Land Rights Enquiry Roundtable Report
27 September 2016
Windsor Cabanas – East London.

1. Attendance

See attached attendance register.

2. Background to and purpose of Roundtable

On 27 September 2016, Afesis-corplan, a development NGO based in East London (www.afesis.org.za), organised a roundtable discussion in East London on 'land rights enquiries' in communal land areas.

There is presently uncertainty as to how to deal with Land Administration in communal areas. Land administration involves, amongst others, managing who has the right to occupy a particular portion of land, as well as what they are able to do on this land. There is at present almost no official legislation governing how to deal with land administration in communal areas, especially as it relates to recording who has the right to do what on a particular portion of land.

A starting point for introducing any land administration system for communal areas is to get an understanding of the existing situation as it relates to who has what claims to which piece of land, including getting a sense of where there are potential conflicting land claims. Land rights enquiry (LRE) is the process through which this context is unpacked.

The purpose of the roundtable discussion was to facilitate broader discussion on the concept of land rights enquiries, and ask questions like how do they fit within broader land administration processes, and how can they be conducted? The insights gained through the roundtable will be used to inform future plans for how a land rights enquiry process could be conducted in communal areas.

3. Presentations

The following presentations were given with an opportunity for questions and discussion after each presentation. The questions and discussions on the presentations have been in integrated into the group reports.

1. Introduction to land rights enquiries in context of land administration – Ronald Eglin (Afesis-corplan)
2. Land administration in communal land areas – Chris Williams-Wynn (Eastern Cape Survey General Office)
3. Local experiences with land rights enquiries in communal areas - Siyabulela Manona (Phuhlisani)
4. Experiences of recording land rights in informal settlements –Thandeka Tshabalala (Community Organisation Resource Centre)
5. Land and Property Spatial Information System (LaPSIS) – Zimasa Biyana (Housing Development Agency - HDA)

The presentations are available separately.

4. Group discussions

Participants self organised into three groups to discuss given questions. Time was set aside for the groups to circulate to other groups to see what other groups had discussed and to add to the discussions.

Group 1: Integrating LRE into government processes

Discussion questions:
- How can land rights enquiries feed into broader land administration processes? (i.e. What happens with the data collected?)
- What are the key components of a broader land administration process?
- Who should be involved in each of these components?
- What, if any, legislative changes are needed to accommodate this broader land administration process?

Broad discussion
1. To give various permits (e.g. environmental approval, mining rights, land use change approvals, approval to use agricultural land, approval to cut forests, etc.) one needs to know if the person applying has the right to make the application. One also needs to know who one needs to approach on the ground if any rights are being taken away or changed.
2. There are many departments involved in any development process and it's not clear which, if any, department comes first or should come first in the process of getting approvals.
3. Consideration should be given to making the municipality the first point of call whenever someone wants to do any new development in a communal area, so that the municipality can help ensure that all the appropriate departments (Environment, Agriculture, etc.) are informed and the necessary approvals are obtained from these departments. The Municipality should have a plan for the area that is developed in a participative manner, involving the community, traditional leaders and others. This plan can be used to help decide if any new development is appropriate or not.
4. The rights associated with who can be on the land and what land use activities can be done on a piece of land are very closely connected in the rural context. In urban areas, by contrast, the deeds office deals with who can be on the land and the town planning department deals with what people can do on the land. Also in communal areas one person may have multiple rights to do different things in different areas such as live in one area, grow crops in another area, graze cattle in a third area and collect fire wood in a further area.
5. When collecting information on land right claims one needs to collect information that can be used by various departments. For example, the rates and services department of the municipality needs to know who is occupying and using the land, the town planning department needs to know what the land is being used for now and what plans people have for using the land in future. The environmental department may want to know what changes there have been over time with regards to river flood lines, boundaries of grazing land and forest areas, etc.
6. In the Coffee Bay case the terms of reference for the Department of Rural Development and Land Reform (DRDLR) and the Eastern Cape Development Corporation (ECDC) need to be reviewed to make sure that information that is collected in the LRE process is useful for other government departments like the municipality, and department of environmental affairs. The information collected must include GIS coordinates and it needs to be compatible with various government data bases and mapping systems.

7. Legislation is not clear on what process needs to be followed for dealing with authorising permits for development applications. A possible way forward is to approve new developments subject to other approvals being obtained in future.
8. It is very important to determine who has land rights to any piece of land before one can decide on any changes to the land rights concerned.
9. If land rights are changed or removed then land rights holders are entitled to comparable redress (e.g. if a new power line cuts through a community garden, the rights holders to the community garden need to be compensated in some way. This does not have to be money but could be additional land or similar).

