



INSTITUTE FOR POVERTY, LAND AND AGRARIAN STUDIES (PLAAS)

**WORKSHOP
REPORT**

National Land Workshop for Civil Society

Johannesburg, 2-4 October 2013

Twitter: #NLWLandPolicies

Virginia Molose

PLAAS Workshop Report: National Land Workshop for Civil Society: Johannesburg, 2–4 October 2013

©Institute for Poverty, Land and Agrarian Studies, University of the Western Cape, August 2012

Author: Virginia Molose

Series Editor & Design: Rebecca Pointer

Cite as: Molose V (2012) National Land Workshop for Civil Society, Johannesburg 2–4 October 2013. PLAAS, UWC: Bellville.



TABLE OF CONTENTS

1. INTRODUCTION	1
2. PURPOSE OF THE WORKSHOP	1
3. COMMUNITY INPUTS	2
4. PRESENTATIONS OF LAWS AND POLICIES UNDER REVIEW	8
Restitution of Land Rights Amendment Bill	8
Traditional Councils and the new Tenure Reform Policy (Traditional Affairs Bill)	8
Minerals and Petroleum Resources Development Act (MPRDA)	9
Recapitalisation, Leasehold and Land Holding	9
Communal Land Tenure Policy	9
5. COMMISSIONS	9
6. COMMISSION REPORT-BACKS	10
Group 1: Restitution, outstanding land claims and CPAs	10
Group 2: Communal tenure, governance, traditional leaders and CPAs	11
Group 3: Mining and large scale development on communal land	13
Group 4: Small scale agriculture and protecting farm workers	14
7. STRATEGIES TO ENGAGE WITH NEW POLICIES	15
8. GROUP REPORT-BACKS	16
Group 1: Co-ordinating structures	16
Group 2: Parliamentary submissions/ litigation/ mobilisation in support	17
Group 3: Media strategies/awareness raising	17
9. CONFERENCE RESOLUTIONS	18
10. CONCLUDING REMARKS	18



1. INTRODUCTION

A number of recent government policies and bills seem to suggest that land may increasingly be transferred into the hands of traditional leaders and other elite strategic partners, rather than to communities, who will instead have conditional tenure and perhaps remain permanent tenants of the state.

The policies/bills include the *Revised Restitution Amendment Bill*; *CPA Amendment Bill*; *Draft Communal Tenure Policy*; *State Land Leasing & Disposal Policy*; *Recapitalisation & Development Policy*; *ESTA Amendment Bill*; *Farm Worker Tenure Policy*; *Agricultural Landholding Policy Framework*.

Prompted by these recent policies, NGOs, CBOs, academic institutes/centres and community members came together to develop a strategy and responses pertaining to communal land tenure, farm worker tenure, smallholder farmers, land redistribution, restitution, rural development and agrarian reform.

The workshop was held on 3–4 October 2013 at Stay City (Berea, Johannesburg) and hosted by the Centre for Law and Society (UCT), the Institute for Poverty, Land and Agrarian Studies (UWC), and Tshintsha Amakhaya. The Legal Resources Centre provided legal advice at the workshop.

The workshop comprised over 100 participants from eight different provinces: Western Cape, Northern Cape, Eastern Cape, Kwa-Zulu Natal, North-West, Gauteng, Mpumalanga and Limpopo. They came from various organisations including farmers associations, community property associations (CPAs), non-governmental organisations (NGOs), networks, community based organisations (CBOs), and displaced community members from mining communities. The participants shared a common connection to the land.

2. PURPOSE OF THE WORKSHOP

The objectives of the workshop were as follows:

- Create awareness and reach clearer understanding of bills and policies
- Use the workshop to create a platform for NGOs, CBOs and community representatives to share knowledge and current and potential implications of the bills and policies on rural communities
- Develop a plan — that recognises different perspectives — on how to respond to these bills and policies
- Develop constructive solutions for how to deal with problems related to insecurity of land tenure. This includes:
 - Assessing IPILRA and amendments to it, as a means to strengthen land tenure security
 - Ensuring communities are consulted in mining situations
 - Thinking about measures to promote small scale farming; proposals for improving farm workers' tenure security (related to draft ESTA amendment)
 - Suggestions on protecting and improving CPAs and other land holding institutions (such as CPIs and Trusts)
 - Suggestions on how to make customary law work for benefit of rural people and not elites

The common thread for the workshop is land and people's experiences, views and issues about it especially in relation to the new laws and policies that are in the public domain.

Day One

3. COMMUNITY INPUTS

Facilitated by: Ms Connie Mogale, Ms Sizani Ngubane, Mr. Mbongiseni Buthelezi and Mr Mazibuko Jara

The session was aimed at hearing directly from communities about their experiences in the areas concerning the bills and policies and recording these as part of the testimonies from the workshop. The participants also gave permission for their names to be used for quotations if needs be. The session was introduced by explaining that participants were free to express themselves in the language they are comfortable in because amongst the three facilitators' translation would be provided.

Community inputs were taken according to the themes of the commissions listed below.

- Issues and challenges arising from the Restitution of Land Rights Act
- Issues and challenges stemming from traditional leadership and communities' interactions, customary law and communal land tenure security or lack thereof
- Mining activities, community engagement on mining, the effects of mining on livelihoods and access to land, and local economic development in mining communities

Community inputs were taken on a volunteer basis and in batches of three to four hands at a time. Below are the inputs:

Isabella Hlalele, North West: Small scale farmers

Ms Hlalele asked for the meaning of agriculture to be explained because from her experience it seems the focus is only on large scale commercial farming and no attention is given to small scale farmers or even backyard farmers. She mentioned that the latter are playing a critical role of feeding households yet they are not recognised nor supported. She requested the workshop to reflect on the question of the size of farms specifically, how many people have more than 10ha? She also stated that government is not supporting small scale farmers. Also there is land and water contamination from a mine which government is doing nothing about and the effects of pollution are felt more by small scale farmers. The issue of contamination and water needs addressing. Also she mentioned that large scale farmers who do not want to give up claimed land deliberately contaminate soil and water resources as a way of sabotaging land claimants' future agricultural practices.

