	Glenmore, Ndwanyane, Ndlame, Pikoli	75
Mpindweni village near Umtata (Eastern Cape)	Transkei Land Service Organisation (Tralso)	Lusikisiki, Idutywa, Mzamba Mouth, Greenville, Umtata, Ntabankulu, Tsolo, Mount Frere, Mqanduli, Mbolompo, Ntshethu, Xhongora, Baziya, Mpindweni	65
Mankaipaa village near Madikwe (North West)	The Rural Action Committee North West (Trac-NW)	Mankaipaa, Katnagel, Molatedi, Obakeng, Pitsedisulejang, Sesobe, Aphiri, Debrak	119
Mashamba village near Elim (Limpopo)	Nkuzi Development Association	Mashamba, Masakona, Bokisi, Chavani, Ntshuxi	140
Pietermaritzburg (KwaZulu-Natal)	Association for Rural Advancement (Afra) and the Legal Entity Assessment Project (Leap)	Amahlubi – Nsukangihlale and Bhekuzulu, Ingogo, Impendle, Estcourt, Greytown, Hibberdene, Elandskop, Boston, Deepdale, Ekuthuleni, Cramond, Ladysmith, Matiwane, Emondlo	70



tenure problems described in the meetings, and comments and recommendations concerning the Bill. It includes brief comparative comments about the meetings, which contain contextual information that may illuminate some of the issues raised directly by the participants. The summary is drawn from two sources: the reports of the workshops (which vary substantially in quality and comprehensiveness) and my own notes taken during the meetings. In two of the meetings (those in Mpindweni and Pietermaritzburg) the majority of participants were women, and discussion focused primarily on the impact of the Bill

on women's land rights. The issue of women's land rights was raised by participants in the other meetings, but not as the primary focus of discussion.

It was anticipated that the portfolio committee would hold public hearings on the CLRБ during May 2003. However, these hearings did not materialise. The Department of Provincial and Local Government has raised serious concerns about the 'privatisation' paradigm adopted by the Bill, and the danger that it could undermine local government's capacity to deliver services to communities living in communal areas. The Minister of Agriculture and Land Affairs has instructed the



Figure 1: Map showing where community meetings were held

Department of Land Affairs to develop an alternative version of the Bill that would retain underlying state ownership of the land, but create strong rights for land holders, perhaps taking the form of usufruct rights or 99-year leases.

Many people, including the rural communities consulted, are concerned that these developments will lead to the Bill being put on the back burner until after the 2004 elections. This happened to the 1999 version of the Land Rights Bill. The issue of tenure reform in the communal areas has always been politically controversial because such strong vested interests are at stake, and because of its impact on the power of traditional leaders.

Yet the meetings indicated the serious nature of the tenure problems currently confronting rural communities, and the consequences of the accelerating collapse of the old land administration systems. People in the meetings stressed that tenure

reform is long overdue and a prerequisite for development and poverty alleviation in rural areas.

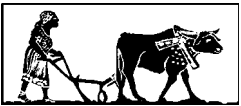
Delegates from the seven meetings met in Johannesburg at the end of May 2003 to discuss how to ensure that the voices of rural people are taken into account in the debate about tenure legislation. Each group drafted a submission setting out their views about what should (and should not) be contained in tenure legislation for communal areas. They are hoping to be invited to present their views to the Minister of Agriculture and Land Affairs and the parliamentary portfolio committee, so that they can explain the nature of the tenure problems they face, and put forward their proposals for solutions. The target date they have set is August 2003. This report aims to make available to a wider audience the full range of community views on the CRLB that were expressed at the meetings, as a contribution to informed public discussion and debate.



Chapter 2: The main provisions of the CLRB

The Bill proposes to secure land rights by transferring the title deeds of communal land from the state to 'communities'. It provides for an intricate transfer process, which includes a rights enquiry investigation, community meetings, and objection procedures. There must be community agreement about the size, nature and boundaries of the 'community' that will become the owner of the title to the land

Before the transfer of title can be registered, the community must develop 'community rules'. Once these rules have been approved and registered by the Department of Land Affairs, they become the 'law' governing land rights and land administration within that community.



On registration of the rules, the community becomes a 'juristic person' and title can be transferred to it. Once the rules are registered, an 'administrative structure' can be 'appointed or elected'. The administrative structure is made up of community members. The Bill provides that traditional leaders can be on the administrative structure in an '*ex officio*' capacity. In their *ex officio* capacity (that is participating as traditional leaders, not as ordinary community members), they cannot make up more than 25% of the structure. However there is no limit to the number of traditional leaders who can be elected or appointed to the administrative structure on the same basis as other community members.

The Bill gives far-reaching powers and responsibilities to administrative structures. These bodies are responsible for the entire land administration system, including the stage of defining, recording and registering land tenure rights within the community. This second stage results in the registration of deeds of land tenure rights for

'households, families, or individual persons'. It is important to note that the registration of individual rights can only take place after transfer of title to the community as a whole, and once community rules have been developed, adopted and registered. Furthermore an administrative structure in the community must be in place to drive the process of registering individual rights. The bill provides that current rights such as PTOs (Permission to Occupy certificates) will be converted into registered deeds of land tenure rights as long as they were not unlawfully issued in the first place.

The Bill provides that the Minister of Land Affairs may award alternative land or comparable redress to people whose tenure is insecure as a result of conflicting rights existing on the same land. Land rights inquiries are used to investigate and recommend solutions in this, and other situations. The Bill also provides for land rights boards (LRBs) to play an advisory role for the minister and to support communities.

It also sets out procedures governing leases and transactions in communal areas.

Transfer of title and opening of communal land register

The primary mechanism used to secure tenure rights in the CLRB is the transfer of

title of communal land from the state to communities living on the land. It should be noted that transfer of title to a community cannot take place until any restitution claim to the land has been settled.

A community (or individual household or individual family or individual person) may apply for the transfer of communal land. The Minister of Land Affairs may also initiate transfer 'projects' on behalf of communities. A rights inquiry is undertaken, and a report submitted to the minister. If the minister is satisfied with the report, she advertises the proposed transfer and calls for objections. If there are objections, these are investigated by the person who did the initial rights inquiry. Another report is submitted to the minister and she decides whether or not to approve the transfer.

Any approval is subject to the community compiling and having registered its community rules. The rules regulate the administration and use of the community's land. They also determine the nature and content of the land tenure rights of individuals, households and families. The rules have to meet standards laid down in the Bill to protect human rights, democratic processes, fair access to the property, accountability and transparency. The rules will be registered only after an official has witnessed and approved the adoption process in the community, and if they conform to the standards set out in the Bill.

The registration of the rules converts the community into a 'juristic person' capable of owning land. No transfer of title can take place until the community has drafted detailed community rules, which have been registered by DLA.

After approval by the minister, and registration of the rules, the transfer of title takes place. The minister may impose any reasonable conditions on the transfer, including a provision to open a communal land register.

It is at this point that the administrative structure enters the picture. Until this point in the transfer process there is no mention

of a structure of any kind. The actors so far are 'the community, or similar entity, or individual household, or individual family or individual person' and the minister. The administrative structure comes into being once a community has 'community rules'. The community 'appoints' the administrative structure in accordance with its community rules. It then authorises it to represent its interests in matters relating to land and land tenure rights, and to administer its land rights.

The Bill states that an administrative structure shall request the minister's approval for the opening of a communal land register. If the minister grants approval, the administrative structure lodges a general plan with the Surveyor General and the Registrar of Deeds. A communal land register is then opened. The administrative structure allocates land tenure rights to individuals and families and 'causes the preparation and lodgement of deeds of land tenure rights'.

The registered owner of a land tenure right may apply to the administrative structure for the conversion of his or her land tenure right to full ownership. If the community approves the application, then the relevant portion of land must be surveyed and applications lodged with the Surveyor General and the Registrar of Deeds.

The process up to this point involves over 30 administrative steps and a minimum period of 12 months for the official steps in the process. This does not include a timeframe for internal community meetings and negotiations. Registered land tenure rights are not possible in communal areas where transfer of title has not taken place. Nor are they possible in communal areas that are not covered by the Bill.

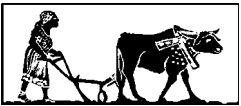
A key issue in the process of land transfer will be determining the boundaries of the communities who will take title. This is particularly important when different groups of people have overlapping or disputed land rights in an area. Which 'community' will become the owner of the land? The Bill defines 'community' to be a group, or a portion of a group of people,



living in an area, who have a shared history, shared rules about land rights, and who use the land as if they were the owners of the land. Because this definition could exclude people who have been living in an area for a long time, but do not share the same history as the others, the definition also says that long-term occupants who do not have a historical connection with the community, must be regarded as members of the community. It also says that a portion of the group, who occupy a particular part of the land, may define themselves as a separate community and so qualify for a separate transfer process.

The issue of defining the boundaries of communities is a critical issue. The Bill proposes that title to the land will be transferred from the government to 'the community'.

The community will then decide (via its community rules) how to define and whether to register the rights of people and families living on the land it has come to own. Any application for transfer of title must identify the boundaries of the land that is sought, and it must also include a community resolution showing the community's support for the transfer.



Administrative structures

The administrative structure is the body that represents a community and is authorised to fulfil the land administration function for the community when it takes transfer of title. An administrative structure comes into being only after a community has developed its community rules. This means that administrative structures come into being either just prior to, or after, transfer of title to the community. They cannot operate in communities which have not adopted and registered community rules. The community rules must set out 'criteria for electing or appointing' the members of administrative structures. The Bill does not require elections; instead, it refers to an appointment process.

Administrative structures and traditional leaders

The Bill provides for *ex officio* participation by traditional leadership

'where applicable' but limits *ex officio* membership to a maximum of 25%. This would not restrict traditional leaders from taking more places in the structure, but they would have to be nominated on the same basis as any other community member, not in their capacity as traditional leaders. It also states that the *ex officio* 25% membership allocated to traditional leaders would not have veto powers in the structure.

Virtually all the land administration functions that are currently fulfilled by traditional leaders in many parts of South Africa are transferred to the envisaged new structures. This raises a variety of questions. In areas where traditional authorities fulfil these functions, what will be the impact of superimposing a new structure on pre-existing systems and institutions? In areas where the land administration role of traditional leaders is contested or challenged, what impact will the 25% rule have?

Relationship with local government

What will be the relationship between the administrative structure and local government? Local government and service delivery issues are not mentioned in the Bill. There is a danger that local government may be reluctant to provide services to private land. Once transfer takes place communal land is no longer state land, it becomes privately owned. Communal property associations (CPAs) find that government departments generally refuse to develop infrastructure within the boundaries of CPA-held land because it is in private ownership. Often there is tension between local government and CPA committees. Unless the Bill provides clarity and direction on the powers and functions of administrative structures relative to existing traditional structures and local government, it may exacerbate existing conflicts and confusion around roles and responsibilities, and thereby impact negatively on service delivery and development.

Functions of the proposed administrative structure

The proposed administrative structure has far reaching powers and functions. It

performs the functions of land administration, including the allocation and registration of land tenure rights. It must compile and maintain a record of all existing and any future land tenure rights. It must establish and maintain registers and records with regard to the particulars of rights holders within the community, and transactions affecting land tenure rights. It must also mediate in land-related disputes within the community. It is the driving force in the process of developing a communal general plan and opening a communal land rights register. It is responsible for causing the preparation and lodgement of deeds of land tenure rights, and for the process of converting land tenure rights into full ownership, should this be requested.

Administrative capacity, time and payment

The tasks allocated to the administrative structures in the Bill are time-consuming and complex. Under most tenure systems (including individual ownership), these tasks are generally performed by full-time employees. Will administrative structures of community members have the capacity and the time to create and maintain proper records of land rights on a sustained and ongoing basis? Will they be considered sufficiently objective and fair for community members to have confidence in the registers generated by their records? In terms of the Bill, administrative structures would not receive salaries or any other financial support from government.