Challenges
1. Who is the community? How is the community defined in different contexts?
2. Who has the authority to make or change a land use right? Is it traditional leaders, communities, municipality, other, some or all the above?
3. In many instances in the past there are no records or proof that can be used to confirm who has been given what right to use which piece of land.
4. We need to be clearer in the definitions we use for terms such as community, erf, land, community etc. the Spatial Planning and Land Use Management Act 13 of 2013 (SPLUMA), for example has very specific definitions of some of these terms like land[1], which when interpreted in the strict definition of the word, potentially excludes rights holders on communal land from the definition of land.
5. How does one determine the original 'ownwer' of the land? Is it the grand perents or the new children?
6. How does one stop communites using land that is not suitable for the purpose it is presently being used for?
7. Consideration needs to be given as to who is the appropriate structure to drive the LRE process? Is it the Municipality, the DRDLR, Department of Cooperative Governance and Traditional Affairs (CoGTA), or someone else? Also who is responsible for being the custodian of any land rights records that are collected? Who is responsible for maintaining the land rights records?
8. There is a need to have separate discussions on how to deal with who benefits from any new development in communal areas (e.g. a new tourism hotel, or a new agricultural project). However, before such a discussions can take place it is important to know who already has land rights in a particular area. One cannot talk about 'beneficiation' of local resources (e.g. of land, good views, etc.) if one has not done a LRE.

Group 2: Conducting LRE exercises

Discussion questions:
• How can local stakeholders work together to undertake land rights enquiries?
• What steps need to be followed to conduct a LRE process?
• Who needs to be involved in each step?
• What challenges can be anticipated & what ideas are there to overcome these challenges?

Broad discussion
1. The concept of land rights enquiry is not yet found in existing legislation or laws. The new draft Communal Land Tenure Bill does make reference to doing land rights enquiries. The DRDLR would be responsible for organising a LRE, and the land rights enquiry report gets given to the

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[1] **"land"** means any erf, agricultural holding or farm portion, and includes any improvement or building on the land and any real right in land;

DRDLR to be approved and formally adopted. The LRE results would only become legal if accepted by the minister.

2. Consideration needs to be given as to when it is an appropriate time to conduct LRE. For example a different set of people are found in rural areas over Christmas holidays compared to the middle of winter.
3. What happens if people do not use their land for a long period of time and then come back later?
4. The LRE process just captures land rights for what they are. It does not aim to change land rights.
5. The community (people) need to be involved in the LRE data collection process.
6. LRE also need to draw on information from land use zoning, spatial development framework plans, the IDP, environmental sensitive areas, etc.
7. LRE exercises must involve actual site visits and not rely on secondary data.
8. There need to be cut off limits as to how far back in time one needs to go to determine who had what rights to which piece of land at what time.
9. There needs to be a process of reporting back what information has been uncovered in the LRE process to determine 'ground truth'. This includes a verification process that includes community endorsement of the validity of the information collected.
10. All stakeholders need to be involved in collecting and verifying information, including government, business, local communities and the democratic and traditional authorities. Stakeholders need to be consulted but they need to understand that the community is at the centre of the process.
11. There needs to be a verification process involving the community and technical tasks teams (including government, private and NGO's) to help verify that the information and rights identified are correct.
12. Different stakeholders can have different levels of access to the information that is collected and that comes from the SDF and from local knowledge.
13. Government must take this process of collecting and verifying information seriously and help document local indigenous knowledge.
14. The land rights must be mapped spatially with boundaries shown and with the support of land surveyors.
15. Data collection must record actual land use and not proposed land use. Data collection must also record conflicting land rights, including for example, historical land rights (land claims), fringe land rights, etc.
16. By involving the community in the data collection, verification and analysis process the community will feel that they are part of the process and are more likely to 'own' and defend the findings and results.
17. The community needs to be understood as the custodian of the data and information. If the community collects some of the data they should control what happens to the information and how it is used.
18. In some instances government can contract and pay the community to help government collect data that government needs.
19. Consideration needs to be given to who can initiate a LRE process, ranging from government (DRDLR and CoGTA), business, civil society organisations, and/or communities.
20. It is important to ensure affected and interested parties are given an opportunity to participate in the LRE process.

Challenges
1. Who owns the land – community or traditional leadership?
2. There is a lack of trust amongst stakeholders to share the information.
3. There is a lack of funding to be able to properly collect and record information.
4. Often information is unreliable, biased and subject to political influence.