Solomon Mabuza, Nkomazi – Mpumalanga: Land Restitution Claims

Mr Mabuza stated that he cannot understand the rationale for amendments to the Act at this stage because the Act had not been afforded an opportunity to be implemented as yet. He is unable to understand what informed the amendments because these should be drawn from on-the-ground experiences in terms of what is working or not. This kind of information is not there in the Department of Rural Development and Land Reform (DRDLR) because its officials are hardly on the ground to come and monitor what is happening. He suggested that amendments be halted because they are taking place before implementation, thus they are ill-informed and not informed by practice. He stated the only assistance communities get is from NGOs while the DRDLR is far from people and not assisting.

Hlengani Chauke, Vhembe Region – Limpopo: Land Restitution Claims

Some communities have challenges with restitution land claims that have been dismissed on the basis that only the traditional authority has the right to make a land claim. In this particular case the community of Maphindani, took the DRDLR to the Land Claims Court and supplied evidence,

including anthropological evidence, however the matter is still not resolved. As a community they were advised that an amount of about R100 000 is required to fight the case. Due to financial constraints, the community approached a law firm which agreed to assist on a pro bono basis. The identity of this law firm cannot be mentioned at these proceedings as the matter is still on-going.

Masilo Robert Ramakgatlane: Land Restitution Claims

The community has been fighting for its land for 18 years (since 1995) and the government has failed to assist it. It appears as if government officials are afraid of traditional leaders. The claim was straightforward, with sufficient evidence and was ready to be processed so that there could be a registered CPA but everything was halted because a nearby traditional authority claimed the land too. The government officials say the matter is difficult because the land had already been transferred to the said traditional authority therefore making it complicated because it is a claim between two black people. There is no progress on this claim at all despite the many years it has been with the Commission.

Piet Nkuna, Barberton – Mpumalanga: Land Restitution Claims

The community's claim was lodged in 1996 and it is still not yet finalised. The claim is for land that affects the town, mine, farmer and forestry companies. Developments continue to happen on the land despite it being gazetted and law forbids this. There are smallholder farmers that are on the land as well and there is suspicion that they are colluding with DRDLR officials to frustrate the land claim. The mine management has changed twice since the claim was first lodged. The frustrating thing also is that these things take place with government knowing. The mining company on the claimed land has changed ownership twice since it was gazetted. The traditional authority has put in a land claim; for the entire town which encompasses the community's original land claim.

The CPA has registered as a cooperative according to DRDLR's own policy but it is struggling to access leased land as there are people who are given preferential access to land and are suspected of "fronting" for government officials. Some community members are fronting for government officials under the pretence that they have been given land with recapitalisation funds while actually it is for government officials. Mining and forestry (Sappi) are part of this as well, so the workshop should come up with a firm position to challenge such issues. There are also concerns about rural mining communities that are not developing because mining revenues are not used to develop such communities; instead they benefit tribal authorities and a few elites in the name of BBBEEE. Also there are political dimensions to this matter because through BBBEEE some politicians from the ruling party have ownership of these mines thus offering the mines some political protection.

Asvoel Modibedi, Ba-Phalane, Skuilpad – North West: Land Restitution Claim and Traditional Leadership

A trust was formed in 2002 with the knowledge of the traditional authority but without declaring it to the community. This trust controls restitution land that was claimed back by the community. There is no reporting from the Trust to the community. The mine that operates on this land gives monies to the trust but these are not declared or shared with the community. How can the trust be disbanded because money intended for the community is benefitting only the traditional authority and other trustees? There are huge monies deposited into the account of the Trust like R30 million, R20 million etc. Trust members are driving cars, live in big houses while the community lives in poverty. The traditional authorities are not attending community meetings to hear the complaints of the community; nothing is done by government to assist the community either. Officials and ministers are having shares in mines therefore have no interest in making sure that land restitution claims are settled.

Thabisile Zulu, KwaJali – KwaZulu-Natal: Land Restitution Claim

There is a forestry company and the farmer says he has a 99 year lease. The traditional authority who is a woman supports the farmer and is not prepared to listen to community complaints and challenges with the farmer. The traditional authority is benefitting from the farmer by getting groceries, money etc. It is the community's view that The Board of Trustees that controls the trust that administers land that was claimed through restitution should be abolished.

Gadifele Tawana, Goedgewonden Village – North West: Land Restitution Claim

The community was forcefully removed from their land in 1978 and was resettled in 1991. As a community they insisted on going back to their land but since resettlement there has not been any development in the area. Some people were moved as it was said that the area is dolomitic but the structures they left before removal are still standing. There has been an RDP housing project introduced to the tribal authority's village but no such development for the land occupied by CPA members. Since January 2013, a mine is operating on the land that was given to the community as part of restitution and there was no consultation with the community. Furthermore, grazing and agricultural lands have been subdivided as well and again there was no consultation with the community.

Mabel Monageng, Thekwana Village; North West: Land Restitution Claim

The community structure calling itself the Bafokeng Land Buyers are going to court on the 31 October and 1 November 2013 to fight to get its land back. They are asking for assistance with transport, food and accommodation as well as picketing and media coverage in order to raise the profile of this case.

Nomgcobo Somdyala, Vula Masango Singene – Eastern Cape: Land Restitution Claim

Vulamasango Social Movement is in the community of Cekwane. Their struggle for the reopening of the lodgement period for the Restitution Amendment Bill started in 2003 and the change of ministers for the DRDLR has not assisted their case but instead has complicated matters because they have had restate their case every time a new minister takes office. The Communist Party has played an important role in assisting them with their issues.

Ntombikayise Mthembu, Dannhauser – Amajuba District Municipality: Land Redistribution and Restitution Claim

There is a serious challenge with DRDLR officials in this area as farming land that is part of land reform is being given in a corrupt manner to these officials rather than to communities. There is also a lack of understanding of whether communities fall under traditional authorities or under farm owners in terms of management and authority. Reopening claims without having concluded outstanding ones in the restitution process creates conducive environment for government officials to illegally acquire land.