Women

The Bill provides that community rules in general should not discriminate against women. However, it does not provide accessible enforcement mechanisms to police this ban. Nor does it contain specific provisions dealing with some of the well-known problems women face under customary tenure. For example, it does not contain a requirement that single mothers must be eligible for land allocation, nor a provision that women are entitled to attend

and speak at community meetings. There is no provision that requires the official who reports on the adoption process for community rules, to assess how, and whether, women are represented in the process. Nor are their provisions that require a proportion of women members in administrative structures, or on LRBs.

The bill provides that after transfer of title to the community, PTOs should be converted into land tenure rights. However the PTO regulations provide that PTOs may only be issued to men. This means that the Bill would entrench past discrimination by registering a 'men only' form of land rights.

At the point that rights are registered, assets that were shared by various family members become the property of the person who is the registered owner. The Bill fails to provide that land rights must be registered jointly in the names of husband and wife. This issue is left to 'the community' to decide by means of the 'community rules'. Unless clear direction is provided, it is likely that land rights will be registered in the name of the male household head. Since land rights can be alienable, this may materially worsen the position of deserted or divorced wives, whose husbands may decide to sell the assets they have 'left behind'.



Land rights boards

The Bill provides for LRBs to advise the minister on certain matters, to provide assistance to communities and administrative structures and to monitor compliance with the Act. They are also expected to liaise with different levels of government on matters affecting communal land, and to mediate disputes.

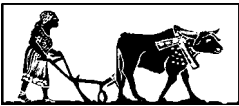
The boards are made up of two members nominated by the relevant Provincial House of Traditional Leaders, one official from each government department the minister deems necessary, and five community members chosen from public nominations. The minister appoints members of an LRB for a five-year period. After consultation with the board, she

appoints a chair and deputy chair. The LRB will be provided with staff, accommodation and finances by the government.

The Bill does not specify the area of jurisdiction of a land rights board. Nor does it guarantee that LRBs will be established in all areas. Section 38(1)(b) implies that LRBs may have to service areas spanning more than one province; it provides that each Provincial House of Traditional Leaders having jurisdiction in the areas subject to an LRB can nominate two of its members. The larger the area a land rights board must cover, the more difficult it would be to deal with specific problems at community level.

Timeframes for implementation

As mentioned above, the process of transferring title is an intricate and time-consuming activity. There are an estimated 20 000 rural communities falling within the ambit of the Bill. This means some communities may have to wait for a very long time.



The fact that many aspects of the Bill come into effect only once community rules have been registered will have serious consequences. Rules are registered only towards the end of the transfer process. The community rules determine the content of the land tenure rights of individuals and families. They also determine in whom land tenure rights will vest. Without community rules, administrative structures cannot come into existence. Without administrative structures, there can be no recording or registration of individual land tenure rights.

Comparable redress

Chapter IV of the Bill addresses the problem of overcrowding and overlapping rights in many communal areas and recognises that, in such instances, the solution has to include additional land. The chapter provides for alternative land, or other assistance, for people whose tenure rights are insecure because of conflicting

and overlapping tenure rights, if the conflict is due to past racially discriminatory laws or practices. It sets out factors governing the prioritisation and adjudication of applications. Land rights inquiries are used to investigate and assess the merits of applications. The inquiries are conducted by officials or service providers appointed by the minister. The minister awards redress (which may be alternative land) on the basis of the report and recommendations of the inquiry.

The chapter gives effect to Section 25(6) of the Constitution, which states:

A person or community whose tenure of land is legally insecure as a result of past racially discriminatory laws or practices is entitled, to the extent provided by an Act of Parliament, either to tenure which is legally secure or to comparable redress.

DLA is under a constitutional duty to introduce a law that make provision for comparable redress, but the Bill provides that an application for 'comparable redress' must be made by an administrative structure, or by an individual. Unlike an application for transfer of title, it cannot be made by a group, or a 'community' or initiated by the minister on behalf of a group of people.

As already discussed, an administrative structure will come into existence only after transfer of title. For transfer of title to be able to take place, the people living in an area must have agreed to be one community and have developed a set of joint community rules. Yet people only qualify for comparable redress when their land tenure rights are insecure as a result of conflicting land tenure rights. There is an obvious contradiction here. People need comparable redress precisely when there are conflicting land tenure rights.

Logically, the time to sort out, and provide compensation for, conflicting claims would be before transfer of title, not afterwards. Furthermore there is no guarantee that people will receive comparable redress. The minister will

prioritise applications, and she will decide, at her discretion, which applications should be pursued and which dropped. Thus people who have agreed to define themselves as one community in order to be able to develop community rules and thereby form an administrative structure, may find, that having done this, and bound themselves to abide by the community rules, their subsequent applications for comparable redress are not granted.

Leases in communal areas

Section 30 enables the minister, the community and an investor to enter into three-way agreements on state-owned communal land. This section would be used prior to transfer, presumably as a transitional measure. An investor who wishes to lease communal land would sign a lease with both the minister, as nominal owner of the land, and the community, as the rights holder to the land. This is necessary because the community does not yet have legally enforceable rights to the land, and therefore is not in a position to enter into legally-binding agreements in respect of the land. The section sets out that, as the nominal owner, the minister

cannot enter into a lease with an investor without the community's consent. It also specifies that the benefits from the lease should be distributed fairly to the community. The leases cannot exceed 40 years, and the lessee may mortgage or 'sell' the lease. The leases must be registered in the Deeds Office.

This section is based on a policy that was adopted by DLA some time ago to govern leasing and other transactions in communal land. Most communal land is still nominally owned by the state. Thus only the Minister of Land Affairs has the legal power to alienate or enter into long leases in respect of communal land. Leases and other transactions in communal land which have not been authorised by the minister are invalid and can be set aside, unless a specific form of community ownership or trust has been registered in the Deeds Office. In terms of both this policy and the Bill, the minister must consult the community before she can enter into contractual relationships in respect of the land. They must agree to the transaction, and the benefits from the lease or other transaction must be fairly distributed within the community.



Chapter 3: Summary of proceedings of the community meetings

This chapter is a summary of what was said at each of the seven community meetings, based on the reports of those meetings. The format of most of the meetings was a discussion of tenure problems experienced by participants, followed by an input on the provisions of the Bill, followed by comments and recommendations on the Bill.

Community meeting held at Leeufontein

This meeting was held in Leeufontein township near Marble Hall/ Groblersdal in Sekhukhuneland, Limpopo on 11 and 12 January 2003. It was attended by 124 people, including representatives from Leeufontein, Tsimanyane, Tafelkop, Rilokoane, Moganyaka, Luckau, Dichoeng, Mooihoek, Mamphokgo, Elandskraal, Morarela, Henloopen, Vaalbank, Groblersdal, Selebaneng, Sehlakoane, Marble Hall, Makgopye, Letebejane, Dennilton, Phetoane and Motetema.

It was convened by member of Parliament Lydia Komape Ngwenya, and was attended by other parliamentarians, including Nelson Diale, John Phala, Frieda Mathibela and MJ Mahlangu. A majority of the people who attended the meeting represented African National Congress (ANC) structures. There were also many municipal councillors present. Comments made during the meeting are summarised in point form below.

Participants' comments on their tenure problems

- People do not have secure rights to the land.
- People 'buy' residential sites from chiefs and *indunas* [headmen] for

R300–R1 500. They get receipts, but nothing else to confirm their rights to the land. This lack of documentation and clarity about the status of the 'purchase' means people do not feel their tenure is secure. They are therefore nervous about investing in the land.

- The amounts that people have to pay for land allocations vary from place to place. Sometimes the same land is allocated to more than one person. The stand numbers are incorrect and confusing.
- What is the status of the old PTOs? Nobody knows. People who applied to have them converted to title deeds have waited for three years but have received no reply.
- Even the old PTOs are no longer being issued. Instead people calling themselves *indunas* 'sell' land allocations. What is the status of these people? Do the chiefs even know what they are doing?
- Some people regard people who acquired land in this way as tenants. They query whether tenants are entitled to services. Yet in many areas there is no other way to acquire land, because the old PTO system has broken down.
- We live under the threat of eviction or other sanction by chiefs and *indunas*.



- Are PTOs or receipts strong enough to protect us from threats of eviction?
- We have to pay tribal levies or risk losing our land. The amount of tribal levies varies. Those closer to the chiefs pay less than those who are more distant. What are these tribal levies used for? How can we be sure that they are being properly accounted for?
 - People need ownership of their residential sites so that they are secure, and also to enable them to get loans from the bank and be able to invest in their houses.
 - Stands are not allocated to women unless they are over 40 years old and have children.
 - We need additional land for various purposes. We need more grazing land. Some residential areas are overcrowded. Yet the chiefs do not allow more land to be released for housing. There are serious land shortages in our areas. In some areas there is no grazing land, in some areas there is insufficient residential land. Even when there is vacant land nearby, people do not know how to access it. Either the chiefs control and keep it, or it is state land and communities have no means of accessing it.
 - There are no longer systems in place to protect and manage communal resources. There is no longer maintenance of grazing camps, nor are there rangers to enforce controls. We need government support to maintain fencing and controls over forests and grazing areas.
 - People are raiding communal resources such as building sand, stone and firewood. Private contractors and the Department of Public Works simply dig up and remove sand and stone. Likewise people in *bakkies* [pick up trucks] come and cut down wood and take it away to sell. Some chiefs and *indunas* are also abusing communal resources for their own profit. There are no controls to stop them.
 - There are serious conflicts between chiefs and municipalities. This causes much delay, confusion and contradiction in development. The two bodies pull in opposite directions. The government should provide a clear demarcation of the powers of the two different bodies.
 - It is very difficult for the municipalities to fulfil their planning and development responsibilities when chiefs control the land. For example an plan to build a school was in an advanced stage when the chief pre-emptively allocated the land as residential sites. It is impossible to have proper IDPs [integrated development plans at the municipal level] while the chiefs simply allocate the land as they see fit.
 - The way that land is currently allocated is higgledy piggledy. There are no straight lines and no proper system. This makes it difficult for police or emergency services to operate effectively.
 - It will be very difficult for municipalities to put in roads and water in areas that are laid out in a chaotic fashion.
 - There should be closer institutional linkages between chiefs and municipalities to make them co-ordinate their activities – especially when it comes to land allocation.
 - The Roman Catholic Church is transferring land to people. How can the municipalities provide services within areas that are privately owned?



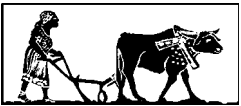
Participants' comments and recommendations on the Bill

These comments and recommendations were made by speakers in the plenary sessions and as report backs from small group discussions. They are not always consistent with one another.

- The Bill will exacerbate the already serious institutional confusion between the powers and responsibilities of local government and chiefs by adding yet another structure to the arena. The proposed administrative structure is

likely to be rejected by municipalities and chiefs as it interferes with the powers of both. It trespasses on chiefs' control over land and their land allocation functions and it will limit local government's capacity to plan and deliver development like chiefs do at present.

- How would the proposed community rules and 'communal general plans' relate to IDPs and municipal by-laws? The Bill does not provide for integration between the land use planning and development functions of municipalities and the control and management functions of administrative structures. This will exacerbate the difficulties of service provision and development in communal areas, as the powers of the administrative structures are stronger than the powers of chiefs.
- The Bill should clearly rationalise and integrate the functions and powers of municipalities, chiefs and administrative structures, or it will exacerbate the current serious problems between existing institutions.
- The functions proposed for administrative structure should be fulfilled by local government. The job of keeping registers of land rights should be done by paid full-time people in offices, not by community volunteers.
- The community rules should fall within the framework of local government laws. It will not work to have community rules with the status of law if they are not consistent with local government laws.
- The communities should not have the status of 'juristic persons'. We cannot have private 'kingdoms' within local government areas. This means there could be different, clashing, centres of power.
- Once people get positions in the administrative structure they will not help to register individual rights within their communities because they will become addicted to power, and independent individual rights would



undermine their power and control over the land.

