

Community consultation and national lobbying in South Africa

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South Africa's new democratic government is working on a large and ambitious land reform programme. During apartheid, access to land was determined by race. Black South Africans were removed from their lands and resettled in so-called homelands. These areas included some of the poorest and most degraded soils in the country and they became islands of rural poverty whose main function was to provide industrial labour for South Africa's farms, mines and urban areas.

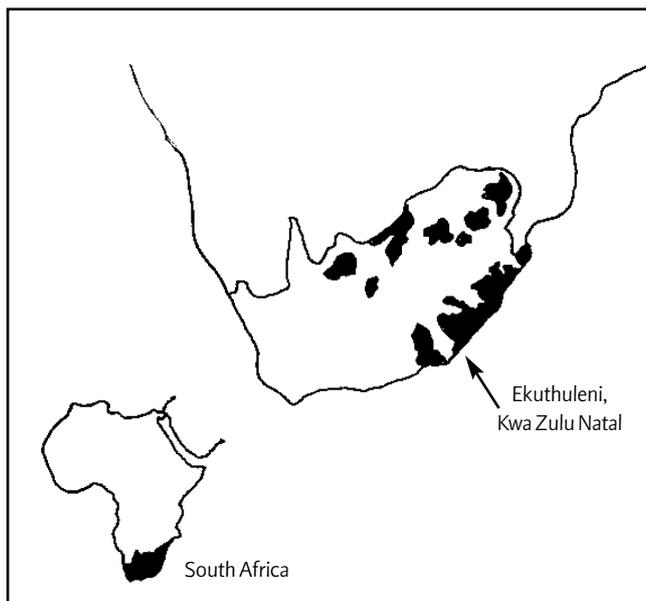


Figure 1: Communal lands in South Africa

The Republic's current land policy has three main aims: to redistribute land, to give back land taken away under racist and discriminatory practises, and to develop a system of land tenure that will give the rural population living in the homelands a greater degree of land security as well as protecting farm workers and labour tenants from arbitrary evictions.

Insecurity

Communal land has a second-class status in South Africa. Those living under these types of tenure arrangements are dependent on the local authorities – the traditional leaders – for access to land and the right to use it. Rights of occupation are not recognised and this increases insecurity. The near-collapse of land administration has further aggravated the situation and women are in a particularly difficult position.

In many places development projects have been held up because the status of land is unclear. This has had a particularly deep impact in community areas where houses, roads and other infrastructure are urgently needed. These problems have increased the tensions that already exist between traditional authorities and local administration and make it more difficult to determine how land should be allocated for development and how access to common resources such as grazing, firewood and water should be guaranteed.

A draft Bill

In August 2002, a draft Communal Land Rights Bill (CLRБ) was published and the public was asked to discuss its contents. The aim of the Bill was to transfer title or ownership of land in the former homelands from the state to local communities. Before this could be done, however, communities would have to make an inquiry into lands rights in the area, organise community meetings to inform people of the proposed changes, and reach agreements on what constituted the boundaries of the community. Before transfer of ownership can be completed, the community also has to work out a set of rules that describe the land tenure rights of all individuals, households and families in the community. The community's legal right to own land can only be recognised when this has been registered. After this has been done a Land Administration Committee (LAC) must be elected to manage the property.

Under the proposed CLRБ, traditional leaders can become members of the LACs, but only as advisors and they must not make up more than 25 percent of the LAC. Such groups as the *Congress of Traditional Leaders of South Africa* have protested strongly against this regulation and have demanded that the traditional role of tribal authorities in administering land be reinstated.

LACs

In the Communal Land Rights Bill, the LACs have great power. These bodies are responsible for the land administration system at the local level. Within the community they are responsible for defining land rights and making sure they are recorded and registered. However, the draft CLRБ does not make any provision for supporting the LACs either financially or institutionally. Officials will be made available if inquiries are necessary or communities need help to implement the law but this is very inadequate given the enormous and difficult task facing the LACs if the Bill is passed.

What the Bill means

The publication of the draft CLRБ in 2002 has stimulated widespread public debate on communal tenure reform in South Africa. Although the government said it wanted to encourage discussion on the issues proposed in the new legislation, it has done little to facilitate this process. Instead it has been left to civil society organisations and others involved in community land reform to get discussions going on the CLRБ. In recent months many activities have been organised in the communal areas to encourage the exchange of experiences and views on existing land tenure arrangements and the new legislative proposals. The National Land Committee and the Programme for Land and Agrarian Studies of the University of the Western Cape has been involved in this process through a project designed to increase people's understanding of the effect the Bill will have on their rights to access and control of land. Amongst project activities was a symposium to discuss experiences of tenure reform in other parts of Africa, the provision of capacity building support to NGOs working on land tenure issues, and advocacy and lobbying activities such as holding workshops on the Bill with a range of civil society stakeholders.