Rosey Nikani, Thulani Community in Roodepoort – Gauteng: Land Restitution Claim

The community of Thulani wants Roodepoort Deep Mines to remove mining dumps because they are causing pollution leading to respiratory diseases for the people of Thulani and Dobsonville. This affects the economic viability of the households in the area. The matter has been lodged with the LRC for litigation. Moreover, the area on which the mine waste is dumped is of significant size and this land could have been better used for housing as many people in the community need housing. Small scale farmers are interfering with the restitution claim's progress because they are benefitting from the mining activities. The communities are also demanding jobs be created for locals.

Sefako Moraka, Bakgatla ba Kgafela – North West: Land Restitution Claim

Representing Bakgatla ba Kgafela Anti-Corruption Organisation, Mr Moraka said that this community should be well off because they are situated in the rich platinum belt however they are very poor because their land claim remains unresolved. They are sold job opportunities for R3000 in the mines operating on their land. Their land together with their livestock was taken away from them to form part of the Pilanesberg Game Reserve. Presently this community has no place for grazing for their livestock. He urged the conference to undertake a learning journey to the area to witness the poverty that the Bakgatla ba Kgafela live in.

Suzan Matsimela, Kalkfontein Community – Mpumalanga: Land Restitution

An established CPA operates in one ward while other wards are under a traditional authority. Government introduced a program called Comprehensive Rural Development Programme (CRDP) in the area but the CPA administered land has been overlooked as is not benefitting at all from this programme. The question of the recognition of the CPA by local government was raised, particularly in reference to development initiatives. The only people who are being supported by local government with services are those under tribal authority. As a CPA they were told by the traditional authority that they received funding and money deposited in their bank whilst they know that they have never opened a bank account in their CPA's name.

Mbulelo Tokwe, Ilezwi Lamafama Farmers Union, Amathole District Municipality – Eastern Cape: Small Scale Farmers and CPAs

The farmers union was started in 2007 because government was and is still not assisting small scale farmers instead it concentrates more on large scale farmers. Water licencing for example is often geared towards supporting large scale farmers with water attained through water licences going through the lands of small scale farmers who have no such licences and therefore no water. Maybe Departments of Agriculture and Water Affairs should be merged so that they can look at these problems holistically. The rights of CPAs need to be recognised as full citizens of the country not subjects of tribal authorities.

Mlulami Nzweni, Ilizwe Lamafama Farmers' Union, Amathole District Municipality – Eastern Cape: Traditional Leadership

He stated that there are now four tiers of government instead of the legislated three. The fourth unlegislated one is traditional authority which has been given way too much power/authority by national government. Traditional authorities do not hold any consultations with communities about developments taking place in their areas of jurisdiction; and expect communities to go along with such practices.

Thandiwe Zondi, uMgungundlovu District Municipality – KwaZulu-Natal: Communal Land Tenure and Traditional Leadership

Government has not explained properly the issue of allocating of land especially in communal areas. The traditional authority has set up a trust over land which benefits only those who are in the trust; those that control the trust benefit from monies that people pay to acquire land. People pay R520 for land and get receipts for R20.00 with no explanation as to what happened to the difference. Some paid R7000 and got R20.00 receipts. The traditional authority is behind these corrupt activities therefore government needs to intervene. Women have borne the worse brunt of these corrupt practices losing a lot of land in the process. Women are not represented in the trust that allocates land, so the question is who should be allocating land?

Bridge Sojane, Bakgatla ba Kgafela: CPAs

Independence of the judiciary is compromised. The community won their land claim through litigation and took DRDLR to court because it was delaying registering them as a CPA. An order

was issued for the DRDLR to register the CPA. However the Department has still not registered the CPA. The question who can force the Department to comply with the court's order? The CPA Act has not evolved, e.g. the time frames have not been changed to get the Department to provide capacity building to the registered CPAs. But the Department is not doing anything; regulation is required through an independent body like an Ombudsman in order to get the Department to comply on court rulings. The level of unemployment is still high in these communities which also needs addressing.

BT Gcilitshana: Land Restitution, CPAs and Tenure Security

The issue is with regards title deeds: he posed a question about when is government going to pass a law on CPAs receiving title deeds in rural areas? He mentioned that people have fairly large homes in rural areas but do not have ownership over these only 'right to occupy' while in towns title deeds are granted. The lack of title is slowing down ownership of an economically viable asset like land in the rural areas.

Elizabeth Monareng, Balfour – Mpumalanga: Land Restitution Claim

Their land claim was gazetted in 2005 with capacity building being provided by the Mpumalanga provincial government. The Mpumalanga government tried to pressure the community to take money instead of settling their land claim. The claim has now been held up and it was discovered that there is a company that is operating on the land and this company is owned by an official from the municipality. The land is divided into four erfes. One of them is water logged. There are several companies operating on the farm, one is concerned with housing and another private residential property. As a CPA when they went to apply for water rights they were told they were late as applications had already closed. A mineral rights certificate was also given out on the land to another company. The official from the municipality has now stopped engaging with the community after they learnt that the community is now working with a land rights CSO – LAMOSA. There is a need for assistance for the community to get its land back.

Benjamin von Meyer, Dwesa Cwebe – Eastern Cape: Land Restitution

The CPA that managed the community's reclaimed land was not given an original certificate but only a copy with its name wrongly spelt. The community's reclaimed land encompasses a game reserve managed by the Eastern Cape Parks and Tourism Agency's (ECPTA). The ECPTA's rangers are victimising communities, shooting at them, killing some and others are even raped. Their domestic animals are also killed without any compensation being paid. The owners of the game reserve refuse to take responsibility for this. Without proper documentation the CPA is unable to confront the ECPTA and as owners of the land they have to take instructions from the ECPTA instead of the other way round. Their area was demarcated as marine protected area but the marine life has declined since it gained this status and the ECPTA is responsible for managing this marine area. The relationship between the CPA and ECPTA is acrimonious.