- The main problem with the Bill is that it transfers ownership and control of land to legal entities. This creates many problems. It privatises the land so that it will be difficult if not impossible for local government to provide services. It separates the control function over the land from the planning and development functions of local government, which makes it virtually impossible for local government to deliver development. It will also create power-addicted structures that will be reluctant to assist people to get ownership of their houses or fields.
- The priority of people in our area is secure and independent ownership of their houses. Why can't the Bill start with this, rather than start by transferring title to legal entities?
- The transfer process proposed in the Bill is too long and detailed. It will take too long to implement. It should begin by giving rights to residential sites. We do not want residential rights to come at the end of the process, they should come at the beginning.
- The approach of transferring land to 'communities' will reinforce tribalism and ethnic divisions between people and reinforce apartheid boundaries and ways of thinking. The definition of community is complicated and it will cause divisions.
- The Bill will trigger boundary disputes between communities. The Bill should provide for proper demarcation criteria and intensive consultation processes involving all stakeholders.
- The Bill is an inheritance from the old National Party bantustan framework. It continues the old song of transferring land to 'tribes'. We think this approach should be scrapped and the bill should focus on upgrading PTOs into property rights.
- The Bill proposes far-reaching and difficult jobs for administrative structures. Unpaid community

structures will have neither the capacity nor the time to fulfil these functions. The Bill would have to include ongoing capacity building for administrative structures, and payment for full-time posts for these structures to be able to fulfil their responsibilities.

- The functions of administrative structures and municipalities should be combined and their roles should be integrated with one another.
- By privatising communal land, the Bill creates the danger that government will wash its hands of communal areas and refuse to develop them, as is the case with land owned by CPAs. We are still poor, we need government support. We would rather have development than communal title. Communal title should be scrapped if it restricts development and service provision. [One view.]
- People living in communal areas pay taxes so the government should not refuse to put in services on communal land, even if it is privately owned. [Another view.]
- Communal land is different from privately owned land such as white farms. It should never be regarded as being in the same category as 'private land'. It is not the same. [Another view.]
- Title deeds are good because they will enable us to get loans from the bank. [One view.]
- Title deeds are dangerous because people will end up losing their land when they cannot repay their loans. This is already happening in the urban areas. [Another view.]
- It is good that the Bill limits the participation of chiefs in land administration to 25%. [One view.]
- Allowing 25% participation by chiefs is too much. They will have 25% percent *ex officio* representation and then other people associated with the royal kraals will get elected within the remaining 75% and these people may combine with the 25% to create a majority for chiefs. The 25% should be reduced to 20%. [Another view.]

- The Bill should not prescribe the proportion of chiefs in administrative structures. This should be left to each community to decide. [Another view.]
- Chiefs who fall within the 25% *ex officio* category should have voting rights within administrative structures. [One view.]
- Only people who are elected onto the structures should have voting rights. Chiefs who fall within the 25% *ex officio* category should not be allowed to vote. [Another view.]
- It is good that the Bill provides for additional land or other compensation where rights overlap and land is overcrowded.
- It is good that the Bill proposes registering all land rights. Such registers are needed to enable planning and development.
- The land rights boards should operate at the local level, not at the provincial level. Officials from local government should be included in land rights boards.
- The Bill should contain provisions for appeals against the decisions of the administrative structures and the land rights boards.
- The Bill should have provided for a 50% quota of women on all the structures it proposes.

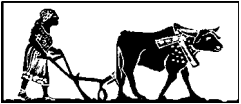


Author's comments

The level of analysis and debate in this meeting was exceptionally high. People were able to grasp the main components of the Bill quickly and apply these to their context immediately. This may be because many of the people in the meeting have experience as councillors and with development processes. Most of the people who attended the meeting are active in ANC structures. Whilst they were critical of aspects of the Bill, they also said that they were grateful that the government is dealing with tenure problems in rural areas, and that it must be encouraged to enact the legislation. They said that the proposed 25% restriction on the role of

chiefs in land administration is a 'step in the right direction' and that the government should be supported for having made this step. They indicated that they would push for amending the Bill rather than scrapping it, as they did not want progress or momentum around land rights to be lost.

The vast majority of people in the meeting favoured individual rights to residential sites and fields over communal title. This may be because of their experience with the Lebowa land transfer to 'tribes' that took place in 1993 and early 1994. (See Claassens 2001). Some of the chiefs who benefited from the transfers now regard communal land as their property and have reverted to the more directly repressive conduct that sparked the 1986 uprisings against chiefs in the area. It may also reflect the fact that a significant number of people in the area came from elsewhere and settled in the area after paying chiefs for residential allocations. In many instances they do not have long-term historical connections with the chiefs or with the land. Much of the land around Leeufontein was given to chiefs who supported the Bantu Authorities system in the 1950s and 60s. These chiefs supplemented both their incomes, and the number of their 'subjects' by allocating residential sites (for a fee) to relative 'outsiders'. For many of the very poor people who acquired land from chiefs in this way R300–R1 500 was, and still is, a considerable sum. They interpret their payments as 'land purchases' whilst the chiefs interpret them as 'tribute' money for being accepted as a member of the 'tribe' (and therefore a subject of the chief). In general, the degree of power and control by chiefs in this area is much higher than in the most of the other areas where meetings were held.



Community meeting held at Batlharos

This meeting was held at Batlharos village near Kuruman in the Northern Cape on 17 and 18 March 2003. It was organised by

Eddie Barnett of Ancra and was attended by 107 people including representatives from the following communities: Majeng, Dikgweng, Deerward, Tsweding, Batlaros and Cwaing. Apart from Ancra and PLAAS staff, the meeting was also attended by some headmen and a chief, as well as two officials from local government.

CPAs

Three of the communities attending have won restitution claims, formed CPAs and are resident on their restored land. They described serious problems with these CPAs, including the committee members monopolising six of the seven camps in Majeng for themselves, and confining the rest of the community to one camp. The Cwaing CPA committee has entered into a lease agreement with a white farmer in respect of a large portion of the land without informing the community. Participants in the meeting complained that the CPA committees act as despotic 'bosses', both in relation to community members and to local government. The committee in one area is charging CPA members for grazing rights, while at the same time allocating CPA land to 'outsiders'. Women describe how their attempts to convince the municipality to provide an ambulance service to Majeng failed because the municipality informed them that it could not meet directly with residents in the area, it could only meet with the CPA committee. This was apparently the CPA committee's 'instruction' to the municipality.

Speakers said no one can challenge CPA committees because nobody knows how CPAs are meant to work, and that different CPAs have different rules. They blamed the government for failing to provide adequate support and backup to ensure that CPAs work properly. There was widespread disillusionment about CPAs.

The breakdown of systems and rules

In the 'ordinary' communal areas where CPAs do not exist, residents complained of the collapse of orderly systems of land allocation. They referred to 'self-

allocation' or 'invasion' of land taking place because of endemic conflict and confusion about the roles and functions of chiefs on the one hand and local government on the other.

Participants described problems with grazing land. There is endemic stock theft in some areas, as well as theft of fencing from grazing camps. Participants said grazing camps are no longer maintained and the 'rangers' who used to enforce rules and systems on grazing land have disappeared. The system of rotational grazing has fallen into chaos. Others complained of the municipalities impounding cattle because there is insufficient grazing land in communal areas, while whites own vast tracts of unutilised land. (A response to this point was that even if more grazing land became available, it would become useless because of the prevailing lack of land use planning systems, and the breakdown of grazing controls)

Chiefs and local government

There were a variety of different opinions here. Some people said that chief's powers in respect of land and development had been undermined and should be reinstated. One speaker said the problems experienced with CPAs are a good reason to 'bring chiefs back'. Others said that chiefs failed to inform communities about development opportunities, had abused tribal levies in the past, and had failed to bring development to rural areas when they had the power to do so. Those holding this view said that reinforcing the power and status of chiefs again would be a bad thing.

There were many complaints about municipalities too, about the lack of development, especially water provision, and about municipal 'cut-offs' (withdrawal of supplies). A key issue raised in relation to municipalities was the unsustainable high price of municipal services and all things associated with municipalities.

The chiefs said that the government provides more development money to municipalities than it had ever provided to chiefs, so their achievements with regard

to development should not be compared. They bemoaned the demise of the old tribal levy system which they said had worked, even if the services provided by means of the tribal levies were rudimentary. Other participants said that people had stopped paying tribal levies because the chiefs had not accounted properly for how the money had been spent.

Most people agreed on the need for better integration and clarity about the respective roles of chiefs and local government, and of the need for mutual respect between the two institutions.

The status of land rights

People said that there used to be two categories of land: 'tribal land' and 'state land', 'but now all land is treated as state land'. Reference was made to a municipality establishing a township on communal grazing land without community permission. Participants stated that municipalities do not respect people's land rights and take unilateral decisions with regard to land. They said 'people need ownership to be able to protect their land from municipalities and to be treated with respect, like whites are'. Yet, at the same time, some people are disillusioned with the CPA leadership. Some argued for communal title to be held jointly by chiefs and CPAs. (Most of the CPA structures in the area already include representatives from the chieftainship.)

Women

Participants said that men dominate all structures, whether CPA committees or tribal authorities. There are women in some of the CPA structures, but in most cases they are 'tokens' and do not have the capacity to adequately protect women. (Ancra staff have pointed out that the chairperson of the authoritarian Majeng CPA committee is a woman.) Women are not respected, said the participants, and one of the reasons is they do not have land rights of their own. There was a hot dispute in the meeting between a chief who said that anyone over 18 is eligible for land allocation, male or female,



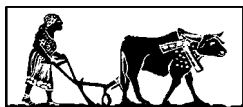
married or not. An unmarried woman challenged the chief, saying that when she had applied for land, he had told her to bring her oldest brother. The tenor of this debate was unusual in that the woman and other women supporting her were willing to confront a chief in a public meeting. It appears that it is a fairly common practice in the broader area for women to be allocated land in their own right, although this does not happen in all cases.

Participants' comments and recommendations on the Bill

Six groups discussed the same topics in relation to the Bill, and in some instances their recommendations differed from one another.

Transfer of title

- While there was support for the proposal to transfer title to communities, concern was expressed that private ownership would make it difficult for the government to deliver services to rural areas. Questions about the government's intentions were raised. Why would the minister initiate transfers if not to enable the government to wash its hand of its responsibility to the rural poor? It was proposed that transfers should not take place except on the basis of a commitment by government to develop and support rural communities. The terms of this commitment should spell out that services and development would be available post-transfer.
- Concerns were also raised about the time that it would take to implement land transfers at scale, and whether it was realistic for DLA to even attempt these transfers when it had fallen so far behind with its other programmes. It was put forward that DLA should get redistribution and restitution working properly before adding yet another programme. Some participants felt strongly that redistribution should be the state's key concern, and that transferring title to overcrowded areas simply exacerbated landlessness and the legacy of dispossession.



- Concern was expressed that the transfer process is too drawn out and that it should be speeded up, or that a different, quicker approach be developed to avoid the delays and frustration experienced with restitution and redistribution. 'Endless delays will cause people to resort to desperate measures to solve their problems.'
- The issue of boundary disputes and the definition of 'community' were raised as serious problems in the envisaged transfer process. Participants said that special dispute resolution procedures would be necessary.
- Various groups raised the issue of land use planning and demarcation within communal areas, and said that different land use zones should be demarcated prior to transfer. They indicated that communal ownership was appropriate for some parts of the land – for example grazing – but that individual ownership was important in residential areas. One group added that demarcation exercises would also highlight the endemic shortage of land, and the need for additional land prior to transfer.
- Most groups stated that the government should finance and enable transfers of individual title within communities. They said that if the government pays the costs of the initial transfer to the community, but not the costs of the subsequent transfers to individuals, poor people would be denied the possibility of holding individual title. However two groups said that individual title would create conflict and should be avoided.
- Some groups recommended that the chief's name be included on the community title.

