



COMMUNAL LAND RESEARCH PROJECT

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ANNEXURE 5: LOCALLY ADMINISTERED LAND-RECORDS SYSTEM



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CONTENTS

1	ITERATIVE AND ADAPTIVE POLICY DEVELOPMENT	4
2	ELEMENTS OF A COMMUNAL LAND ADMINISTRATION SYSTEM.....	5
2.1	A FRAMEWORK FOR ‘COMMUNAL’ LAND	5
2.1.1	RECOGNISE COMPLEX NATURE OF LAND RIGHTS ON TRUST LAND.....	5
2.1.2	MACRO SCALE	5
2.1.3	MICRO SCALE	5
2.2	PROCESS ARRANGEMENTS.....	5
2.2.1	ALIGN BOUNDARIES OF TRADITIONAL AND DEMOCRATIC STRUCTURES	6
2.2.2	LAND RIGHTS RECORDING PROCESS	6
2.2.3	LAND INVESTIGATION AND DISPUTE PROCESS.....	6
2.3	INSTITUTIONAL ARRANGEMENTS.....	7
2.3.1	LOCAL LAND RECORDS OFFICES	7
2.3.2	NATIONAL AND PROVINCIAL LAND RECORDS SUPPORT OFFICE	8
2.3.3	PROVINCIAL LAND SUPPORT OFFICES	8
2.3.4	NATIONAL LAND MONITORING AND EVALUATION	8
2.3.5	NATIONAL AND PROVINCIAL COMMUNAL LAND CAPACITY BUILDING PROGRAMME..	9
2.4	PRIMARY ELEMENTS OF LAND ADMINISTRATION SYSTEM FOR COMMUNAL AREAS	9
2.4.1	TENURE	9
2.4.2	LAND USE	10
2.4.3	SPATIAL PLANNING.....	10
2.4.4	ENFORCEMENT.....	11
2.5	ADDITIONAL ELEMENTS RELATED TO LAND ADMINISTRATION AND DEVELOPMENT IN COMMUNAL AREAS.....	12
2.5.1	ENVIRONMENT AND RESOURCE MANAGEMENT.....	12
2.5.2	ENGINEERING SERVICES	12
2.5.3	HOUSING.....	13
2.5.4	FACILITIES.....	13
2.5.5	LAND FINANCE	13
3	THE LOCAL LAND ADMINISTRATION SYSTEM	14
	SOCIAL	14
	PHYSICAL.....	15
	USE	16
3.1	FINANCE.....	17
3.2	DEALING WITH BOUNDARIES IN A LOCALLY MANAGED LAND RECORDS SYSTEM	17

1 ITERATIVE AND ADAPTIVE POLICY DEVELOPMENT

Land administration in communal areas (or more accurately referred to as state trust areas) is in crises. There is an urgent need for government intervention to address this crisis. However, government needs to be cautious in how it intervenes as inappropriate intervention could actually make the situation worse. No one can claim to have the 'magic' solution that will solve the crisis in all situations and in all contexts. Government needs to acknowledge that they do not have the 'one' solution that will solve all problems.

There are a number of reasons why this is the case.

- Firstly, no one has all the information on which to base their decisions. Some of the information may be incorrect and a lot of detailed information may be missing. Any action based on such incomplete information, may not be the most appropriate intervention in that context.
- Secondly, there are a range of stakeholders involved in rural land administration, each with their own visions, world views and mind-sets as to what future development they are aspiring towards. Even in situations where people may agree to the long term vision, many role-players have differing views on how this vision can be achieved.
- Further, we do not know what the outcome of any initial intervention will be. There are likely to be unanticipated consequences that will mean that subsequent interventions will have to be adapted from what was originally thought needed to be done to take into account these unanticipated consequences. .

Addressing the land administrative challenge in communal areas is not like one person building a house. In building a house it is relatively easy to do studies on the local geology and climate, and on availability of various building materials. The one owner-builder knows what type of house they want, and they know from years of experience from others who have built houses in that area what are the best steps to follow to build the house they have planned. Planning, designing and implementing an improved land administration system for communal areas is far more complex.

It is therefore unwise to think that we have one solution and one plan for solving the problem, and that if followed correctly from beginning to end will lead to a situation where we have addressed the land administrative challenge. What is more appropriate is for government to set in place a process through which local development approaches and decisions can be negotiated at a local level by local people. Government does however need to put in place a broad national framework within which the local and provincial decisions can be made. Government should also establish and facilitate spaces, processes and opportunities through which experiences and lessons can be captured and shared amongst all role-players, building a solid body of practice over time. Land administration policy and legislation can be adapted over time based on this experience. The UN Habitat Global Land Tools Network (GLTN) estimates that such a process could take anywhere between 8 and 15 years.