Getruida Baartman, Ceres – Western Cape: Small Scale Farming

The speaker identified herself as the chairperson of a small scale farming project. They are living on a commercial farmer's land as small scale farmers with very limited land for them to farm on. Their struggle to obtain land started in 2008. When they raised their concern about the size of the land available to them, the DRDLR asked them to look for their own land thus absolving themselves from the responsibility of finding them suitable land. As farm workers access to media or information about farms that are on sale is limited. This negatively affects their ability to get prospective land for the DRDLR to purchase it for them.

They are still paid very little as farm workers despite the settlement of R105p/d that was reached after the 2012 farm workers' strike. This is burdensome on them because the cost of living is rising and government's failure to support their access to land means they struggle to support their meagre salaries by producing their own food. The little bit of vegetables that they

produce and try to sell is met with hostility in the market by big supermarkets wanting to pay very low prices for it complaining about quality although it is not any different from the commercial farmers' vegetables for which they pay better prices. She also indicated that there are still many evictions going on farms without any intervention from government.

Mmuthi Kgosietsile Pilane, Motlhabe Community – North West: Land Restitution Claim

Motlhabe community claimed land in 1998 and it was gazetted in 2005. The traditional authority claimed 67 farms but only two claims were successful. There was an expectation of resistance from the white farmers that had occupied the land for some time but actually the resistance came from Kgosi Nyalala Pilane who had made a counter claim that covered most of the land that the community had claimed. The land that the community was claiming was bought through the traditional authority back in 1932 in trust on behalf of the community as the previous government never allowed community members to buy land by themselves. A mining company was brought on board without the knowledge of the community and the DRDLR's officials took the side of the traditional authority. The claimants were told they have no right to make a claim because all their rights are vested in the traditional authority. There was also a mistake in the application, the lawyer lodged claimants as Bakgatla ba Kgafela which was wrong. This mistake was used by Kgosi Pilane to hijack the community's restitution claim. The mine benefits are paid to Kgosi Nyalala Pilane who does very little for the community, and he, along with those close to him, are the only ones enjoying the benefits and living comfortable lives. The request was for the legal firms, community leaders, NGOs and CBOs to ensure that government first deals with issues relating to land claims that were lodged in what is to be the first lodgement period and also those first claims are settled before the second round of claims are dealt with.

Lamson Maluleke, Makuleke community – Limpopo: Land Restitution

Lamson Maluleke posed several questions he felt were important to answer in order to understand the drive for the Restitution Amendment Bill; what is triggering the legislative review? Who is to benefit from the reopening of the restitution process? Is there a hidden agenda in reopening the restitution process and if so, what is the hidden agenda? Are CPAs not functional and if they are not then why are they not functional? What is government's role in the dysfunctional status of CPAs if they are indeed dysfunctional? How many CPAs have been in existence without their title deeds? Are we not looking to create new backlogs upon existing backlogs with the reopening of the lodgement process? There is suspicion that there are those who want to benefit from the reopening of the restitution process.

Daniel Khoza S, Elim – Limpopo: Support for Restitution Land Claimants

There are three CPAs in the areas of Shimange, Mavhungeni and Muzhezi and their development plans look the same. There is a dam in the general area of these three CPAs. The dam that was initially built was washed away during floods but the rebuilt dam is badly constructed and is already leaking. The communities' queries regarding the dam are not listened to because they are told they did not contribute money towards construction of the dam although the funds were sourced using the three CPAs' names. Floods and the risk thereof make farming for the communities of the three CPAs very difficult and negatively affect people's livelihoods. There is a poultry farm project raising chickens within a 42 day period but the market is very difficult because there is no support from government. There are no agricultural extension services to support small scale farmers and support from the Department of Agriculture, Forestry and Fisheries (DAFF) is sporadic. Their vegetable produce is met with hostility and not fairly treated by local supermarkets like Spar as the CPAs' produce are priced lower than the farmers' ones despite the quality of both being good.

Buselaphi Magwaza, Babanango – KwaZulu-Natal: Land Use Management and Land Redistribution

Ezemvelo KwaZulu-Natal Wildlife earmarked a game reserve on land that was occupied by the community. Ezemvelo KZN Wildlife then requested residents in the area to move. Most white farmers left the area but the community remained despite Ezemvelo KZN Wildlife trying to put pressure on them to move. Ezemvelo KZN Wildlife built a game reserve and brought in wild game to their land. The game has brought in terrible diseases to their livestock but nothing is being done by officials despite the many complaints that the community has raised with them. The farmer next to them complained about the matter and all wild animals on his farm was removed but Ezemvelo KZN Wildlife refused to do the same for this community. In fact Ezemvelo has made it clear to the community that there will not be any developments on that land because the land was not intended for residential purposes and that it is their loss for refusing to move.

Henry Michaels, Trust for Community Outreach and Education (TCOE) – Western Cape: Farm Workers' Tenure Security

Mr Marcus is the spokesperson for Western Cape Farm Workers Association. In the Western Cape there is less land reform taking place and the situation is exacerbated by high unemployment among farm workers. There are a lot of evictions taking place despite the moratorium on farm workers' evictions still being in place. Those that are over the age for economic activity are under particular risk. Political parties use farm workers' issues to try to further their political aims but the circumstances of farm workers stay the same. Rural development e.g. housing is also another challenge because even when farm workers are evicted they then have nowhere to go for housing. The change of ownership of farms deprives the communities' security of tenure because they are treated as new workers with every new owner taking over the farm. This makes it difficult for farm workers to secure their tenure and that is part of the reason behind high levels of evictions. Municipalities are not supporting development on the farms; there is no housing, water services, sanitation, etc. The Western Cape suffers from the slowest land reform as the farms are very expensive.

4. PRESENTATIONS OF LAWS AND POLICIES UNDER REVIEW

Chaired by: Mazibuko Jara

The chairperson introduced each presenter. Two presentations were made at a time followed by a question and answer session.

