

Report on Eastern Cape (EC) Provincial Spatial planning and Land Use Management dialogue workshop

Afesis-corplan and EC-COGTA

14 September 2016 – Bhisho Disaster Management Centre

1. Attendance

See attached attendance register in annexure.

2. Purpose of meeting

The purpose of the meeting was to:

- share information on Spatial Planning and Land Use Management (SPLUM)
- unpack the recommendations made by civil society for what they would like to see included in provincial SPLUM policy and legislation
- explore a way forward for how civil society and government can work together in developing and implementing SPLUM across the province

3. Presentations

See Afesis-corplan PowerPoint presentation for introduction to SPLUMA and background to meeting.

See EC-CoGTA PowerPoint presentation for summary of the Eastern Cape Pre-draft Spatial planning and land use management policy (Green paper)

See copy of petition in attached Annexure

4. Plenary questions and discussions

Q: How does SPLUM deal with traditional leaders and communities in communal areas?

- National government has left the issue of how to deal with SPLUM in communal areas to provinces and municipalities to sort out.
- Customary law is protected by the constitution so we need to engage with customary law.
- We must listen to each other – communities and traditional leaders, government and communities, etc .

Q: Who owns communal land?

- The state is the custodian of 'so called' communal land on behalf of the community. Communal land belongs to the people/ community.

Q: How does provincial SPLUM aim to address rural densification?

- Municipal Spatial Development Frameworks (SDFs) need to address the issue of how to manage 'densification' of some communal lands around main roads and urban centres; and communities themselves need to inform these SDF's .
- EC-CoGTA is planning to review and develop a provincial spatial development framework plan which will include principles for densification that municipalities will then need to pick up on.

Q: What is the role of the Dept. of Rural Development and Land Reform (DRDLR) in SPLUM?

- It is anticipated that responsibility for SPLUM will be shifted from DRDLR to CoGTA in future, with local governments playing the leading role in implementing SPLUM.

Q: When will provincial SPLUM legislation be developed?

- It is difficult to say at this stage as many factors are out of the hands of the EC-CoGTA, such as delegating authority for SPLUM from the Premier to MEC (Member of the Executive Committee) for CoGTA to be able to make decisions on provincial SPLUM (like approving the green paper).
- SPLUM legislation will not be static. Over time SPLUM legislation will change as we all gain experience.

Q: Is the province looking at building capacity of municipalities, traditional leadership structures and communities to understand and implement SPLUM?

- Yes. For example, the University of the Free State is developing a course on 'planning for non planners', which will help municipal councillors, officials and others

5. Group discussions

Ronald Eglin explained the process that had been followed to arrive at the SPLUM recommendations found in the petition.

- A seminar was held in 2015 to raise awareness within civil society on SPLUM
- An information booklet and a website on SPLUM was developed (see ...)
- A SPLUM task team was established and a workshop held with the task team to identify issues that the task team felt should be addressed in provincial SPLUM policy and legislation.
- A draft set of recommendations were circulated within civil society organisations for comments.
- A final set of recommendations were approved by civil society organisations and submitted to the EC-CoGTA as part of a petition calling on the province to incorporate the recommendations into provincial SPLUM policy and legislation.

Participants were broken into three groups, with each group addressing two of the broad recommendations made in the SPLUM petition. Each group was tasked to answer the following three questions per recommendation:

- Why: Why is this recommendation an issue?
- How: What should provincial legislation say about this?
- Other: Do we need to add anything to the parking lot of issues to be discussed latter?

Recommendation 1: Involve the public in EC-SPLUM development and implementation process (group 1)

Why

- To ensure openness and transparency, information sharing and consultation imperatives as well as the requirements of the municipal systems act

How

- Provide substantive guidelines to ensure meaningful and substantive public involvement

Other

- Review any existing public participation structures to ensure inclusivity of broader society
- Develop a checklist that government (provincial and local) can use to check that they are involving the public in the policy development and implementation process, and in the process of municipal planning

- Check the municipal by-laws that they comply with the guidelines provided by SPLUM (in that they adequately involve the public)

Recommendation 2: Improve participation in SDF's (group 2)

Why

- The public must contribute to decide where they want to see developments happening in their areas
- Good participation helps ensure that municipalities have credible SDF's