This proposed approach is similar to what is being implemented through the *Spatial planning and Land Use Managed Act No.16 of 2013* (SPLUMA). SPLUMA provides framework legislation through which provinces and municipalities can develop their own unique solutions for how they plan to address local land use issues. Over time, municipalities and provinces will learn from each other and see what works better in certain contexts and adopt their interventions in a way that incrementally and iteratively leads to better solutions.

2 ELEMENTS OF A COMMUNAL LAND ADMINISTRATION SYSTEM

This set of recommendations, provisionally proposed by the research team, were used to help conceptualise and think through the recommendations that have been proposed in the main body of the report. This section is a slightly edited version of the recommendations made in the preliminary draft submitted by the research team to the Housing Development Agency (HDA) in September 2015.

2.1 A FRAMEWORK FOR 'COMMUNAL' LAND

2.1.1 RECOGNISE COMPLEX NATURE OF LAND RIGHTS ON TRUST LAND

Recognise the complex nature of 'communal' land rights operating across multiple scales from the macro to the micro scale and introduce land governance and administrative systems as outlined in these recommendations.

2.1.2 MACRO SCALE

Mobilise commitment to redesign a new land administration system based on national government as the ultimate custodian of all 'communal' land in the country on behalf of communities. At the centre of this commitment is the need to treat this land as land held in trust by the state, acting as trustee, on behalf of communities.

Note that in Kwa-Zulu Natal (KZN) the state has specifically allocated this trusteeship to the *Ingonyama* Trust Board. In both these instances however (where the state retains trusteeship and where this is handed over to a dedicated trust board) the community is still recognised as the beneficiary. The community is understood to include past generations (ancestors), present generations and future generations.

2.1.3 MICRO SCALE

Introduce a locally administered tenure system as described elsewhere in these recommendations. At micro-scale the family/ household/ individual makes most decisions about what happens on the household land as well as succession and land transfer decisions related to this land. At micro scale recognise differing land rights at household, neighbourhood, village, etc. The role and the voice of neighbours is in principle key to consider, even in respect of individual household land use decisions.

2.2 PROCESS ARRANGEMENTS

2.2.1 ALIGN BOUNDARIES OF TRADITIONAL AND DEMOCRATIC STRUCTURES

A process should be put in place through which traditional leadership boundaries are identified, confirmed and possibly revised, where necessary. This process is going to coincide with already pre-existing disputes over jurisdiction among various levels of traditional leadership structures. In some cases historical boundaries were ill observed due to poor land use management practices. It is important to have mediation and adjudication capacity to help find amicable solutions to the boundary research findings.

Initiate a process by which place names are revisited and rationalised within the context of the interface between communities and various government entities¹. Given the cost implications of such a process, it is advisable to implement such a process incrementally over a long term time line.

Alongside the process proposed above, realign municipal ward boundaries to align with Traditional boundaries (e.g. Administrative Area boundaries in the Eastern Cape), thereby facilitating the simplification of land governance issues at a local level, so that its clear which traditional council has to deal with which municipal ward councillor.

2.2.2 LAND RIGHTS RECORDING PROCESS

Initiate a systematic process of identification and digitisation of all old order land records. In digitising land records, information should be scanned in disaggregated configurations², which means that it has to be undertaken by persons that understand the data.

Set in place a process and system to record existing land rights at a local level, through a nationally supported process. This process can be managed by land clerks located in land administrative offices in provincial offices of the Department of Rural Development and Land Reform (DRDLR).

Roll out this land rights recording process over time in selected pilot areas. Where possible focus on 'simple' cases where there are less controversial land rights related disputes. If challenges emerge through this process, involve provincial land investigation units (see next recommendations)

2.2.3 LAND INVESTIGATION AND DISPUTE PROCESS

Establish dedicated provincial units and teams that can gain experience in investigating, mediating and adjudicating disputes. Empower or capacitate these units to review and investigate situations where land rights disputes have emerged, and to make decisions relating to giving and protecting land related rights. Include appeal processes. Capacitate these units to support local structures to find local solutions using living customary law and formal law.