Restitution of Land Rights Amendment Bill

The presentation was made by Ms Tara Weinberg from Centre for Law and Society (CLS). The presentation is attached as **Appendix 3**. This bill was outlined as one of the bills that required urgent attention because it is being tabled in parliament in October 2013 and the public hearings for it are happening between November 2013 and January 2014.

Traditional Councils and the new Tenure Reform Policy (Traditional Affairs Bill)

The presentation was made by Dr Aninka Claasen from CLS and it is attached as **Appendix 4**. It is important to note that written comments were expected to be submitted by 19 November 2013. Participants were advised that it was important to put in written comments in order to improve their chances for selection during oral presentations.

After the two presentations the chair opened the session for comments and questions as captured below.

Comments

- Government is using the same oppressive law – the Black Authorities Act – to make communities' lives unbearable
- Officials and traditional authorities are in collusion in treating communities badly. The Batho-Pele ('People First') principles do not apply for rural communities. The traditional authorities come first.

Questions

- How is productivity defined in the Restitution Amendment Bill?
- What are the reasons for the failure of Restitution of Land Rights (Act 22 of 1994) to fail? This could assist us in understanding what needs to be done differently for the Restitution Amendment Bill.
- What is your success rate in winning land claims cases on behalf of claimants – in order to induce our confidence on you as our possible legal representative?

Tara's responses

Productivity is not defined in the bill – but expectation, as captured in, for instance the Policy for Recapitalisation and Development Programme, is that land should be used as a commercial farm or be in the hands of a traditional authority and thus communities lose out.

Annika's responses

The success of the campaign in opposition to the Traditional Courts Bill (TCB) shows that is possible to push back against bills and policies which will negatively affect rural people. There's a need for mobilising and advocacy work in communities to raise awareness and get communities engaged in the process so government understands that they are going against the wishes of people who most likely votes come from? The government must be made to see that most of the votes are with the communities and not traditional authorities, so they have to address the issues of communities rather than trying to only please traditional authorities.

Minerals and Petroleum Resources Development Act (MPRDA)

Mr Chris Rutledge from ActionAid made the presentation which is attached as **Appendix 5**.

Recapitalisation, Leasehold and Land Holding

Prof Ben Cousins from PLAAS made the presentation which is attached as **Appendix 6**.

Communal Land Tenure Policy

Ms Wilmien Wicomb from the Legal Resources Centre made the presentation which is attached as **Appendix 7**.

5. COMMISSIONS

The participants were requested to break into four groups taking into account geographical representation, theme/issue base and fair distribution in terms of numbers. The Commissions were to take the remaining time in the afternoon and evening to answer the set questions and be ready to report back in plenary the following morning. The four Commissions were as follows:

- Restitution, Outstanding Land Claims and CPAs
- Communal Tenure, Governance, Traditional Leaders and CPAs
- Mining and Large Scale Development on Communal Land
- Supporting Small Scale Agriculture and Protecting Farm Workers

Day 2

6. COMMISSION REPORT-BACKS

Chaired by: Mbongiseni Buthelezi

Participants were welcomed for Day 2 of the workshop and invited rapporteurs from all the commissions from the first day to get ready to report back. The process was such that report backs for each Commission would be followed by additions from members of the commission, then questions, comments and additions from the floor.

There was an announcement on a Mining Affected Communities United in Action (MACUA) Petition. As an organisation MACUA has drafted a petition and it is requesting participants to sign if they agree with the objectives; which are to get government to include communities affected by mining in the consultative process about starting mining activities in their areas. Currently only private sector and traditional authorities are consulted but not affected communities. The petition is to put a stop to this practice. The petition will circulate for participants to please sign if they agree with the sentiment.

Group 1: Restitution, outstanding land claims and CPAs

The report back by Mr Humphrey Mugakula raised the following points:

- Looked at existing Act and the new Bill
- Old Act had unconditional support grant but new Bill has funding through the Recapitalisation and Development Programme which is conditional and thus problematic particularly for restitution
- There are no process timeframes for claims in the new bill
- Implementation of the Act was hamstrung by capacity constraints but the new bill does not tackle these capacity issues in terms of implementation
- The new bill does not explicitly recognise CPAs which is a challenge as CPAs are a desirable vehicle for community participation in the management of claimed land
- There are challenges of record keeping that hampered implementation of the existing Act, and this is not dealt with in the new bill
- Gender mainstreaming in the new bill has not featured even though women were side-lined in the implementation of the existing Act

Challenges with the new Bill

- No consultation by government, only consultations done were in provinces of Limpopo and Eastern Cape. All provinces need to be consulted thoroughly with a particular focus on communities' experiences
- The new Bill does not deal with how outstanding claims are going to be managed
- The bill is not clear on eligibility criteria regarding restitution claims
- There is no proper definition of betterment in the Bill. Clear criteria stating what qualifies people to claim for betterment is required
- There is a lack of an internal appeal mechanisms for people to appeal against claims or decisions on claims before claimants take the litigation route
- Opening up restitution claims brings with it the risk of potentially corrupt traditional authorities which would possibly lead to the hijacking of CPAs' claims
- There must be a stipulated budget and adequate human resource support to investigate the legitimacy of claims

- Claimants have complained that when they lodge a grievance about problems with the restitution process, or delays in receiving their land, they do not receive adequate responses from the Commission or the Department of Rural Development and Land Reform. But the new bill contains no new measures to resolve these problems. Budget shortfall challenges for land claims have not been dealt with

Discussions and way forward

- Organise coordinating structures (made up of CPAs or other community property institutions) in order to inform communities on the amendments happening with the Acts and other policies. These could be based at the district level.
- Claims must involve claimants — claimants should be able to present their own cases and get regular feedback on progress and outstanding documents so that there is no missing information
- There must be separation between new and old claims. Amendments must be informed by problems in the existing law and its implementation. There were no consultations regarding amendments, affected communities were not briefed on what was wrong with the Act that required amending
- There must be strategies to counteract aspects of the bill, communities must be mobilised to support presentations at parliament or courts. Support also must go to communities experiencing hindrances to their full enjoyment of their land rights or not seeing progress with their claims. Transportation costs must be thought about with regards to CSO and community mobilisation
- Lobby support from organisations that are in this workshop in terms of their time and support to communities. Their research and legal capacity must be used to support communities. The issue of funding support is important to think about
- Post-settlement support must be included in the new Bill
- Protection and recognition of CPAs as legitimate democratic structures in the transfer of land claims to the communities must be lobbied for inclusion in the Bill
- CPAs must be protected and supported in the new Bill instead of making traditional authorities the new entry point for holding or managing claimed land in trust on behalf of community claimants
- There must be increased research and legal capacity to support restitution claimants, CPAs and rural communities that depend on communal land tenure.