5. Stakeholders continue to work in 'silo's and do not properly share the information they have.
6. The information is not properly updated and people use outdated information when making decisions.
7. You need to know what information to collect so that time is not wasted collecting information that is not used.
8. Community conflicts make it hard to get into communities and find the information. Also some of the information may contribute to fuelling the community conflicts.
9. Where does one start? Do you start with who is staying in an area now, or do you consider who has been in an area over time? How far back can the LRE go in time? How does one deal with situations where the same land is 'given' to different individuals and different times?

Group 3: Using technology in the LRE process

Discussion questions:
- How can technology be used in support of land rights enquiries?
- What aspects of the LRE process could benefit from the use of technology?
- What examples of technology are we aware of that could be further explored?
- Who could be approached to provide further advice and support in using technology?

Broad discussion
1. Technology can provide a tool that services all land administration elements (land use, land tenure, land fees, etc.). The Land and Property Spatial Information System (LaPSIS) that is part of the Housing Development Agency (HDA) is a good starting point.
2. There is a need for consensus and a vision of what constitutes public information.
3. The land information that is needed ranges across informal, rural development, agricultural, and spatial land information. It all needs to be integrated. It saves on costs of collecting and sharing information if there is collaboration between stakeholders.
4. Drones, smart pens, cell phones, cell phone trees, etc. can all be used to collect information. Data needs to be geo-referenced and date stamped. Photos can also be geo-tagged. Need to also make use of google earth. Must make sure that updated satellite imagery is always used. There is mapping available from the Survey General office that can be used.
5. There is a need for human resource training in how to use the technology.
6. There is also a need for supporting legislation to make sure that the technology is used appropriately and safely. There may need to be changes to the Survey Act and other associated legislation.
7. The Surveyor General, the department of human settlement and other departments need to meet and agree on the establishment of a coordinated data base for land related information.
8. Government departments must start/ continue collecting soft copies of data for various projects undertaken within their areas.
9. LaPSIS and other technologies (like Talking Titler and social tenure domain model) allow one to record geo-reference points (like front door of a homestead) so that data bases do not have to rely on registered erven.
10. Most technological data bases accommodate different categories of users, so that some users can have authorisation to upload and change certain information while other uses can just analyse and see the information. One can also keep track of who is making changes and what changes are being made so that one can deal with instances where people may try and manipulate the data for their own benefit.

Challenges
1. Data signal coverage in some rural areas to be able to access the internet is a challenge.
2. It is very expensive to acquire, set up and maintain technology data management systems.

3. There is a lack of integration between departments and stakeholders when it comes to data management.
4. There is some unnecessary privacy protection of some data that should be in the public domain.
5. Poor knowledge management within government departments with officials who leave with information that is then lost to subsequent officials.
6. Much of the information that is available is out of date.
7. Many people are technophobic and scarred to use technology.
8. Some of the data uploaded on existing data bases (e.g. boundaries of administrative areas in the former Transkei, has errors). Ways need to be found to easily correct these types of errors.

The way forward
1. We need one system that is integrated and used by everyone. It must not be completely open but should have different levels of security built in in terms of who can change and access the data.
2. There is a need for a roundtable discussion with ALL stakeholders participating and committing to take the process forward.
3. Technical committees can be established when needed to look at more specific details.

5. Summary

Group facilitators gave a summary report back from their discussions.

Group 1: Linking LRE into government processes

1. The LRE process can play an important role in determining who has the authority to make any land development application and in determining who is affected by any land development application.
2. It is important that consideration be given as to who will make use of any information that is collected in a LRE process so that relevant information can be collected and that the best use is made of the process of collecting information. For example, if one is collecting information of who has what rights to the land, one could also collect information of who had what rights to the land in the past, and how land use activities have changed over time. Information on historical flood lines for example would be useful from an environmental and climate change mitigation and adaption perspective.
3. It is important that someone is made responsible for looking after the information, and there are clear procedures for how the information is updated and changed. A specific department or structure should take responsibility coordinating the collection and distribution of information that is collected as part of any LRE process. This should be legislated.

Group 2: Conducting LRE exercises

1. People are at the centre of any data collection exercise, with the municipality and other government departments working closely with the community.
2. When collecting information one should also record where there are conflicts and challenges. The community can play a role in helping to verify the information collected and deal with 'conflicts'.
3. It's important to show land rights spatially, as communities are able to understand maps and this helps clarify the situation on the ground.
4. One may need a cut off time for how far back in time one goes when determining who has had what rights to which piece of land over time - if not it could get very complicated.