Administrative structures

- Most groups stated that, for administrative structures to function properly, they would need to be adequately trained, supported and supervised by government, not left to sink or swim as had happened with CPAs. They said that impartial state officials would need to monitor the

structures to ensure they respect people's rights.

- Most groups said that members of administrative structures should be paid to avoid corruption.
- One group said that the Bill must clearly show that the administrative structures do not own the land in their own right. Another view was that municipalities (with support from chiefs) should administer the land, not the administrative structures envisaged in the Bill.

Traditional leaders

- One view was that the proposed 25% representation of chiefs on administrative structures was correct. Another view was that their representation should be increased to 30% or 50%. A third view was that traditional leaders should administer the land.
- Some groups said that the role of traditional leaders should be made clear, explicit and limited to cultural issues to avoid conflict because chiefs had blocked development in the past.

Local government

- Groups said the Bill should guarantee that local government will continue to provide services and development on transferred land. It was noted that, in any event, it is the duty of local government to provide service and development to all South Africans. It was held that the Bill should be rejected if it interferes with or weakens service delivery to communal areas. There are already enough problems with service delivery, people said, and communities could not accept anything that could worsen the situation.
- Groups said the Bill must provide clear guidelines in order to ensure that the envisaged community rules cannot contradict existing laws and policies, such a municipal laws and IDPs.

Land rights boards

- The proposed land rights boards should operate at the district or regional level. There should be a major role for local government in the boards. The

minister's discretion with regard to the appointment of board members should be limited and a more open selection and appointment process should be put in place.

Women

- There should be a 40–50% quota for women in the proposed administrative structures.
- Support should be provided to enable women to participate effectively, so that they are not just 'tokens'.
- The Bill should ensure that land rights are allocated to women on the same basis as men.
- Tenure rights should be registered jointly in the name of husband and wife or of people who cohabit with one another.
- The Bill should specify that women's rights cannot be undermined by cultural and customary practices.
- One group recommended 15% participation by women in traditional authorities.

Author's comments

The majority of people in the meeting seemed to be in favour of group ownership of communal land with strong individual rights (ownership?) of residential sites within the villages. The majority's bias in favour of group title is similar to that expressed in the Madikwe meeting discussed below. However, various people expressed disillusionment with CPA committee members. There is also widespread disillusionment with municipalities and with chiefs. There is a plea for central government to perform strong 'hands on' oversight of local institutions. Many people proposed bringing local government, chiefs and elected committees together in joint structures to administer land rights. It seems this is to mitigate the risk of any particular grouping becoming too powerful with regard to land rights administration and abusing its position.

The people in the meeting seemed less concerned about offending or confronting chiefs in their presence than people from



other areas, particularly those from Limpopo. My impression is that the power of chiefs in the area has waned substantially, and that it is weaker than the power chiefs enjoy in some other areas.

While the majority of people entered into the discussion around the format of the Bill, a vocal minority queried the entire paradigm of transferring title of overcrowded pieces of communal land. They argued that redistribution of land should be DLA's key imperative, and that to agree on current boundaries and formalise them would be to accept landlessness and dispossession.

Community meeting held at Tyhefu

About 75 people attended a meeting held at Tyhefu Irrigation Scheme near Grahamstown, Eastern Cape on 4 and 5 March 2003. Representatives from the four villages within Tyhefu attended, namely Glenmore, Ndwanyane, Ndlame and Pikoli, as well as representatives from Masifunde, PLAAS, the Border Rural Committee (an NGO), a councillor from Peddie, an agricultural extension officer from Peddie and two representatives from the local House of Traditional Leaders. The meeting was organised by Mputumi Mayekiso of Masifunde, an NGO based in Grahamstown which is affiliated to the Trust for Community Outreach and Education.

Background

There was an irrigation scheme in Tyhefu that was run by the former bantustan department of agriculture. Because it was running at a loss, it was closed down by the post-1994 government. There is a pending investment by the Industrial Development Corporation (IDC) to use the irrigable fields that are currently fallow for an agricultural project. The investment has been delayed by confusion about the status of the land. The provincial DLA office has contracted consultants, Karibu Service Providers, to investigate tenure rights and

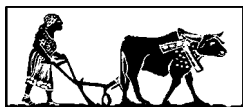
options and to consult the community about their views in order to expedite the proposed investment and development in the area. One of the problems being investigated is that certain individuals were allowed to farm larger portions of land within the irrigation scheme while the majority had much smaller plots. The people who were allocated the larger areas did not receive formal rights to the land, but they did develop vested interests.

Karibu held a series of meetings in the different villages of the area where it was agreed that the community is in favour of communal ownership of the commercial farms. The farms should be run for the benefit of the entire community through a trust or a CPA, the meetings agreed, and individual title should be given for residential sites and food allotments. The report states that:

The incorporation of the different sized plots and unit into a single/ combined entity has already been agreed upon. This should run concurrently with the identification and isolation of alternative land to be registered under the individual names of all who used to own plots bigger than those owned by the rest. The size of these separate units shall be determined through negotiations (Karibu Service Providers, undated).

Karibu has advised the community to form a trust to take ownership of the commercial land. It appears that the surveying of the different land parcels and the process of transferring title will go ahead regardless of the passage of the CLRB because of the urgency of the investment project. DLA has apparently indicated that it will use existing interim procedures to expedite a three-way agreement between the minister, the community and the investor, pending transfer of title.

The community is actively involved in the process and is looking forward to the IDC investment. They have energy and hope that their land rights will translate into a major stake in an investment that will lead to development and livelihood improvement.



Participants' comments on their tenure problems

- The status of our land rights is not secure. The land still officially belongs to the government.
- We are caught in power struggles between chiefs and the municipality.
- We are not sure of the boundaries of our land – we do not know where our land begins and ends.
- There is a severe shortage of grazing land.
- We want allocations of land to be equal and fair. [One view.]
- Commercial farmers need larger areas than people who are not dedicated to farming. [Another, minority, view.]
- We need the government to play an ongoing role in demarcating different land use areas, and to assist in maintaining fences for grazing camps.
- There should be a transparent process for allocating or disposing of state land. There are serious land shortages in the area – yet farms are sold or allocated to individuals without rural communities getting the opportunity to participate in the process.
- We need post-transfer support once land is transferred to enable us to develop and maintain the land.
- We need to have clear rights to land, and ongoing support once the land has been transferred. We are scared that once the government transfers land to us, it will wash its hands of us.
- The debates about land rights should include all stakeholders, including chiefs. Otherwise the community may agree to something and its decision may be overturned later by the chiefs.
- We need to consider the issue of land rights for residential areas – not just land rights to the irrigated land.
- We need support around land use planning issues.

Participants' comments and recommendations on the Bill

Women

- It is a problem for the Bill to refer to customary law, as customary law

discriminates against women.

- The Bill should specify that men and women should own land jointly. A husband's rights should not be registered without the wife's name there too. This will protect women from losing everything at divorce or on the death of the husband.
- The Bill should state clearly that single women are entitled to land allocation, whether they have children or not.
- There must be equal quotas of men and women in all proposed structures, for example the administrative structure and land rights boards.

Land administration

- The criteria for land allocations should be set out in the community rules.
- There should be one group title for the 'commercial' land, and individual title for food plots.
- It is good that the participation of chiefs in the Bill is restricted to 25%.
- The Bill must clarify and ensure that local government will provide services on privately-owned land.
- National government cannot expect poor rural communities to finance development themselves, nor can it leave this financial responsibility to local government alone. It needs to subsidise development and services in rural villages.



Boundaries and land transfers

- The current boundaries of land are not clear. Mediation and support would be necessary to reach agreement on boundaries.
- The Bill envisages transfer to one community. This raises complex issues in Tyhefu, for example, the area is made up of four separate villages which fall into different municipal wards. They cannot be regarded as one community. But the 'commercial' (irrigable) land should be shared between all of us.
- We propose that the 'commercial' land be transferred to one legal entity.
- The commercial land should be managed by the legal entity and there

should be proper controls in place around financial accountability and income distribution.

- In order to facilitate future service provision to the villages, we propose that the residential areas remain state-owned, until township development takes place. Township development would provide individual ownership for residential sites and municipal ownership of streets and public facilities.
- In the meantime, to secure our rights, the Bill should provide for strong individual rights to residential sites while the title still belongs to the state.

Other issues

- The proposed land rights boards should function at the municipal level. There should be equal representation of men and women on land rights boards.
- The option of three-way leases between communities, the minister and an investor is useful. It enables investment and development to proceed while tenure problems are being sorted out. However there should be clear regulations in place that spell out how the community will be consulted, and how the benefits will be distributed fairly within the community. Otherwise this provision could backfire with individuals (for example, chiefs) purporting to represent the community and yet acting unilaterally and keeping the benefits for themselves.
- There needs to be better co-ordination and co-operation between government departments, for example the provincial department of agriculture and DLA. We are sent from pillar to post at the moment. We are concerned about how the surveying of the land will take place.

Author's comments

The pending IDC investment on the irrigable land has focused people's attention on tenure and development. There were high levels of debate, participation and interest in the meeting. The discussion on the Bill was focused by the issues and dilemmas immediately

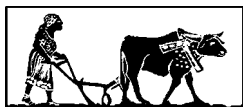
confronting the community around tenure options. Various community members, including young people, seem very committed and capable. However, there were also indications of some individuals 'grandstanding' and holding forth, perhaps to raise their own profiles in the run up to the election of the proposed new structures, for example the possibility that a trust will own the commercial land.

It was striking that speakers showed no fear or particular respect for traditional leaders and their representatives. There were frank and outspoken exchanges of views between the traditional leaders and their supporters on the one hand and the rest of the meeting on the other. This was good-humoured for the most part. However, there was tension around the issue of women's rights and the issue of discriminatory customary practices. Women argued that customary discrimination in relation to land rights should be outlawed by the Bill. The chiefs' grouping said that it was part of life and would never change. They justified their position by saying that it was unthinkable that women should ever be treated the same as men, for example should women be allowed to slaughter cattle?

While the Karibu report states that all villages have agreed to joint ownership of the irrigable area, some older people spoke at length to justify the previous allocation of parcels of this land to a number of 'commercial' farmers. They stressed the risks, dedication and expense involved in farming and questioned whether the egalitarian ethic was realistic. These older people are from the group supporting the chiefs. They were allowed to speak at length, but they were a small minority and nobody seemed to pay much attention to what they said.

Community meeting held at Mpindweni

This meeting was held in a marquee in Mpindweni village in the district of Umtata in the Eastern Cape. It took place on 3 and 4 December 2002 and was attended by 65



people, including representatives from Lusikisiki, Idutywa, Mzamba Mouth, Greenville, Umtata, Ntabankulu, Tsolo, Mount Frere, Mqanduli, Mbolompo, Ntshethu, Xhongora, Baziya and Mpindweni.

The meeting was organised by Nolulama Wakaba of the Transkei Land Services Organisation, an independent land NGO based in Umtata. The meeting focused particularly on the impact of the CLRB on women.

Case presentations

The meeting began with the presentation of three case studies by women. The first described the forced removal of villagers from land that was then given to a hotel and casino in 1980. It illustrated that the villagers were powerless to stop the government removing them, as they had no formal land rights and the land was officially 'state land'. They have never received compensation for the houses and fields they lost, and are denied access to water sources and grazing on the land that has been fenced in by the casino.

The second case was of a woman who had been allocated a residential site by the tribal authority, and built a house on the land. However her neighbours disputed the allocation on the basis that the land formed part of their property. They broke her windows, cut her fences, threatened and insulted her and ultimately fenced her in. All the woman's appeals to the police, to the tribal authority, to the magistrate and to DLA were unsuccessful. She was promised an 'official' PTO certificate, but this was never issued. She was insulted and shouted down in community meetings. Ultimately she had to flee the area, leaving her house and building materials behind. The woman is a school principal and said that had she been an ordinary uneducated woman, she would have would have been treated even worse.