Questions and comments

- Clarity was provided that in the case of Limpopo, consultations were not held with communities but only with the Provincial House of Traditional Leaders
- Self-monitoring of CPAs in terms of term of office is a challenge. Moreover, CPAs also have major challenges in terms of democracy, corruption, lack of accountability, etc. Issues within CPAs as well need to be addressed in order for structures to be legitimate and recognised
- Successful claims must be given legal aid to protect their claims against counter-claims or new claims
- The role of mining must be recognised in land claims because they devalue the land, so communities must be compensated for this.

Group 2: Communal tenure, governance, traditional leaders and CPAs

The report back was presented by Mr Mlulami Nziweni.

- New laws must address the imbalances created by past laws like Black Authorities Act and Black Administration Act and people must be at the centre of that process
- Active participation is required from communities
- The traditional authorities do not own the land but are custodians of the land so they cannot allocate, people themselves must allocate sites not the chiefs as custodians. Chiefs are there only to play oversight. This was disputed by Shirhami Shirinda who said the traditional authorities are actually only leaders and people themselves are custodians of the land.
- The new laws are serving the interests of elites over the interests of communities
- Acts and amendments to traditional leadership laws are geared to favouring elites
- Some traditional authorities abuse their roles and go beyond their supervisory role (as assigned through TLGFA) and usurp powers that they don't actually have
- There must be village land committees for dealing with land
- The legitimacy of some traditional authorities is questionable so that needs addressing first. Bills and amendments give power to the traditional authorities more than to the people themselves.
- Abuse of power by the traditional authorities is a challenge and there is a lack of legislation to make chiefs accountable to the people
- These new laws could bring the traditional authorities into conflict with communities and this could end in the very existence of traditional authorities being threatened
- State must create space for the people to participate even in consultation.

Way forward

- Mobilise and organise people and embark on an organised march
- There must be local, provincial and national coordinating structures
- Force government to scrap Bills not representing people
- Engage parliamentarians to ensure that the needs and rights of communities are protected
- Disseminate information from the conference in order for those not at the conference to know the agreements
- Awareness-raising of the new Bills and their implications in our communities is necessary
- Lobby media on our side and expose traditional authorities and government for the injustices they perpetuate in some rural communities
- The upcoming elections present an opportunity for us to pressurise the government to make concessions — through marches and protests
- People need to be made aware of laws and policies so they understand the legal role of traditional authorities as well as how they fit into their rights as citizens
- There should be land administration committees and they should allocate land. These committees should be part of the local government structures like ward committees in order to make sure they access support from municipalities
- The CPAs need to exercise their power as legal entities and assert their roles and responsibilities. They also need to create better understanding with the traditional authorities to appreciate their role as beneficiaries and not leaders in the CPA administered lands.

Questions

- How do we improve our practices to be more democratic and transparent as CPAs?
- Can we set an example as CPAs in reporting especially financially to our members?

- Should good customary law be recognised in our CPA constitutions? **Note:** not the traditional authorities' law but customary law proper as intended to govern the people.
- How can we use the media wisely to hear our plight despite it being government's mouthpiece?

Group 3: Mining and large scale development on communal land

The report back was done by Mr Bridge Sojane.

- The Mineral and Petroleum Resources Development Act (MPRDA) being introduced is unfriendly to communities
- The MPRDA did not properly engage and involve communities — poor consultation
- Communities within mining areas should benefit from mining but there is nothing that speaks to that
- The Environmental Impact Assessment (EIA) requires community engagement and this is one area in which communities are not being properly engaged
- There should be a clear process and timeframes to enable communities to engage with the different stages of the mining operations approval process
- Politicians and officials have mining rights through BBBEE creating conflict of interest in handling community complaints fairly.

Challenges

- For mines to get their operations approved by communities they always promise employment opportunities for locals but after approval the mines renege on their promises citing the need for skilled labour force as an excuse
- Loss of rights is immeasurable amongst people hence compensation varies.
- Compensation in the affected communities is not properly structured because there are no criteria defining fair compensation, opening room for subjective interpretation of the phrase. This needs reviewing with proper community consultation for inputs.
- Government officials and politicians having shares in mines is a problem as it affects transparency, accountability and their ability to objectively further and protect communities' rights
- There are no real benefits for communities affected by mining operations yet these communities bear the brunt of the environmental, loss of land livelihoods costs associated with mining.

Way forward

- Affected mining communities should use our votes to drive home our issues on development and mining. Using the power of X – when voting we consider carefully who we put in charge. This requires consultation with our communities. There was a counter view that this point of power of X was not a group view but one person put it forward and there was no agreement or discussion on it. A suggestion was made that it should not be recorded as a submission of the group
- Communities must always be consulted when new amendments to legislation that affects them are crafted
- EIAs recognise community engagement. There are SLP sections that must be adhered to. Mines are using whichever way possible to avoid compensating people where mining activities are disruptive to people's lives, e.g. where houses are cracking as a result of mining

activities mines will avoid paying claims casting doubt on the quality of the workmanship of the affected structure such as houses.