Examples of disputes that can be addressed include situations where there is an overlap between quit-rent and old Permission to Occupy (PTO) certificates, and situations where

¹ In one case in Willowvale, Eastern Cape, four different government institutions use different place names for the same places.

² Scan individual documents separately.

there is a dispute between new occupants and original traditional occupants to land around urban settlements where there is a high demand for land.

In future, if necessary, such units can form the basis of a possible national land ombudsman (or land public protector) function.

Any appeal process should start at a local level, where neighbours or local stakeholders, including traditional structures using living customary law, where appropriate, seek a resolution. Failing this, more sophisticated teams with enhanced capacity should be drawn in. As a last resort the courts can be involved.

In relation to appeals to land use change decisions, as outlined in the SPLUMA, the use of municipal councils as appeal authorities should be reviewed, as section 32 of the Bill of Rights states that “(e)veryone has the right to have any dispute that can be resolved by the application of law decided in a fair public hearing before a court or, where appropriate, another independent and impartial tribunal or forum.”

Recourse to the courts is very expensive for most people living on communal land.

2.3 INSTITUTIONAL ARRANGEMENTS

2.3.1 LOCAL LAND RECORDS OFFICES

Establish a local hierarchy of cascading land records offices at a magisterial district scale to be responsible for collecting, keeping and disseminating records of who has occupation and use rights to which portions of land.

The Traditional Council level is the lowest point for collection of information. One does not need a permanent physical office at this level, but this function can or should be linked to functions of the Traditional Council or equivalent entity. This level could have hard copies of records updated once annually. Depending on circumstances, the possibly of making use of a mobile and/or rotating offices could also be explored.

The second level should ideally be the magisterial district level land office, which should be a dedicated land office, supporting Traditional Councils or other appropriate structures in data collection and maintenance and also providing information to the general public. These offices should be capable of capturing information into the electronic system, printing hard copies of maps etc. This level should have a responsibility to update the municipal office on a cyclic basis. This is what could be considered to be the anchor office. It should be equipped with equipment such as computers, GPS devices, GPS enabled cameras, printing equipment, voice recorders etc. It is at this level that one could consider adjudication capacity.

The third level is a land office at a municipal level, linked to the municipal Planning units. This office should not tamper with information, but deal with approvals related to land use management.

Community members, developers, government departments, etc. should be able use these offices to access information related to land rights in communal areas and they should approach these offices to change and update land occupation and use rights records. There should be different administrative rights allocated between the different offices, with some

being able to add or change information, while others should only be able to view the information.

These offices should exclusively be responsible for keeping, maintaining and updating of records of who has rights to which pieces of land. Personnel in these different offices work closely with those officials of municipalities and with other government departments that are users of the system and that are responsible for land use management matters.

The opportunity of making use of various local multi-purpose centres for some of these facilities should be explored, based on local circumstances. Initially staff these offices with clerks employed as local offices of the national DRDLR. In the long term, other institutional configurations could be explored which involve COGTA, other government entities and municipalities.

2.3.2 NATIONAL AND PROVINCIAL LAND RECORDS SUPPORT OFFICE

At national and/or provincial level establish a unit within the DRDLR office that is responsible for designing and maintaining a system framework that can be used by land clerks at local land records offices to maintain a record of all land rights. This unit can seek input from officials dealing with deeds, survey and mapping for advice. This system needs to make use of appropriate information and communication technology.

This system needs to be compatible with all other land related recording systems such as the Deeds Office, the Survey General office, municipal land use schemes etc.

In short term, investigate and select an open source software system, create alignments with the department dealing with mapping, institutions of higher learning, practitioners, communities, etc. to explore options for making use of information and communication technology and data management software such as the Social Tenure Domain Model, and talking Titled. Use this office to support and build capacity of provinces and municipalities to administer the locally administered land records system.

Link this to the national observatory idea (mentioned in the National Development Plan), such as LaPSIS with a view that it is to be managed by the Housing Development Agency.

2.3.3 PROVINCIAL LAND SUPPORT OFFICES

Establish provincial offices of the DRDLR, which oversee and support local land offices.

These offices can house the land investigation and dispute units, as well as provide support and capacity building services to the local land offices.

2.3.4 NATIONAL LAND MONITORING AND EVALUATION

Use the phased process of rolling out the process of collecting and recording land rights across the country as an opportunity to draw lessons from, learn from experience, and improve the implementation of the system over time.

Build into the process of collecting and recording land rights, and the process of dealing with disputes, specific opportunities and times for reflection, monitoring and evaluation. Put in place a dedicated process for evaluating and sharing experiences, through case studies and the establishment of communities of practice of people involved in such locally managed off-register land recording systems.