The final case study was of the problems faced by the women's project in Mpindweni in obtaining and securing land for a communal vegetable garden. The women struggled to be allocated a fertile

area for growing vegetables, because of opposition by men. Eventually the matter was put to the vote in a community meeting, and with the support of the youth, the women were allocated the land by the tribal authority. However some men in the community opposed the allocation and cut the fences and destroyed the vegetables. There was severe conflict, which has now abated and the bakery, gardening and sewing project is going from strength to strength after a difficult beginning.

Participants in the meeting also listed the problems faced by women with regard to land rights and communal tenure:

- Unmarried women are not allocated residential sites, except in the name of a male relative.
- Women are never allocated fields, yet they are the people who work in the fields.
- When men re-marry, the first wife and the children of the first marriage are left with nothing because the rights to the land and the house belong to the husband alone.
- When a husband dies, his male relatives take over the land and the house, and the widow and daughters are left with nothing. This problem is especially acute when there are no sons.
- When a husband deserts or divorces a wife, she has no rights to the house or to the land, and she and her children lose their home and all the assets that have been built up during the marriage.
- Within families, men are the decision makers regarding land, yet often they are away and women are the people who actually manage and maintain the land and the house.
- Men generally do not consult their wives when they sell land, they usually only consult their male relatives.
- The problem arises from the terms of customary marriages. Land is allocated only to men. Women always come in as wives who are 'outsiders'. *Lobola* has been interpreted to mean that a wife must adapt to, and pay allegiance to, all the rules and customs of her husband's family. It has been interpreted to



support a system that denies women equality and land rights of their own. Traditional authorities are reluctant to give women land rights because they fear that they will marry men who will not be compliant when it comes to obeying the rules of the place. *Lobola* is useful because it binds the two families together and means that they will play a mediating role within the marriage. But it needs to be re-interpreted to assert and protect the equality of women and men.

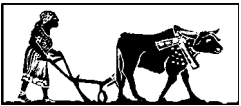
- Women have no right to talk in community meetings or customary courts where decisions are taken. They must be represented by a male relative. This impacts negatively on women and on girls who have no father or brother. Even when women try to speak in meetings, their voices are not respected.
- Women are not treated as adults or as equals to men.

Participants' comments and recommendations on the Bill

Most of the comments and recommendations were made in the small group discussions and reported to plenary.

- Land should be jointly owned by husband and wife in the case of married couples.
- Land tenure rights should be registered in the name of both husband and wife.
- An alternative would be for the land to be owned by the family, with the husband and wife's names registered to represent the family.
- In the case of unmarried women, the land should be registered in the name of the woman and one of her children or another person from her family.
- Children's names should also be recorded in the register of land rights to protect them in the event of the death of one or both of their parents.
- The law must protect the land rights of children who are orphaned. The family should choose a woman guardian, but the guardian should not get the land or the house. This must be protected for the children.

- Sons and daughters should have equal rights to inheritance of land.
- Although children's rights should be recorded, they should not have equal rights with their parents, as they will grow up, move away and establish homes of their own. Moreover, only some children care for their parents in old age, others desert them. Those who desert their families should not have equal rights of inheritance,
- Marriages of girls younger than 18 should not be allowed as they are too vulnerable to abuse at this tender age.
- Land rights boards should operate in all magisterial districts, and be accessible to deal with the problems confronting women under customary tenure.
- Land rights boards must be made up of equal numbers of men and women.
- Land rights boards should be backed by the Minister of Land Affairs and have the capacity to intervene to uphold women's rights. The minister should give them the status to intervene in her name.
- Local rural people who really understand the situation in rural areas should be on the proposed land rights boards, not people from urban areas or from far away.
- The proposed land rights boards must deal with family disputes around land. They must not be allowed to brush off dealing with family disputes on the grounds that these are 'internal problems'.
- While community structures such as the proposed administrative structures are necessary, their work must be checked and overseen by DLA.
- The community must be able to replace people serving on administrative structures if they fail to perform well.
- Women must be entitled to attend all community meetings. The law must state that they should be invited to attend and participate in all meetings.
- Women must be represented in all the structures proposed by the Bill.



- The Bill must be explicit about the rights of women. It must not leave women's rights to be decided by community rules or community structures. Women's rights should be set out in the law itself.
- The Bill should not confirm current boundaries as they entrench the results of racial dispossession. Whites own 87% of the land. There should be no transfer of title until this imbalance in land ownership has been corrected.

Author's comments

While the majority of participants were women, the small minority of men in the meeting still managed to dominate the small group discussions. The women had clearly been discussing these issues for some time and were very thoughtful about the relationship between the terms of marriage, land rights, power and property rights. This came out during the small group discussions.

Community meeting held at Mankaipaa

A meeting was held in Mankaipaa village, near Madikwe, North West on 10 and 11 April 2003. It was attended by 119 community representatives from eight areas, namely Mankaipaa, Katnagel, Molatedi, Obakeng, Pitsedisulejang, Sesobe, Aphiri and Debrak. The meeting was organised by Moses Modise of The Rural Action Committee, an NGO based in Mafikeng which is affiliated to the National Land Committee.

Participants' comments on their tenure problems

Many of the villages describe the same problem in different forms. Communities with strong land rights (established for example by historical purchase of the land or when compensatory land was awarded to them during the forced removal era) were put under the 'tribal jurisdiction' of nearby chiefs who were not their historical or rightful chiefs. These chiefs then began to treat the land, not as the property of the community, but as land they could allocate

as they saw fit. In all cases the chiefs began to make land allocations to 'outsiders' – often people from their own tribes or groups. As time went by, the original 'owners' found themselves outnumbered on their own land. In all cases they took (and continue to take) steps to assert their ownership rights and to challenge the chiefs' authority to act in such a unilateral way, without success.

All of the communities have lodged restitution claims to land in the area. Most of them were forcibly removed at some stage. However it appears that a key motivation for having lodged some of the restitution claims is to gain ownership and thereby control over land in order to escape their current problems with the 'wrong' tribal authorities administering their land and allocating it to outsiders. Some people said directly that they followed the restitution route because there was no other way of solving what is fundamentally a tenure problem. This is not to deny that there is a direct restitution component in the claims some of the communities have lodged in the Madikwe game reserve, which they hope will provide their communities with a viable income stream. Other communities, for example Mankaipaa and Molatedi, have approached DLA directly to provide them with title to land that they historically purchased so that can use this to get rid of the 'wrong' chiefs who currently govern them. They have been told that they must wait for the CLRB to be enacted, but query why this is necessary. They ask why existing legislation cannot be used to transfer title of land that they purchased long ago. It is likely that the Upgrading of Land Tenure Rights Act or the State Land Disposal Act could be used for this purpose.

One of the communities has been told by DLA that the government will transfer title of 'compensatory' farms to the communities but 'only in cases where there is no conflict'. Yet the meeting participants asserted that there is conflict on all the compensatory farms. The conflict is between the communities which



were awarded the farms as compensation for forced removals, and the chiefs who were given tribal jurisdiction over the farms. The chiefs' followers and those who were wrongly allocated land now generally outnumber the original occupants. There is ongoing conflict around the relative powers and authority of the two groups. This is complicated in some instances by other claims to the land that predated its award to a group in compensation for a forced removal.

There are also complaints of unilateral actions by the chiefs, and lack of transparency and accountability. It is feared that these conflicts will continue even after restitution. Communities who have lodged restitution claims say that they fear that the chiefs will try to 'jump into' the restitution land when it becomes available and attempt to assert their authority there too.

It should, however, be noted that the criticism of chiefs was not of chiefs generally, but of cases where the 'wrong' chiefs were imposed under the tribal authority system. It was not made explicit whether the communities wanted their 'rightful' chiefs to play a role in future land administration.

A prominent female speaker challenged the discourse of the meeting, asking why people focused so much on history and the identity of specific communities and chiefs. She said that this kind of problem statement only reinforced the differences between people and led to discrimination. The speaker suggested that anyone who has lived in an area for over five years should be accepted as a 'citizen' of the place, and that all residents should be treated equally. She said 'rights are rights when you exercise them', appealed for an 'integrated approach', and said that all tribal authorities discriminate against women and that the only future for women is under the local government system.

This woman was joined by other speakers in raising the issue that nearby state land called 'Bala farms' has been and continues to be allocated to individuals through secret processes. They called for a

transparent allocation process that benefits communities rather than individuals.

Participants' comments and recommendations on the Bill

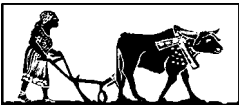
Integration with local government

The meeting said that government must ensure proper integration between the proposed land administration structures and local government because rural communities cannot afford a measure that worsens the existing stand-off between different forms of authority in their areas. The Bill would have to explain how the different institutions will relate to one another and co-operate with regard to service provision and delivery. Participants said the roles, responsibilities and functions of the different bodies must be clearly set out and areas of overlap and possible confusion must be dealt with before the Bill could be introduced to rural people.

Traditional leadership

Participants noted that chiefs have power in terms of the Black Authorities Act and Black Administration Act, and that they use these laws to assert their authority even in relation to issues where local government claims it has authority. They said that existing laws would need to be rationalised before new forms of power and authority are given to a new structure. People said the fact that chiefs get salaries helps to entrench their position. They asked how the administrative structures would be able to assert their functions over chiefs if chiefs received salaries and they did not.

Another source of power for chiefs identified in the meeting was their role in processing pensions and child support grants. People said chiefs refused to process grants for people who are not up to date with their tribal levies. Because people depend on grants, they had to do whatever chiefs require in order to secure access to the grants. Participants said the Bill cannot simply transfer the land allocation function from chiefs to administrative structures and expect this arrangement to work without taking into



account the legal powers, salaries, and structural position enjoyed by chiefs.

Boundary disputes

Another critical issue identified had to do with the boundaries of communal land. Serious conflicts around boundaries were created by the previous National Party government and the former Bophuthatswana government, especially as a result of forced removals, the allocation of land in compensation for forced removal, and the whole issue of placing groups under the jurisdiction of different tribal authorities. Participants said the government would have to actively mediate in and resolve these disputes before the proposed land transfers could take place. It could not expect communities to resolve the disputes on their own, or to leave conflicts in an unresolved state.

Development and services

Meeting participants said the problem of service provision on privately-owned land must be dealt with before the Bill is passed. The Bill could not allow local government and other parts of government to say they are not obliged to provide services or development on 'privately owned' land. The government had to resolve this issue properly and clearly before it could submit the legislation to Parliament. Communal areas desperately need services and development funds from government, people said. The Bill should clarify the different roles and responsibilities of local government and land-owning communities.

Land grabs

Major concerns about individual title and pre-emptive land grabs of communal resources by wealthy or powerful individuals were expressed. Various examples of individual co-option of communal resources were put forward in the meeting. It was stressed that the Bill should not allow this.

Individual ownership

People referred to professional people such as teachers and nurses having to invest in

townships where individual land ownership is provided for because they were unable to get housing loans in communal areas. They said it would be better if professional people settled and invested in communal areas. Small group discussions referred to various advantages of stronger individual rights.

Women

Participants said the Bill should ensure both that women are represented in all community structures and government institutions, and that they should get land rights in their own right, regardless of whether they are married or single, and regardless of whether they have children or not. Furthermore it should protect them from losing land to male relatives when their husbands die or in the event of divorce. It was stressed that the government should not perceive these issues as 'family problems' and refer women back to their families to sort them out; they should be addressed directly by means of provisions in the Bill.