A series of seven consultative meetings were also held between November 2002 and April 2003. These meetings were attended by 700 participants from 75 rural communities in 5 provinces and representatives were chosen from the meetings to report their recommendations to the Parliamentary Portfolio Committee on Agriculture and Land Affairs.

Community views

The field experiences of NGOs and views expressed by community members in the consultative meetings suggest that the CLRB has many weaknesses. These conclusions have been confirmed by those attending the consultative meetings. Many were concerned about the negative effect the collapse of the present system of land administration has had on land security in the communal areas, and were disappointed that the draft CLRB did not go far enough in dealing with the chaotic and complex situation in which land rights would have to be administered. There was no attempt in the Bill to define the relationship between the LACs and local authorities, for example, and although the draft CLRB gave LACs far-reaching powers, it made no attempt to create a link between their work and the function of local government. Where tensions already existed between traditional leaders and local authorities it was felt that the provisions of the CLRB would only make them worse. There was an urgent need to resolve this standoff and it should be taken into consideration in redrafting the CLRB.

Common property

The fact that the draft CLRB made no provision for managing access to and control of common resources such as grazing, mud, thatch, wood and water was seen as a very serious omission. If the new Bill does not protect these rights, the rural poor can be denied access by more powerful members of the community or by interventions from outside.

Those attending the consultative meetings also raised the complex and sensitive issue of boundaries. A major criticism of the Bill was that the boundary issue was not well covered by the proposed legislation. Under the terms of the draft CLRB, title would be transferred to the communities as a first step towards tenure reform and it would be the job of the LACs to define community boundaries. It was pointed out that serious problems could arise in situations of conflicting claims, especially if these were tribally based. Representatives from areas with experience of boundary conflicts such as Elim in Limpopo Province, where communal land borders on the three former 'homelands' of Gazankulu, Venda and Lebowa, warned that the CLRB seemed to be "returning to apartheid thinking" in basing its proposals to formalise boundaries along traditional (ethnic) lines.

Whilst defining tenure rights and granting title to land would remove one of obstacles to development, confirming old boundaries in communal areas where there was already overcrowding and land shortage would only make the situation worse. Legislation such as the CLRB could not deal with this type of problem and there was a need for more comprehensive land policy.

The consultative meetings also provided women with the opportunity to discuss the implication of the proposed legislation for their right to access and control land. It was agreed that the CLRB did little to improve women's land security. They could still be evicted from their land when their husbands died or they divorced, and no provisions had been made to include them in communal decision-making processes

on land issues. The biggest weakness of the CLRB as far as women were concerned was that it did not state that land rights must be given to men AND women and that land should be allocated to women on the same terms as men.

Local action to national lobby

Concerns about the implications and possible effects of putting the CLRB into practise were widespread amongst NGOs and other organisations working with local communities on land tenure issues.

The need to discuss the implications of the CLRB provided a focus for a wider discussion on land tenure reform. It gave those who had discovered the limits of local action the chance to link up with a wider national lobby. In this way they would be better able to put pressure on government for a national policy framework and new legislation on communal land rights that was strong enough to guide the highly sensitive and complex process of land tenure reform. The consultative meetings described here give an indication of how local experiences, views and strategies can be brought to together and taken forward into a process of national lobbying and advocacy.

Alternative proposals

Discussions on the CLRB during the consultative meetings indicated that the new Bill should:

- Recognise existing occupation and use rights and give them the status of secure property rights, without waiting for a time-consuming and expensive process of transfer of title which government is unwilling to devote sufficient funds to or create capacity for;
- Ensure that measures to secure individual rights were complemented by mechanisms to support the management of common property and other resources held in common;
- Make sure people can participate in community processes as stakeholders with guaranteed rights;
- Explicitly define and secure the rights of women;
- Provide rights holders and local land administration bodies with government support as part of a wider, clearer programme of rural development.

A revised version of the CLRB is scheduled to go before parliament in August 2003. It remains to be seen whether community and civil society views will be taken into account. What has been made clear from civil society action is that consultations not only yield powerful insights into the nature of land tenure problems but can also lead to the development of potential solutions. The conclusions of meetings such as those mentioned above have shown that there is a limit to the progress that can be made on land tenure issues through local actions alone and that it is necessary to establish links with other community groups in a co-ordinated process of lobbying and advocacy at the national level. ■

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Both these articles are available from ILELA. Considerable material is also available on the website of the University of the Western Cape at www.uwc.ac.za