<u>Group 3: Using technology for LRE</u>

1. LaPSIS is a very good starting point for any land related data base as it is easy to use and is linked to many different spatial data sets.
2. Technology that is accessible like cell phones should be used to collect the data and also show and distribute the information.
3. Information can easily be geo-referenced and date stamped making the information much more useful to those using it.
4. Training is needed for communities, government officials, and others in how to use the technology. There are many people in communities and structures that are quick learners in using technology.
5. Cost saving can be achieved if all spatial data is brought into one central data base like LaPSIS.

6. Way forward

1. As a country we need to develop a common vision as to what type of broader land administration system we want, that incorporates both on-register (e.g. involving the deeds register and survey general office) and off-register (e.g. that accommodates incremental and social forms of tenure found in communal areas and informal settlements) land administration systems into a coordinated whole.
2. We need to develop and implement pilot projects on LRE processes so we can learn from experience and see how best to integrate LRE into a broader land administration system.
3. We also need to review and modify existing legislation or develop new legislation that addresses land rights enquiries as part of a broader land administration system/ process.
4. Afesis-corplan does not have funds at this stage to conduct an actual door to door land rights enquiry survey process in Coffee Bay or elsewhere. Afesis-corplan only has funds to conduct this land rights enquiry roundtable discussion, and hold a community mapping workshop in Coffee Bay.
5. Afesis-corplan will engage with the South African Local Government Association (SALGA), the KSD municipality, the DRDLR, the Eastern Cape Development Corporation (ECDC) and the Coffee Bay Community Development Forum, to prepare for and organise a community mapping workshop in Coffee Bay towards the end of October or early November. The exact content of the workshop still needs to be determined, but may involve a broad land rights mapping exercise with community stakeholders.
6. Afesis-corplan will be attending a Land Administration Learning Network meeting in Johannesburg on 29 September 2016 (with a small group of NGO's interested in land administration matters) where they will highlight the importance of establishing national legislation for addressing land administration issues in communal areas. Afesis-corplan is committed, depending on the availability of resources, to promote and address land tenure and land administration issues in communal areas.
7. Afesis-corplan will develop a report on the round table discussions and circulate this information to participants.
8. Roundtable participants are to inform Afesis-corplan if they have any information on land rights enquiries they would like Afesis-corplan to share with participants.
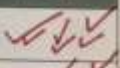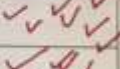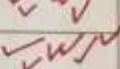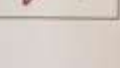
7. Evaluation

1. Many participants expressed gratitude for being invited to the workshop as they learnt a lot about land rights enquiries.
2. The workshop highlighted the importance of stakeholders to collaborate with each other so as to ensure that the correct information was collected and used.

3. It was noted that many people have different perspectives on land tenure and administration in communal areas and it is important that we all listen, share and learn from these different perspectives.
4. It is important that departments like the DRDLR and CoGTA are quickly drawn into the process so we can make sure that the work they do is coordinated with any LRE process s that gets done.
5. Participants from KSD indicated that the discussions highlighted the importance of making sure that the terms of reference for conducting a land rights enquiry in Coffee Bay need to be reviewed making sure that a proper land rights enquiry process is conducted and not just a simple land audit exercise which would just indicate in whose name the land is registered in the deeds office and would not identify who has what land right claims to which piece of land.
6. People involved in urban enumeration exercises can learnt from the rural experiences and so can rural stakeholders learn from how community surveys are conducted in more urban contexts (like informal settlements).
7. The HDA is offering training and support with its LaPSIS system and interested stakeholders must just ask if they want training or support.
8. The issue of proving who is able to make development applications for a particular piece of land in communal areas is not going to be solved in the short term. The Department of Environment and others will have to find practical solutions to how they deal with issuing development and environmental approvals until such time a as a long term solutions is negotiated and agreed.
9. The sooner a LRE enquiry process happens in Coffee Bay the better.
10. Key departments must work together and share information if progress is to be made in developing areas like Coffee Bay.
11. See figure below for an evaluation table of the workshop.

Figure: evaluation table

Annexure: Attendance register

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MEETING SUBJECT: Land Rights Enquiry Round table   DATE: 07 Sep 2016   VENUE: Windsor Cabana, EL

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MEETING SUBJECT: LRERT 10

DATE: 27 Sep 2016

VENUE: Windsor Cabana

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MEETING SUBJECT: CRERTD   DATE: 27 Sep. 2016   VENUE: Windsor Cabana, EL

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MEETING SUBJECT: LAND RIGHTS ENQUIRY   DATE: 27 SEPT 2016   VENUE: E.L.

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