Author's comments

The majority of people in the meeting were in favour of group ownership and the transfer of title to communities. They share a history of community or 'tribal' land purchases and of communal ownership of land. The maturity of the discourse, tolerance of opposing views and general atmosphere of the meeting bore testimony to extensive experience with group-based institutions and participatory processes.

While the meeting favoured communal ownership and communal title, it expressed major concerns about the process of defining the boundaries of communal land prior to transfer, and the need for state support in resolving current disputes and conflicting claims. It stressed that extensive state support is necessary to be able to solve these conflicts and that the conflicts must be resolved prior to transfer, via processes that take all voices and interests into account.

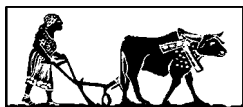
It also stressed the need for careful rationalisation and integration of functions



between the ownership structures of communal land, chiefs and local authorities. It said to simply transfer the land allocation function from chiefs to administrative structures was unrealistic and would not work in practice, unless the Bill also repeals the powers given to chiefs by the Black Administration Act and the Black Authorities Act. It pointed to the need to rationalise the salaries and other powers of the different institutions. It said any intervention in this area should be properly thought through, not 'half-baked', or it would 'backfire'.

Community meeting held in Mashamba

A meeting was held in Mashamba village near Elim in Limpopo on 22 and 23 November 2002. It was organised by Mike Nefali and Thembani Furumele of Nkuzi Development Association and was attended by about 140 people, including residents from Mashamba, Masakona, Bokisi, Chavani and Ntshuxi villages, some people from the Landless People's Movement in Phalaborwa, significant number of chiefs and headmen, and a representative from local government. Representatives from Nkuzi, PLAAS, the National Land Committee, Itireleng Education Project and Tralso were also present.



Participants' comments and recommendations on the Bill

The meetings broke into three groups to focus on three separate issues: the Bill and traditional authorities; development and investment on communal land – the interim proposals in the Bill with regard to three-way agreements between the Minister of Land Affairs, communities and investors; and the issue of land transfers and the boundaries of communities.

Traditional authorities

Disadvantages of the Bill identified in the meeting were that it would destroy the power of traditional leaders, and that the proposed 25% limit on the participation of traditional leaders in administrative structures would undermine the status and powers of

chiefs. An advantage identified was that administrative structures would promote transparency, fairness and flexibility. (This appears to be a minority view.)

Within this group, some people argued that chiefs play a valuable role in society and that they provide continuity and stability which elected structures cannot equal, since elected representatives keep changing, and elected structures are not strengthened and sustained by an ancestral mandate as traditional structures are. It was also argued that the links of communities to the land would be weakened if the land were held by a structure whose membership keeps changing, rather than being held by a line of chiefs.

It was argued that administrative structures are unnecessary as they will merely duplicate the work being done by traditional authorities. It was recommended that, should these structures come into being, they must work 'hand in glove' with the chiefs. (During the group discussion the chiefs present were reassured by a speaker who said: 'Even if these structures are going to be formed, you'll find that only chiefs will get a salary.....These people [administrative structures] won't have back-up power, which is the salary.') Speakers also said that most government laws and policies have a very limited impact on the way things operate 'in real life'.

This group stressed that restitution claims should be resolved before the Bill is applied. In the plenary session, questions were asked about the exact role and functions of the proposed administrative structures, vis-à-vis the functions already fulfilled by chiefs on the one hand, and local government on the other. It was proposed that if the structures were meant to deal with issues such as water and development, they would constitute an unnecessary duplication of local government functions.

The group concluded that administrative structures should not take away the powers of traditional leaders, since elected structures easily fall away.

Three-way agreements

The group welcomed the proposed three-way lease agreements as a means of facilitating investment and development prior to transfer. It stressed that the leases must be conditional on the communities having been properly consulted and having agreed to such leases in advance of the Minister of Land Affairs signing them. The group also stated that a maximum 40-year period would be acceptable as long as it was clear that leases could also be much shorter than this, depending on the nature of the envisaged development. It proposed that proper investigations must be made prior to the signing of contracts to ascertain any possible negative consequences for the community or the environment. Another condition was that the benefits from such investments must belong to the particular communities whose land is being used. According to the group, it must be clear that when an investor breaches the terms of a lease, the lease will be cancelled.

During the discussion there was a debate about the government's responsibility and role after transfer of title. Concern was expressed that the government may use land transfers to rid itself of responsibility for development and administration in communal areas. It was resolved that land administration must remain the responsibility of the government and that, while people want tenure rights, this should not be at the expense of their rights to service delivery and development. It was therefore resolved that the government must remain bound to deliver services and develop communal areas, regardless of the provisions of the Bill.

Land transfers and boundaries

This group addressed the issue of boundaries of communal land. It found it difficult to focus on the issues of boundaries for tenure transfers because most participants were preoccupied by pending restitution claims. The group queried why the government was introducing yet another programme, when

it did not even have the capacity to implement restitution properly. Speakers also raised the history of the area, which has been riven by disputes between different ethnicities: Tsonga, Venda and Pedi. Various speakers said that the Bill was reactionary in yet again dividing people into separate communities, rather than uniting them as South African citizens. They alluded to the danger that the approach taken by the Bill would reignite ethnic conflict. Members of the group pointed out that all these different ethnic groups have different traditional leaders, so defining communities on that basis may also set chiefs against one another, rather than enabling people to live together peacefully in areas where there are overlapping claims. The group proposed that if land has to be registered in a particular name, it should be registered in the community's name rather than in a chief's name, as some communities are composed of people of more than one ethnic group, falling under more than one chief.

The group resolved that the provisions of the Bill are impractical and it cannot work in areas where restitution claims are outstanding. It also resolved that the Bill was a low priority, and that DLA should rather concentrate on implementing its existing programmes effectively.

Author's comments

This was the first of the consultative meetings to be held. It experienced a number of teething problems which, once identified, could be ironed out to make the running of subsequent meetings smoother. The meeting did not begin with a session on tenure problems, as did the others. This was only partly because the meeting format had not yet been 'firmed up'. The other reason is that powerful chiefs attended the meeting and brought supporters with them from villages which had not initially been invited. It was considered too divisive to open proceedings with a session on tenure problems since it was feared that different



interest groups would use the opportunity to attempt to 'capture' and set the agenda of issues to be discussed. In any event, the organisers anticipated that some interest groups might be too intimidated to speak in front of the chiefs.

This is, in fact, what appears to have happened. Mashamba village was chosen for the consultation site because of a serious tenure problem – a headman had entered into a contract with an investor in terms of which a large area of communal land has been fenced off as a potential game farm. This has restricted the community's rights to grazing, hunting and water on the land – all key livelihood determinants in the area. However, apparently neither the chief nor the community were adequately consulted about the contract, nor has any benefit emerged in the form of rent or jobs.

On the face of it, because DLA, as nominal owner of the land, was not involved, the deal is unlawful and could be set aside. However, whilst Nkuzi informed us that the deal is a burning issue in the village, nobody raised it directly in the meeting. Various chiefs and headmen, including chief Mashamba, attended the workshop for its full duration, probably inhibiting people who may have wished to speak out on this and other issues.

The attendance of chiefs in all the small group discussions may have also been experienced as intimidating by participants. A Landless People's Movement delegation from Phalaborwa did, however, attend the meeting and did take issue with the chiefs, in both the small group sessions and during the plenary sessions. Compared with meetings in other provinces, the power of chiefs in this area is striking, as is the significance of traditional leadership in many aspects of people's lives. For a better sense of this, please read the full meeting report, which is a verbatim record of what was said.

Four languages were used during the meeting: English, Tshivenda, Xitsonga and a little Sepedi. Some people felt that there

had not been adequate translation into their language. The small group session that I attended struggled to focus on the issues before it, and the facilitator had a hard time keeping the discussion moving forward. This was in stark contrast to group discussions in other areas, most of which progressed relatively fluently with little intervention by facilitators.

Community meeting held in Pietermaritzburg

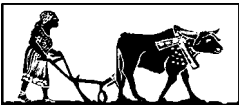
This meeting was held at a hotel in Pietermaritzburg from 22–25 March 2003. It was organised by the Association for Rural Advancement and the Legal Entities Assessment Project, and was co-ordinated by Sizani Ngubane. It was attended by about 70 people, including community representatives from Amahlubi – Nsukangihlale and Bhekuzulu, Ingogo, Impendle, Estcourt, Greytown, Hibberdene, Elandskop, Boston, Deepdale, Ekuthuleni, Cramond, Ladysmith, Matiwane and Emondlo.

There was a delegation from the Rural Women's Movement and from the Tenure Security Co-ordinating Committee. Afra staff, Leap staff, and a representative from NLC and PLAAS also attended. The overwhelming majority of the community representatives were women, and the specific focus of the meeting was on the impact of the CLRB and tenure issues on women.

Participants' comments on their tenure problems

Both the problems described here and the recommendations in the next section are drawn from the reports of various small group discussions. They are a compilation of issues raised in the sub-groups, not a summary of a position adopted by the meeting as a whole.

- Single women, widows, and women without sons are generally not allocated land. The problem is worse in areas administered by tribal authorities, although some are better than others. In areas owned and administered by trusts



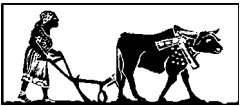
- and CPAs, women are generally allocated land on a more equal basis.
- Women generally have no role in the land allocation process, so they have limited knowledge of the process.
 - Women are not represented in tribal authority structures that control and administer land rights. In the case of some trusts and CPAs, they are represented on committees.
 - Women have no security on the death of their husbands because a male relative of the deceased husband takes over the family's land. There are instance of widows and unmarried daughters being evicted from their homes by male relatives of the deceased husband or father.
 - Women can lose everything (including their homes and land rights) on divorce.
 - Single women who have managed to get land lose their right to it if they marry.
 - Only sons inherit. Daughters receive nothing when their fathers die.
 - Within some families the father, as head of the family, unilaterally takes all decisions pertaining to land. In some families there is consultation. But women can do nothing to challenge unilateral decisions that affect the family's land rights.

Participants' comments and recommendations on the Bill

- The question of how the Bill would interact with local government was raised.
- The law must provide that women are entitled to be allocated land on the same basis as men. It should ban discrimination against widows, unmarried women and divorced women and ensure that the land rights of women are protected.
- Women's right to inheritance of land (and other property) should be guaranteed by law.
- Children born out of wedlock should have the same inheritance rights as the other children of the parent.
- Women should have an equal say within the family in decisions about the family's land.
- Women must be encouraged to participate in decisions and structures pertaining to land rights; they need support and training to be able to participate effectively.
- The Bill should require equal representation for men and women in all the structures it proposes. Structures that do not have equal representation of men and women should be dissolved.
- Men should be sensitised about gender issues and women's rights.
- Joint structures that combine committees and traditional leaders are better for women. In many instances committees discriminate less against women than traditional authorities do. However, there are also instances of autocratic committees. The problem with joint structures is that there may be conflict between traditional leaders and committees.
- A good working relationship between traditional leaders and committees (such as trusts and CPAs) should be encouraged.
- Traditional authorities should allocate land to women without discrimination and allow women representation on their structures. If they refuse to do this, they should remain limited to a 25% role in land administration as proposed by the Bill. [This was a minority view.]
- The majority of participants opposed even the 25% *ex officio* role of traditional leaders in administrative structures. They said they feared that chiefs would dominate the structures, and so proposed that the structures should be entirely elected.
- The Bill should provide for strong punishment for those who discriminate against women.
- The government should provide salaries and training for land administration structures.
- It should also provide adequate training to all involved in implementation.
- Land rights boards should operate at local level. Traditional leaders should not be put on land rights boards in areas where there are no chiefs.