Prior to the development of any new national laws or regulations undertake policy impact assessments of any proposed laws or regulations to determine institutional implications, financial implications, and alignment with other legislation.

2.3.5 NATIONAL AND PROVINCIAL COMMUNAL LAND CAPACITY BUILDING PROGRAMME

Facilitate processes and opportunities for stakeholders described below to come together and jointly share experiences and insights so as to search for and identify common ground on which to base future land administration on communal land.

- communities
- traditional councils
- municipalities and other government structures
- development practitioners and professionals

Develop and implement an awareness raising and training programme that looks at raising awareness of stakeholders listed above on the issues related to land administration in communal land areas and roll-out a training programme to improve the capacity of stakeholders to implement the programme. Identify and draw in the experience of practitioners who have undertaken land administration functions in the past.

2.4 PRIMARY ELEMENTS OF LAND ADMINISTRATION SYSTEM FOR COMMUNAL AREAS

2.4.1 TENURE

Land tenure deals with who has the right to be on which piece of land.

Land tenure is a national competency under the constitution.

Amend the *Interim Protection of Informal Land Rights Act* (IPILRA) so it does not have to be renewed each year.

Develop and implement national regulations under IPILRA dealing with the issuing and administration of a land Occupation and Use Rights (OUR)³ system (similar to the old PTO system), and repeal old PTO related proclamations that were transferred to the national minister. Ensure that these new regulations do not reduce people's rights they have under IPILRA.

³ This OUR terminology is new terminology proposed in this report. Consideration was given to referring to PTO certificates, but it was felt that the term PTO comes with its own historical baggage and that it is better to use new terminology.

Introduce the OUR system in *Ingonyama* trust areas. Once the new OUR system is in place put a moratorium on the issuing of new lease agreements by the *Ingonyama* trust until an investigation is completed on how to deal with lease agreements that have been issued in the past and how to re-introduce a process of issuing lease agreements in these areas in a way that does not reduce the existing underlining land rights of occupants.

Also make use of the OUR system in the upgrading of informal settlements and the development of Managed Land Settlement areas. In other words, the OUR system of locally recording occupation and use rights is also applicable in non-communal land areas.

In the medium to long term, investigate and develop procedures for and implement systems for issuing long term leases on communal land (after consultation and due process followed with affected communities).

In the medium term make it possible to convert OUR certificates, after following due process, into other forms of tenure such as: title deeds, lease agreements, rights under communal property associations, rights associated with land owning cooperatives and other forms of common property institutions (share block companies, sectional title, etc.).

2.4.2 LAND USE

Land use deals with what activities can be undertaken (and what type of structures can be built – through building control) on the land.

Land use management is a municipal competency as part of municipal planning.

Develop national regulations under SPLUMA, that are coordinated with the regulations proposed under IPILRA, dealing with: 1) as per s21(k) of SPLUMA how to introduce designated areas where incremental approaches to development and regulation will be applicable (including communal areas); 2) as per 24.2(c) how to incrementally introduce land use management and regulation under areas under traditional leadership, rural areas, informal settlements, slums and areas not previously subject to a land use scheme; and 3) how to record land use changes (in a way that is coordinated with the OUR certification process).

In the short to medium term, mobilise communities to make sure that people who are familiar with development in rural areas are nominated to sit on Municipal Planning Tribunals where land use change decisions are made.

2.4.3 SPATIAL PLANNING

Spatial planning deals with what the 'community' and local government envisage future development patterns will look like in the area.

Municipal spatial planning is an exclusive municipal competency.

In the short term develop provincial SPLUMA laws and/or regulations within national and/or provincial SPLUMA legislation, that can be implemented in the medium to longer term requiring municipalities to facilitate processes of developing Community Based Plans (CBPs) involving local communities (including ward structures, traditional council structures if relevant, and other community based structures). These plans can be developed drawing on nationally developed spatial planning guidelines. These plans need to be considered by

municipalities when developing and finalising the municipal Spatial Development Framework (SDF).

Note that if these plans are not approved by the community and the municipality then they cannot be implemented. Appropriate dispute resolution procedures will need to be followed to align the CBP with the SDF plans.

At national or provincial level undertake research and develop guidelines for how various possible future spatial visions can be developed in rural areas ranging from, for example: townships, small holder farming, clustered homesteads, to scattered homesteads.