How

- For decisions taken by Municipal Planning Tribunals (MPT's) to be properly informed, the SDF's on which the MPT land use change decision are based needs to take into account all community concerns and aspirations.
- Need coordinated participation of various government departments and others to avoid duplication and waste of resources
- Those that make decisions of where money is to be spent and invested can be held accountable to make sure these decisions fit within the agreed SDF
- Provincial legislation should specify what is the content of a credible SDF and what process needs to be followed for a SDF to be credible

Other

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Recommendation 3: Develop and use appropriate land use schemes (group 3)

Why

- Land use schemes help guide development and allocate rights to use land in certain ways (in communal areas this could be questionable; how can land use scheme maps accommodate living customary law and multiple overlapping rights?)
- Land use schemes helps foster sustainable development
- The scheme can help in further unpacking the SPLUM development principles

How

- Use community mapping techniques to develop baseline for land use schemes in communal areas (maybe even extend community mapping to urban areas – formal and informal – to review land use schemes)
- We need to give more thought to how to deal with 'incremental upgrading of informal areas', which according to SPLUMA include informal settlement and communal land areas

Other

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Recommendation 4: Include full spectrum of experience in Municipal Planning Tribunals MPT's (group 1)

Why

- Decisions taken by MPT may have a negative impact on socio economic development and the law

How

- Legislation must provide a credible, transparent process of selection of MPT that is of high standard and beyond reproach
- The composition of MPTs should include a representative range of skilled people
- Consider advisory planning board as a vehicle to address any capacity constraints at a municipal level

- Establish a provincial pool of professionals who can avail their services in municipal planning tribunals
- Land use applications should be considered in locations where the applications come from (this was how the DFA tribunal heard many of its cases)

Other

- -

Recommendation 5: Have affordable appeal processes (group 2)

Why

- Expensive appeals excludes those that don't have money and resources to appeal

How

- Appeal events and processes should happen physically close to where the issue being appealed is found

Other

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Recommendation 6: Improve relationships between stakeholders (group 3)

Why

- Constructive relationships needed if we are to make progress with development
- Need to develop appropriate protocols (or rules of engagement) on how we will work together in SPLUM process
- We need mechanisms that help us deal with our 'violent' and 'oppressive' past, so we can come to terms with it in moving forward

How

- We need to accommodate a range of techniques for engagement between stakeholders at various phases of the SPLUM process, drawing on experiences of NGO's, indigenous cultures and others
- We need legislation that supports and inclusive planning and land use management process, starting by making sure that all relevant stakeholders are identified and drawn into the process; and making space for these stakeholders to engage with each other. Provincial legislation must recognise and respect community processes of dialogue and engagement
- Consider implications for policy if SPLUM process was viewed as state participation in community processes, rather than community participation in state process
- Provincial and municipal legislation needs to accommodate agreed upon customary and community developed forms of conflict avoidance and resolution mechanisms in communal areas and in urban areas; recognising the potential diversity of approaches used in the diverse contexts of our province

Other

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6. Way forward

1. We need to be creative when organising participation events and processes like this dialogue as finances are a challenge. For example, consideration should be given to sharing costs between stakeholders.
2. Consideration should be given to establishing a smaller group (like people in this meeting) who can 'represent' government and civil society who can meet and comment on draft SPLUM legislation and then share the information from these dialogues with other people in government and in other civil society structures.

3. The EC-CoGTA is in the process of reviewing the existing provincial spatial development plan (see <http://www.psdp.ecprov.gov.za/> for a copy of this plan). This plan has not formally been approved by government yet so there is a chance to modify it. Consultants are being appointed to review this plan and, as required by SPLUMA, develop a new provincial spatial development framework plan. This provincial SDF development process will include opportunities for consultation and can be used to also help inform the content of provincial SPLUM policy.
4. Ntinga Ntaba kaNdoda, BRC and Calusa are starting a consultation process with communities in many rural areas around the province on rural development issues, and will incorporate discussions on SPLUM in these consultations. The next round of consultations is in October 2016 and continuing next year.
5. Civil society organisations will explore ways and opportunities for engaging traditional leadership structures on issues relating to development in communal areas. These consultations will seek to find more constructive working relationships between communities and traditional structures.
6. EC-CoGTA needs to champion intergovernmental relations more as it is vital that the various government departments coordinate their development efforts across the province and municipalities. SPLUM can help in this process of improving intergovernmental relations.
7. The EC-CoGTA is open to requests from civil society to give presentations and training on SPLUM. Civil society must just ask.