- There should be recognition of communities losing the right to use of land due to mining activities and measures must be taken to ameliorate the impact of this loss
- Communities must insist that mines train locals in the skills they require at the mine so that they are employed. Communities must remind the mines that the land should actually belong to them (communities) and therefore the mines will account to them. The database of who has been trained on what must be presented to the community always and a plan how the trained people will be absorbed in the employ of the mines must form part of the reporting.
- Compensation must be fair — definition of fair must be explained
- Communities must always be represented in mining compensatory committees, be it ecological damage, pollution, damage to properties like houses, etc.
- Mines should commit and be held accountable to a skills programme for locals designed to meet their operations before operations are approved
- Community members as affected parties should be part of governance structures that deals with mining approval processes
- Work with a structure like MACUA for coordinating activities and efforts of mining affected communities in raising their plight with mines operations
- Stakeholder Forums vs. Interested parties: Confusion around status of the community on the two must be eliminated.

Questions and comments

- Concerned about the use of the power of X: as a gathering we should not take our democracy for granted because in other dispensations these kinds of gatherings might be regarded illegal as it was in South Africa under apartheid
- There must be consultation and a meaning of this need to include negotiation and recognised as key. The communities' right of refusal on mining operations should be recognised and included in consultation.
- There should be sensitivity to the initiative being hijacked by political forces given that we are so close to elections it would then be important to guard against this and make sure the initiative stays independent as we could end up being mired in controversy

Group 4: Small scale agriculture and protecting farm workers

Challenges

Land

- Lack of access to quality productive land
- Confusion on ownership of land
- Redress/ceiling on land ownership
- Land linked to water rights — so when people are excluded from access to land, they are also excluded from access to water
- Problems with long term lease agreements

Support

There is a need for:

- Skilled extension officers

- Integrated government support
- Planning based on needs and aspirations of farmers, i.e. infrastructure and post settlement support
- People-centred, Local Economic Development and agricultural sustainability approach as opposed to business and capitalist
- Levelling of playing fields: provision of subsidies

Policy

There is a need for:

- Clarification around ownership of land
- Alternatives for strategic partnerships and options
- Monitoring and evaluation mechanisms of economic activities on resettled land and support for those activities
- Provision of different forms of support for different levels or scales of farming
- Cooperative governance amongst departments dealing directly or indirectly with land and agriculture e.g. DAFF, DWAF, etc

Farmworkers

There is a need for:

- Strong tenure and housing rights for farmworkers (ownership/ housing/ food production/ dignity)
- Service provision for farm workers/dwellers, i.e. transport, education, etc.
- Size and number of farms owned by farmer to be used to consider land availability for farmworkers

Suggestions and way forward

- Access of unions to farms must be recognised and included in law
- One farm, one farmer principle must be included in legislation — this would address the challenge of landlessness
- Elderly farmworkers must be looked after — there is no provision on where these people will go to after retirements while farmers are catered for
- Women are not recognised as having independent rights. Their rights are dependent on their spouses/ men leading to high evictions when the spouse/ men die or are employed elsewhere or they separate.
- The farmworkers must have title deeds on farms where they are residing and working. Agri-villages increase farmworkers costs to commute to work
- RDP housing should be brought to farms in order to eliminate the practice of mud housing for farmworkers
- There should be government officials monitoring enforcing laws and policies on farms so that farmworkers can start to enjoy some of their benefits enshrined in these laws
- Plan to embark on various actions to call for proper consultation process with farmworkers and small scale farmers (suggestions mooted included submissions on ESTA, pieces in the press, petition).

7. STRATEGIES TO ENGAGE WITH NEW POLICIES

Prof Ben Cousins facilitated this session by presenting a summary of the *Way Forward* points raised during report-backs and plenary. He said most of the Wayforward points centred on three main themes as listed below. He further explained to the Conference that some of the points

raised pose questions of how, by whom and when, i.e. they call for an action plan. Therefore this session is aimed at drawing such an action plan. To do this he explained that participants should choose a group to work with on practical action regarding engagement with policies. Each group was to produce strategies to deal with *Way Forward* points and present these in plenary. The groups were:

- Coordinating structures
- Parliamentary submissions/ litigation/ mobilisation in support
- Media strategies/ awareness-raising.

8. GROUP REPORT-BACKS

Group 1: Co-ordinating structures

Issues looked at:

- State of play
- Gather more information on how the CPAs (according to the Bill) are to be eroded
- How to strengthen our focus
- How we reach out without exhausting our energy, etc.
- A particular message?

Organisation	Area of operation
Tshintsha Amakhaya	Nkuzi and 8 organisations
LAMOSHA	Limpopo, North-West, Mpumalanga, Gauteng and Northern Cape Land, Women, SSF, Youth, CPAs
Khulumani Support Group	Gauteng, Limpopo provinces
RWM	KZN
LPM	Gauteng, KZN, WC, LP
Alliance for Rural Democracy (ARD)	KZN, GP, WC
MACUA	