- The Bill must ensure standard rates (prices) for land allocation in areas administered by chiefs. [Another comment was that since the Bill implies that the chiefs do not own the land after all, why have people had to pay levies to them for so many years?]
- The roles and responsibilities of traditional leaders and committees, and their relationship with one another, must be spelt out clearly in the Bill to avoid conflict.
- Traditional leaders should be given land in compensation for land they lose through the operation of the Bill. [This was the view of one of the six small groups – it was challenged by others.]
- One group said that the Bill did not provide sufficient protection or status for individual rights. Another group said that individual ownership was extremely dangerous – that it would lead to landlessness for the poor – and that the Bill should therefore prohibit it. [Afra reported that during community report back meetings after the workshop, women expressed concern about individual ownership of land because it enables the land to be sold and this can lead to women becoming landless and homeless. Most of the women in these subsequent discussions favoured joint titling or communal ownership to guard against this danger.]
- The government should help to support and finance the transfer of title to families and women's names must appear on the title deed or on the land tenure deed.
- Some communities will not be happy with land tenure deeds.
- The Bill should cover restitution and redistribution land, as there are many post-transfer problems in these areas.
- The Bill does not say how development and infrastructure will be provided once the land has been transferred.
- The Bill is not clear about how communities will be delineated.
- The Minister of Land Affairs should



delegate powers to municipalities to implement the Bill.

- The role of the municipalities in community development should be clear in the Bill.
- The land transfer process outlined in the Bill is too time-consuming.
- The government should learn from its previous mistakes and from delays in implementing land reform by shortening the procedures proposed in the Bill.
- The Bill may turn out to be another useless land reform measure if the implementation strategy (including training) and the budget for implementation is not sorted out in advance.

The conclusion in respect of the Bill's impact on women was that it does not address the serious problems women currently face in communal areas with regard to land rights and land administration. The Bill does not require equal participation by women in existing structures, or in the structures it proposes. It does not require equal access to land rights for women, nor does it require that the new rights it proposes must be registered jointly in the name of both husband and wife. Instead, the Bill proposes the upgrading of PTOs to land tenure rights, even though PTOs were issued only to men. This will entrench exclusive male ownership of land into the future.

Author's comments

Since this meeting took place over four days, it enabled a more comprehensive discussion around tenure reform and how it fits with the other components of land reform (redistribution and restitution) than was possible in the other meetings. It also considered the historical background of the draft legislation, which the other meetings did not do. Afra provided input on the Bill, not PLAAS, as was done as in the other meetings. The meeting was different to others also in that people were divided into groups according to the different tenure systems that apply in their areas, for example, trusts and CPAs, areas falling under chiefs, farm land, and state land.

Chapter 4: Key themes emerging from the meeting

In order to draw out the themes and issues from the meetings, I have made a further summary of what was said, based on the reports on the meetings. However, there is an inherent danger that, since any summary is subjective, it may be biased. The issue of author bias is particularly sensitive in a project designed specifically to elicit a direct rural voice rather than interpretations by experts. It must be said that the issues raised in the meetings did not necessarily reflect consensus positions, or even the majority view of those present.

While preparing the summary, I listed and grouped all the issues raised in the meetings. Various themes emerged. Only those issues or themes which arose in at least three of the seven meetings are discussed here. Readers are encouraged to read the full reports to obtain a comprehensive sense of all the issues that emerged in the meetings.

Current tenure problems

Insecure or unclear land rights

Most meetings raised the problem of the unclear and vulnerable status of current land rights. The problems cited include the fact that people have no documentary proof of the status of their residential sites. The problem is twofold: on the one hand there are queries about the exact status of the rights; on the other, there is a lack of any documentary record of land allocations. In many areas the PTO system has broken down and nothing has replaced it. People described instances of conflict and insecurity arising from the same piece of land being allocated to more than one person. They also said that the current confusion and lack of documents means that rural people are unable to qualify for

loans or housing subsidies. They raised issues of insecurity and inability to defend their land rights against threats of eviction by chiefs on the one hand, and unilateral local government 'developments' that result in the loss of land rights on the other.

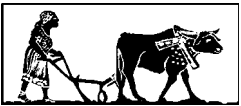
People in North West spoke of cases where land which had been transferred in compensation or purchased by them had been put under the 'tribal jurisdiction' of chiefs to whom they are not affiliated, after which the chiefs in question had undermined their rights by allocating parts of this land to others. They said they had been unable to protect their land from such incursions over many years and are now outnumbered on their farms. In the Tyhefu irrigation area, residents asked for clarity about the status of their land rights in order to secure and negotiate a long-term contract with a major investor.

Breakdown of communal systems and increased vulnerability

The government has withdrawn from its role in land allocation systems and record keeping. (Agricultural extension officers no longer survey sites and keep plans of the area, there are no longer commissioners to issue PTOs and deal with



land-related disputes, and the government no longer has officials who assist in demarcation and land use planning exercises.) The government no longer supports and maintains controls over common property resources such as grazing and forests. (There are no more 'rangers' to enforce grazing rules and the fences of grazing camps are not maintained, the system of rotational grazing has broken down, and stock theft is endemic in many areas.) There are no longer controls to stop individuals, including chiefs and indunas from collecting or selling common property resources such as sand, stone, or firewood to the highest bidder. Many areas are degenerating into 'open access' systems, and the rights of community members to common property resources are becoming meaningless. The old systems and controls that used to operate in communal areas have broken down, and land rights in communal areas are now more vulnerable than they were a decade ago.



People generally attribute the current impasse to one or more of the following things: the withdrawal of the staff and resources that used to maintain the old systems; the general confusion about the relative roles and responsibilities of chiefs and local government with regard to land administration; and the lack of clarity about the status of land rights in communal areas.

Disputes between chiefs and municipalities affect rural people

At virtually all of the meetings, problems arising from tension and confusion about the roles of chiefs and local government in communal areas were described. They said that often chiefs and local government pull in opposite directions and undermine one another, resulting in the loss of development opportunities to communities. The type of problem described was that of a chief refusing to 'release' land for a development project, or pre-emptively allocating land earmarked for development by the municipality to other people or for

another purpose. The lack of integration between the planning and development functions of local government and the land allocation functions of chiefs was cited over and over again. In Sekhukhuneland in particular, participants queried how local government can effectively plan and execute development tasks when control over the land lies with the chiefs. They raised issues of 'chaotic' allocation patterns making service provision prohibitively expensive and making it impossible for emergency services such as police and ambulances to access some areas.

The need for additional land

Participants in most of the meetings raised land shortages as a key constraint. They spoke of severe overcrowding both in residential areas, and of shortages of agricultural land, including ploughing and grazing land. In many instances they said that tenure reform could not work if it serves to confirm current boundaries, it must expand communal areas and relieve the pressure of overpopulation created by colonialism and apartheid.

Women face specific problems

Although only two of the community meetings specifically focused on women and the CLRБ, the problems faced by women in communal areas were raised in all seven meetings. These include:

- Women are generally not allocated residential land in their own right – this impacts negatively on women who are not married.
- Even married women are not considered to be co-owners of the land, it vests in the husband and his family.
- Women are treated as minors both within the family and within the community.
- Inheritance of land and property follows the male line – widows and daughters are vulnerable when male family members of the deceased husband or father takes over the land they are living on.
- Women often lose their homes and the

assets they built up during the marriage if they get divorced.

- Women are not represented in the structures that make decisions about communal land.
- Women may not speak in customary courts and in some tribal authority meetings where land rights are at issue.

Traditional leaders and land

Complaints were raised about chiefs acting unilaterally and abusing their power over land in about half the meetings. A key concern was lack of transparency. What was striking about the meetings, however, was that in some areas chiefs appear to have very little influence and authority over land, whilst in others they clearly are a force to be reckoned with. It was particularly in the areas that chiefs remain influential (Sekhukhuneland and KwaZulu-Natal) that there were complaints about them. It should, however, also be noted that while representatives of local traditional leaders did attend some of the meetings, the only place where there was a strong showing of traditional leaders was in the Mashamba meeting.

Comments and proposals on the CLRB

Abdicating state responsibility for land administration

The Bill signals the government's intention to 'wash its hands' of communal areas, and dumps the responsibility for fixing the mess of land administration on poor communities which do not have the necessary resources to perform this function.

At the majority of meetings, concerns were expressed that the Bill signals the government's intention to dump the entire responsibility for land administration in communal areas onto administrative structures once title to the land has been transferred. Participants at all the meetings said that the functions given to administrative structures were very ambitious, and that it was unrealistic and unfair to expect them to be fulfilled by

community volunteers. They all said the government should provide salaries for people fulfilling these functions. Some meetings said that functions such as recording and registering land rights should be performed by local government officials.

Concerns were raised that the government plans to subsidise and support the initial transfer of title to the community, but not the subsequent steps of delineating and registering individual rights (or ownership) within communal areas. According to some groups, securing internal rights should be the priority and first product of tenure reform and it is bad faith on the government's part to dump this entire job on unpaid community structures which are unlikely to have the capacity (or will) to do the job.

Many groups proposed a strong oversight role for government in training, supporting and monitoring local structures involved in land administration. Concerns were expressed repeatedly that, in the absence of adequate oversight and intervention, elected structures might 'betray people', 'become power mad' or 'undermine people's rights'. With regard to the proposed land rights boards, most groups recommended that they should 'not be too far away' and that they must be accessible to people living in communal areas. They proposed that the boards should operate at district or local level rather than a provincial one.

Most groups stressed the need for government to play a role in financing and enforcing adequate systems and controls to protect and sustain common property resources, such as grazing and forests, thatching grass, sand and stone. They also talked of the need for a government role in demarcation and land use planning issues.

These issues do not pertain so much to development as they do to the maintenance of communal land rights systems. These systems always have the dual components of individual rights to residential sites and fields on the one hand, and rights of access to common property



areas and resources such as grazing, forests, sand, stone, firewood and water on the other. The meetings indicated that government support (in terms of salaries, running costs, setting of standards and oversight) is necessary both for maintaining systems of individual rights and for managing and protecting common property resources.¹

People in the meetings made the point that communal areas are poor largely as a result of systematic racial discrimination and forced overcrowding under apartheid, and said that they do not have the resources to finance the maintenance of registers of individual rights or of common property systems. Government would therefore have to continue to support these functions. Their concern was about whether the government would continue to finance and support these systems once it had transferred title to communities. Some communities said that just as rural communities are too poor to finance the maintenance of these systems, local government is also financially unable to do so. If the functions fell to local government, local government would have to recover the costs from the very people who are too poor to pay for services in the first place. In the past, these functions were financed by central government via the Department of Co-operation and Development or the Department of Community Affairs.

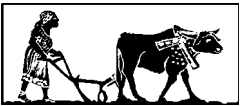
Questions which emerged in various meetings had to do with the role that land ownership plays in the relationship between DLA and rural communities. Did the government believe that its role and responsibility in these areas derives from its nominal ownership of the land, a responsibility which would end with transfer of title, or did it accept ongoing responsibility for establishing and maintaining a functional system of land rights in communal areas, no matter where the title vests? The ambitious range of functions which the proposed administrative structures would have to play, together with the fact that the

functionaries would be expected to do this work without being paid, together with the fact that the old systems of land administration have collapsed over the last decade, have made this a critical question for rural communities. People in various meetings stated that if transfer of title means the end of government support, they would rather that title continue to vest in the state.

Provision of services

Government does not provide services on 'privately-owned' land and, once the land is transferred, it will regard communal land as privately owned.

In all the meetings people said that rural areas desperately need development and services from government. However government generally does not provide services on privately-owned land, it provides services up to the boundary of the land. The responsibility for extending the services from the boundary to the service points on the property then falls onto the owner of the land. This is a well-known problem on land belonging to CPAs. At some meetings, participants said that the Bill must contain an undertaking that services and development will be provided to service points on the land after transfer of title. If this were not done, they would refuse to accept transfer of title. Others said that government must understand that communal areas are different from privately-owned land like white farms, so government should continue to provide services, even if title is transferred. In the Tyhefu meeting, people recommended that only the agricultural land be transferred to the community, and the land on which the villages are kept as state land so that, in the long term, townships could be proclaimed and individual plots could be transferred to people while the streets and public areas remained the property (and responsibility) of the municipality. They said residential rights should be strengthened immediately so that people are not vulnerable in the interim.