7. Evaluation

1. This dialogue has shown that government and civil society are fairly close together in understanding the issues relating to SPLUM, they are both keen to ensure that there is adequate community participation in all SPLUM related processes (like provincial SPLUM policy development, SDF development, land use scheme development, appeal processes, etc.).
2. This is a new experience where civil society and government start working closely together from a very early stage in developing provincial legislation and these types of dialogues need to continue.
3. Many participants expressed appreciation to the organisers of the dialogue session as it has opened many participants' eyes as to what SPLUM is and what the issues are that need further analysis.
4. The workshop has shown us that SPLUM is not a big complicated thing; it is really all just about managing land use changes across the country.
5. This workshop must not be the end of the process of engagement between civil society and government on SPLUM. The participants committed to build on this positive relationship that has been started.
6. See annexure on evaluation table.

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ATTENDANCE REGISTER: PROVINCIAL LEGISLATION WORKSHOP WITH CIVIL SOCIETY: BHISHO DISASTER MANAGEMENT CENTRE (DMC): 14 SEPTEMBER 2016 AT 09H30

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ATTENDANCE REGISTER: PROVINCIAL LEGISLATION WORKSHOP WITH CIVIL SOCIETY: BHISHO DISASTER MANAGEMENT CENTRE (DMC): 14 SEPTEMBER 2016 AT 09H30

Annexure: Copy of Petition

Eastern Cape Provincial Spatial Planning and Land Use Management Petition

reference number EC-SPLUM-no.01-2016

21 July 2016

Attention: Mrs. Nqaka Mosehana

Head of Department

Eastern Cape provincial Department of Cooperative Governance and Traditional Affairs

e-mail address: ngaka.mosehana@eccogta.gov.za

Noting that the Eastern Cape provincial Department of Department of Cooperative Governance and Traditional Affairs (EC-CoGTA) is in the process of developing new policy and legislation on Spatial Planning and Land Use Management (SPLUM).

We the undersigned Civil Society Organisations call on the EC-CoGTA to incorporate the following recommendations into future SPLUM policy and legislation in the Eastern Cape:

1. Involve the public throughout the process of development, implementation and continual review of provincial SPLUM policy and legislation. In particular:
 - a. Establish a provincial SPLUM advisory committee that includes representatives of civil society. Such a committee needs to a) oversee the development of provincial SPLUM policy and legislation, b) monitor that the policy and legislation is being implemented, c) be kept informed of and monitor the performance of local government in reporting on SPLUM implementation, and d) regularly evaluate the policy and legislation and advise on possible improvements over time.
 - b. Undertake a comprehensive publicity campaign, prior to the drafting of a White Paper for the new SPLUM legislation, to ensure that civil society and members of the public are in a position to prepare for participating in the white paper and legislation development process. This includes providing an opportunity for the public to familiarise themselves with the content of the provincial SPLUM Green Paper and nominate representatives to sit on any SPLUM advisory committee or any other structures established as part of the SPLUM development and implementation process.
 - c. Facilitate local workshops and awareness raising events on SPLUMA in local areas, municipalities, in districts and regions as well as with different sectors.
 - d. Develop summaries of national, provincial and local legislation and translate these summaries into languages that are most commonly used in the various parts of the province (being mainly isiXhosa, English and Afrikaans).
2. Improve community participation in the development of Spatial Development Framework (SDF) plans. In particular:
 - a. As part of the municipal SDF, require municipalities to customise spatial principles that respond directly to the development environment in the municipality and ensure that the Municipal Planning Tribunal (MPT) is sensitised on the implication of these principles when informing decision making on proposed land use changes. Although these principles are required to relate to broader national Spatial Planning and Land Use Management Act (SPLUMA) principles, they also need to reflect on and be aligned with local needs and aspirations. These principles, along with municipal SDF's and Local SDFs need to be developed in a consultative manner.