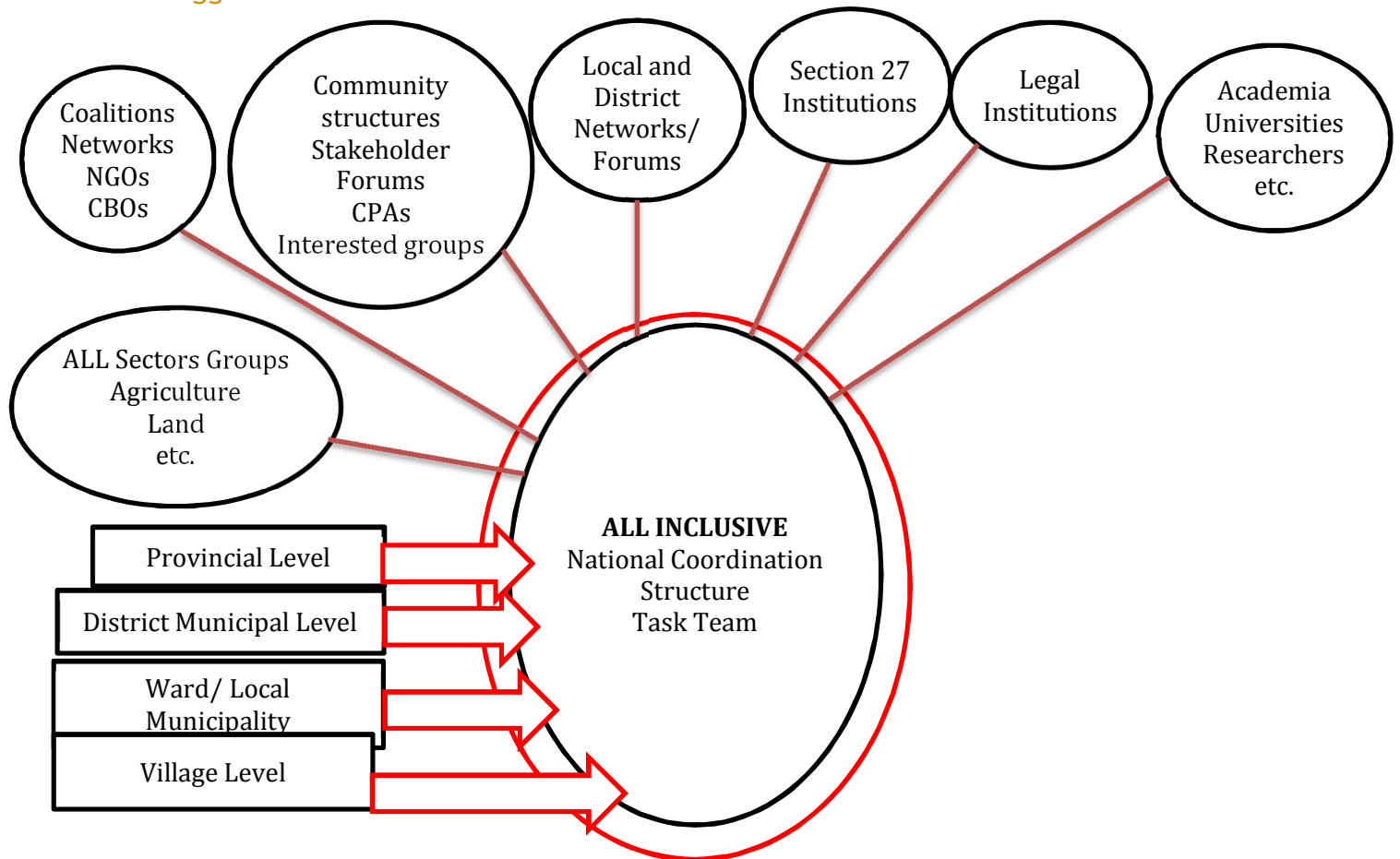
Coordinating responses requires financial resources and constant communication; there are also time constraints. Existing Organisations must use available resources to build a foundation, including by participants

- reporting back to localities through meetings
- Raising the issue of how to campaign
- Preparing submissions by the end of October
- Packaging information
- Raising awareness in district/local meetings
- Holding submissions workshops

The co-ordination mechanisms for the workshop (LRC, PLAAs, LAMOSHA, CLC, LRC, Tshintsha Amakhaya) were suggested to coordinate submissions, inputs media briefings, etc.. The current coordinating structures can invite like-minded organisations for support, however these organisations need to be carefully chosen and those looking for glory in this process be avoided. Resource mobilisation: how are the funds going to be raised? FHR should be approached for funding based on past experience and their willingness to fund similar initiatives. Fundraising activities should be embarked upon based on a theme agreed by different NGOs. Other fundraising activities/ events at provincial levels should be thought about e.g. music/cultural events whereby entrance/attendance will be charged for. There should be a common kitty to make a contribution to and those resources used for these activities across organisations.

There should be a joint statement crafted during the Conference which can be used for fund-raising. The issue of accusations of legitimacy by detractors of the process arose. The response is a Coordinating Structure agreed to at the Conference therefore offering support and protection of individual organisations against such accusations

Suggested co-ordination structure



Group 2: Parliamentary submissions/ litigation/ mobilisation in support

- Individual organisations to brief their members then consolidate discussions and submissions coming from there
- Submissions workshops should be organised in order to prepare submissions from various provinces. Challenges regarding resource mobilisation would be an issue
- Differing views would also pose challenges for submissions
- Mass mobilisation in provinces also needs to be thought about so that parliamentary submissions are not the only means
- Research is also important in order to inform submissions
- Fact sheets to be developed for this process for different organisations

Group 3: Media strategies/awareness raising

Building community engagement requires the active engagement by activists, backed up with materials — aspects of the workshop should be collated into a pamphlet that activists can use to inform people. Activists need to engage people through whatever structures are available, such as traditional structures, school and church meetings, CPAs etc.

Media spokespersons then need to engage their local media — particularly radio stations. Media will be sent press statements tackling the issues — not once off, but regularly. NGOs and academic organisations need to support the media engagements.

9. CONFERENCE RESOLUTIONS

- Existing structures should be used instead of setting up new ones
- In terms of resource mobilisation: Organisations which coordinated the conference should first examine their own resources and in cases where these exist funds be contributed to a common kitty. If the resources are still inadequate a plan for further fund-raising should be agreed to and implemented
- Detail of the campaign (restitution) should be send to networks and their plan of action be communicated

10. CONCLUDING REMARKS

- Deadlines need to be communicated
- A format for submissions should be forwarded to Conference participants in order for organisations to follow the correct guidelines
- Individual organisations can take different positions on any issue raised at the Conference because the Conference agreed that it was not about consensus building, however about discussions and information sharing.
- Commitment of all to the process is key
- Issue of legitimacy of other organisations (e.g. University and/or urban based organisations) being used to divide the struggle. This can be mitigated by communities stepping forward and making their voices heard in the struggle as it is theirs as well
- Feedback on the Conference can be send by emails to organisations that coordinated the meeting in different areas/provinces
- On the logistics: a concern was raised about claiming for expenses especially travel. The input was that expenditure of raised funds must be spend appropriately therefore honesty regarding travel claim needs to be exercise