Traditional leadership vs. local government functions

The Bill will exacerbate the already tense relationships between chiefs and local government and it will exacerbate the confusion and lack of integration between land management functions on the one hand, and development and planning functions on the other.

Various meetings described the tense and difficult relationship between chiefs and local government and the negative impact of this stand-off on development and service delivery in rural areas. They said that the proposed administrative structures would be rejected by chiefs because they would undermine their powers, and they would also be rejected by local government because they would make its job even more difficult. Some meetings (particularly Leeufontein) said that the far-reaching power and control vested in these administrative structures would make local government's task of planning development and implementing its delivery very difficult. They pointed out that the proposed 'community rules' could cut across and contradict municipal by-laws and IDPs, yet the Bill proposes that the rules have the status of law. At the Mankaipaa meeting it was pointed out that tribal authority and local government legislation has never been properly rationalised, resulting in conflicts of power and disputed functions. The Bill in its current form would add to the confusion by adding a third structure with far-reaching powers that overlapped with the functions of the other two. While the Mankaipaa meeting supported the approach of transferring title to communities, participants said that if care were not taken about integrating the functions and powers of local government, traditional leaders and the proposed administrative structures, the Bill would have a negative impact on rural communities.

At most meetings, people said that the Bill fails to spell out clearly how land management and service delivery functions would be integrated with one another, and how administrative structures

and local government would interact with one another. It therefore runs the risk of isolating rural areas from development and service provision, thereby deepening rural poverty.

Problems with transferring title to 'communities'

Boundary disputes

Apart from Mpindweni, participants at all the meetings said that the paradigm of transferring title to 'communities' would open up problems of defining the unit of 'community' and also generate boundary disputes between communities. Some raised the danger of the Bill re-igniting ethnic tensions and focusing attention on divisions rather than people's common identity as South African citizens. They criticised it as a return to the old 'bantustan' approach.

Others supported the notion of communal title, but referred to the necessity of resolving the overlapping land rights that had been the result of apartheid having created endemic disputes within and between 'communities'. They warned that the process of defining communities and of resolving boundary disputes would be time-consuming and resource-intensive. They pointed to the necessity for government to have a strong hands-on role in resolving and mediating such disputes prior to transfer of title.

A time-consuming and intricate process

Another issue raised by many of the communities was that the process of transferring title to communities is intricate and involved, and that it will be very time-consuming, contributing to long periods of stagnation and dashed expectations for communities 'stuck in the queue'. Various groups proposed that the government develop an alternative approach that could be implemented at scale across the country, one that could at a minimum immediately secure residential rights.

Capacity constraints

At many meetings people expressed strong reservations about the government's



capacity to implement the provisions of the CLRBB, given the long delays they had experienced with its restitution and redistribution programmes. At various meetings it was suggested that DLA should get its existing programmes working well before introducing yet another time-consuming and resource-intensive process.

Making injustice permanent

Some meetings raised a more fundamental problem with the 'transfer of title' paradigm. They said that transferring title of land within current boundaries would legitimise and 'set in stone' the landlessness and poverty of rural communities. They said that the key imperative is to make more land available to rural communities, not to confirm the consequences of racial dispossession.

Balancing individual and communal rights

Implicit in the proposals of all groups was the view that communal areas contain two types of land rights: individual rights to residential sites and fields, and shared rights of access to grazing land and common property resources.

Some groups specified that different systems should apply on the different types of land, for example the Tyhefu proposal about joint community ownership by the residents of all four villages of the irrigated land, with the different villages having separate rights to their residential areas. One of the reasons for this was to ensure alignment of the village units with existing municipal wards and to leave open the possibility of future township establishment and maintenance by the municipality. Thus they proposed that residential areas should not be included in the initial transfer of title to the combined 'community of four villages'. They said that residential rights need some form of legal security, but opposed the transfer of title of the residential villages to 'communities' for fear it would exclude them from government support and service provision.

The Tyhefu proposals are well developed because people have been

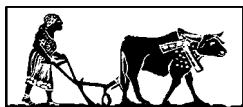
applying their minds to a pending land transfer for some time. In other areas, the proposals are less differentiated and most meetings expressed either a basic preference for securing individual rights to residential sites and fields, or for securing communal title. Yet in all areas people acknowledged both that residential rights are functionally individualised, and that group-based rights and systems are necessary to manage common property areas and to fulfil allocation and maintenance functions.

In the meetings where communal title was prioritised, participants in the small group discussions nevertheless spoke of the value of stronger and clearer individual rights in residential areas. In the areas where individual rights to residential sites and fields are the priority, participants also talked about the need for improved systems and controls over common property resources.

Issues of title and ownership

Many groups were in favour of 'ownership' as the 'strongest' form of land right, some favoured individual ownership, and some favoured group ownership. The underlying bias in favour of the 'strength' of ownership was no doubt reinforced in the meetings by the terms of the Bill, which is offering ownership rather than any other form of land right. In some meetings, participants expressed dissatisfaction that the Bill offers communal title, but seems to make the subsequent registration of individual title difficult (because only the costs of the first transfer are paid by the state, and because unpaid administrative structures would be the agents of the subsequent transfers to individuals). In these meetings some participants insisted that nothing short of ownership of individual sites would satisfy them.

However, the problem of people losing their residential sites through 'individual ownership' was also raised in various meetings. Speakers described the danger of the banks foreclosing on loans, or people being forced to sell their land to



raise cash for emergencies. Various people warned passionately against the dangers of individual ownership leading to increased landlessness for the poor.

Group title, whilst strongly supported by some people, was fiercely criticised by others as creating mini-kingdoms under local government. There was widespread concern, even amongst those who favoured group ownership, about what the impact might be on service provision and development, and whether the government would withdraw support from communal areas after transferring title.

Women

The majority of meetings said that the Bill must ensure that women are allocated land on the same basis as men – that this must not be left to variable rules and ‘custom’. The majority of meetings also said that the Bill must impose quotas for the representation of women in all the structures it proposes. The quotas proposed were in the range 30%–50%. Some meetings also said that the Bill should require that women be represented in tribal authority structures. Half the meetings recommended that the Bill require that land rights to (or ownership of) residential sites and fields must be registered jointly in the name of husband and wife. This was proposed in order to protect women from losing their homes and their land rights on the death of their husbands, or in the event of divorce.

Traditional leaders

The CLRБ restricts the *ex officio* participation of chiefs in administrative structures to a maximum of 25%. This restriction on the participation of chiefs was generally not controversial except in one meeting, where it was argued that administrative structures should not be introduced as they would undermine the powers of chiefs. Most of the meetings endorsed both the 25% restriction, and a decreased role for chiefs in land administration. Some argued that the Bill should not impose a percentage on this matter, but leave it up to communities to decide. In some instances it was

recommended that the 25% restriction in the Bill be reduced to 20%.

Most meetings stressed the need for clearer roles and relationships between local government and community structures involved in land administration and land rights management. Most also stressed the need for better relationships between chiefs and local government, based on mutual respect for one another’s roles.

It should be noted that while representatives of traditional leaders and traditional leaders themselves were invited to the meetings, and did attend most of them, there were not significant numbers of traditional leaders in any of the meetings with the singular exception of the Mashamba meeting.

Caveat to the summary

The meetings took place in areas where very different circumstances prevail. The nature of tenure problems varies from area to area, as a result of very different histories and geographical locations. Different homeland governments imposed different systems and the forms of resistance and adaptation adopted by people also varied from area to area. The positions and views expressed by people are generally illuminated most clearly by the specific nature and immediacy of the problems they face, and a comparative summary like this cannot do justice to the detail that brings tenure issues to life in individual locations. The best way to understand the issues is to speak to the people directly affected and hear their voices – or at least to read the reports of the individual meetings which start with a record of the tenure problems people currently face, and then record their views about the CLRБ. In all but one meeting, participants were asked to describe their current tenure problems before an input on the provisions of the Bill was made.

Another fact to bear in mind is that the reports reflect a ‘snapshot’ of what was said during the meetings. The meetings involved around 100 people each, drawn from different communities meeting for a



day and half around a very complex piece of draft legislation. No attempt was made (nor would it have been possible) to establish consensus, or even to ascertain which views or statements carried majority support. The record of what was said no doubt favours the more vocal participants over those who were silent, and we cannot know whether people who spoke eloquently necessarily represented the views of the majority.² However, in all the meetings, participants spent at least half a day in small group discussions, where there was much wider participation in discussions. Interestingly, the small group discussions raised the importance of securing individual rights in all instances, even in the meetings where this was not discussed in the plenary.

Another factor was that the Bill is complex and people who were unfamiliar with it took time to absorb its contents. While some groups grasped it and applied it to their contexts very quickly, others would have needed more time before being able to formulate their responses fully. Finally, it must be said I listened to what was said through the lens of my past experience, and have no doubt interpreted



it subjectively. This summary should be understood as my interpretation of the key issues that emerged during the meetings. It cannot and should not substitute for the voices of the people directly affected by the provisions of the Bill.

Endnotes

- 1 Until the early 1990s these systems were supported by officials of the Department of Agriculture, and officials employed in the District Commissioner's offices. There were also budget lines for the running costs entailed in fulfilling a number of functions, including survey, planning, registration of rights, maintenance of records, patrolling grazing areas, dipping cattle and maintaining fences.
- 2 All the summaries of the meetings were checked and corrected by the regional partner organisations which organised the meetings. In three cases the partner organisations identified statements in the report that they felt did not represent the views of the majority of participants, because of other processes that they are involved in with the participants. They agreed that these statements were made, but felt it was misleading to include them without indicating that they were minority views. This was done. However the process highlighted the possibility that other statements made during the meetings may also not enjoy widespread support, and yet appear 'equal' to statements that do reflect the majority view.

References

- Afra (Association for Rural Advancement). 2003. *Report on women's workshop on Communal Land Rights Bill held in Pietermaritzburg 22-25 March 2003*. Unpublished 44-page report.
- Ancra (Association for Northern Cape Rural Advancement). 2003. *The Communal Land Rights Bill community consultations at Batlharos: 17th and 18th March 2003*. Unpublished 16-page report.
- Claassens, A. 2001. *'It is not easy to challenge a chief': Lessons from Rakgwadi*. Cape Town: Programme for Land and Agrarian Studies, University of the Western Cape. (Research report; no. 9.)
- Gxabe, Z. 2002. *Report on the TRALSO workshop on women and the Communal Land Rights Bill, held at Masibambane Sewing Project (Mpindweni Village, Umtata) on the 3rd and 4th December 2002*. Unpublished 31-page report by Zamikhaya Gxabe.
- Karibu Service Providers. Undated. *Preliminary report on the Tyhefu Irrigation Scheme Facilitation Project*. Unpublished report prepared for the Project Manager: Eastern Cape Provincial Department of Land Affairs, East London.
- Khanye, T. 2003. *Communal Land Rights Bill workshop: Tyhefu Irrigation Scheme*. Unpublished 6-page report by Thabang Khanye on the community meeting held on 4 and 5 March 2003.
- Kojoana, L. 2003. *Report of workshop: Communal Land Rights Bill: North West Province: Mankaipaa*. Unpublished 21-page report by Lerato Kojoana of the The Rural Action Committee on the community meeting held on 10 and 11 April 2003.
- Nkuzi Development Association & Chamondo Professional Services. 2002. *Communal Land Rights Bill consultative meeting: Mashamba*. Unpublished 31-page report on the community meeting held on 22 and 23 November 2002.
- Thobejane, A. 2003. *Report for Communal Land Rights Bill consultation: Leeufontein*. Unpublished 12-page report by Allocia Thobejane on the community meeting held on 11 and 12 January 2003.