- b. Provide more detailed guidance on how municipalities must establish and develop incremental upgrading or settlement areas (as per section 21(k) of SPLUMA).
 - c. Explain in more detail how municipalities can develop local SDF's, clarify the relationship between local SDF's and municipal SDF's and how the proposals of such local SDF's can be integrated with day to day decision-making in local communities in terms of prevailing practices.
 - d. Require municipalities to make use of community based planning methodologies, such as, but not limited to Asset Based Community Development, when developing local SDF's.
3. Develop more detailed guidelines for how to establish and maintain Land Use Schemes, especially in communal areas. In particular:
 - a. Guide municipalities on the use of community mapping techniques when determining existing land use rights and developing and updating their Land Use Schemes (especially in rural and communal areas).
 - b. Require municipalities to develop appropriate land use regulations for managing land use in communal areas, based on the principle of incremental upgrading of informal areas.
 4. Include people with experience in the entire spectrum of development, both urban and rural, on Municipal Planning Tribunals. In particular:
 - a. Tribunal members need to understand both the land use and social (customary) context within which development, consultation and decision making takes place.
 - b. Require municipal planning tribunal members that are responsible for areas that include communal land to be familiar with the development context in communal areas.
 5. Make it more affordable and easier for ordinary members of the public to appeal land use decisions. In particular:
 - a. Review the appeal process in SPLUMA in order to find ways to make this process more affordable and accountable, as opposed to leaving the only recourse as the courts (which is time consuming and expensive).
 - b. Provide for the establishment of a well capacitated and independent joint appeal structure, set up by participating municipalities, to take responsibility for dealing with appeals to the decisions of designated officers and municipal planning tribunals.
 6. Clarify and recognise the role of government, traditional leaders, other community leadership structures, and other community stakeholders in the SPLUM process. In particular:
 - a. Recognise Communal Property Associations, residents and homeowners associations, and other representative structures in provincial legislation.
 - b. Require municipalities to allow for these other structures to participate (through consultation or commenting) in land development applications prior to making final land use decisions.
 - c. Establish clear conflict avoidance/ resolution mechanisms, that include, for example, pre-consultation, negotiation, mediation and arbitration, amongst others, when there is potential for disputes around development decisions.

We commend the excellent research work that has been undertaken by the EC-COGTA culminating in the production of draft 'The Green Paper: Spatial Planning and Land Use management in the Eastern Cape' (January 2016). We request the EC-CoGTA to take the issues and the recommendations from this Green Paper into account when developing provincial SPLUM policy and legislation.

In particular we want to see the principle of 'free prior and informed consent' of communities in decision making processes forming the backbone of any provincial policy and legislation.

We request the EC-CoGTA to inform us in writing by 12 August 2016 as to how they will be responding to this petition. Further correspondence can be addressed to:

Ronald Eglin
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Organisations that have endorsed this petition reserve the right to make their own independent recommendations and petitions in relation to provincial SPLUM.





1. Tholulwazi Development Organisation
2. Public Service Accountability Monitor (PSAM),
3. CALUSA
4. Matatiele Advice Centre
5. Duncan Village Youth Developmental Initiative (DVYDI)
6. Private Eye Community Watch Project
7. HIVOS
8. Catholic Development Centre
9. **Youth Potential South Africa (YOUPSA)**
10. Somila Community Development Association
11. Imbasa Community Services
12. Phuhlisani
13. Siyandiswa Family Co-operation
14. Buffalo City Civic Association
15. Eastern Cape NGO Coalition (ECNGOC)
16. Afesis-corplan

cc. Dr. Tony Williams, The Director of Spatial Planning, Eastern Cape provincial Department of Cooperative Governance and Traditional Affairs.

cc MEC Xasa, the MEC for Cooperative Governance and Traditional Affairs in the Eastern Cape

Annexure: Evaluation table

Evaluation

	Poor	OK	Good	Excellent
				
1. Pre-preparation		✓	✓ ✓ ✓	✓ ✓ ✓ ✓ ✓
2. Workshop facilitation			✓ ✓ ✓ ✓	✓ ✓ ✓ ✓ ✓
3. Content of presentations			✓ ✓ ✓	✓ ✓ ✓ ✓ ✓
3. Level of discussions			✓ ✓ ✓ ✓	✓ ✓ ✓ ✓ ✓

Annexure: Photos