Ensure that when communities and municipalities develop future plans they take into account existing and anticipated population trends and dynamics. For example, intervention plans will differ for areas where it is expected that the population is going to increase compared to those areas where the population is declining or is stable.

Over time, make use of the SDF planning process to identify and establish various special areas (like zones, but without necessarily using these areas to give rights) such as:

- agricultural resource areas
- forestry resource areas
- conservation resource areas
- high intensity rural settlement areas
- low intensity rural settlement areas
- settlement expansion areas
- heritage and cultural preservation areas
- view shed areas
- etc.

Community structures, including traditional councils, as well as Municipal Planning Tribunals can make use of these areas to guide development decisions and land use changes in communal land areas.

2.4.4 ENFORCEMENT

Enforcement looks at the extent to which the rights a social group has to a portion of land can be enforced. It includes who has authority to implement this enforcement.

With regard to land tenure or occupation, the IPLIRA regulations must outline the procedures for enforcing land occupation rights. Regulations need to accommodate the practice of communities having their own living customary laws governing enforcement of land occupation rights.

With regard to land use the municipality must, through the SPLUMA law and regulations, outline procedures for enforcing land use.

2.5 ADDITIONAL ELEMENTS RELATED TO LAND ADMINISTRATION AND DEVELOPMENT IN COMMUNAL AREAS

2.5.1 ENVIRONMENT AND RESOURCE MANAGEMENT

Environment and resource management looks at what activities can be undertaken and structures can be developed on the land so as to minimise environmental and resource impact.

Environment is a concurrent national and provincial function.

Introduce, through SDF planning processes, resource areas within communal land areas to identify land and resource areas for 1) conservation, 2) high quality agricultural land, 3) forestry areas, 4) cultural/ heritage zones, 5) mining zones, etc.

As part of the CBP and Municipal SDF planning process identify areas where there is a need to conduct further Strategic Environmental Assessments (SEA) in communal areas to identify these resource areas.

Develop guidelines based on the *National Environmental Management Act no 107 of 1998* (NEMA) and other appropriate legislation that stakeholders can use to determine when certain land use activities will trigger the need for environmental authorisation.

Align the steps that are required to obtain planning approval with steps that are required to obtain environmental authorisation.

2.5.2 ENGINEERING SERVICES

Engineering services looks at where engineering services can be located on the land.

Make use of 'way-leaves' as a mechanism to facilitate infrastructure development on communal land. Way-leaves are a mechanism whereby the land holder (the state), the community and the developer or service provider agree where to locate new engineering services and a record is kept of this agreement. Eskom, for example makes use of way-leaves to get permission for and record the location of new power lines on communal land.

Other examples of more procedurally onerous options to get permission and record where engineering services can be and are located is to establish servitudes or to expropriate communal land for the provision of roads and power lines etc. When expropriating land the underlining rights holders need to be compensated (for example if the services go over arable lands or grave yard areas).

The National Department of Human Settlement (DHS) needs to review the funding instruments available across government available for engineering services with a view to determine the suitability of these funds and programmes for the provision of engineering infrastructure on communal land. Examples of subsidy instruments that can be used for engineering services include:

- Rural housing subsidy - communal land rights programme: This grant can be used for engineering services as a last resort if other funds are not available.
- Upgrading of Informal Settlement Programme: This grant can be used specifically for engineering services, with the Rural Housing subsidy used for top structures.

- Community Work Programme
- Expanded Public Work Programme

2.5.3 HOUSING

Housing looks at what type of housing can be built on the land and which government housing subsidies can be used and by whom.

Allow land rights conferred as a result of regulations emerging from IPILRA, to be the basis on which housing top structures can be funded.

More research and analysis is needed to explore issues such as:

- how to determine household income when the subsidy is given to households
- whose name gets recorded as receiving the housing subsidy when a house is built in a situation where an OUR certificate is provided in the name of a household
- how to determine who can receive another subsidy in future if their family name is recorded

Review the criteria that determine what housing top structure funds can be used for, making it possible for communities and households to use such funds for activities, such as fencing, water harvesting, cattle kraals, etc. that are not usually associated with top structures. The existing rural housing subsidy is intended to allow this flexibility but in practice such flexibility is rarely found.

Review progress being made within the National DHS with regard to allowing subsidy funds to be used within the context of traditional building techniques (e.g. building mud brick building techniques).

Review the Rural Housing Voucher Programme, which has been piloted by the Rural Housing Loan Fund, for its suitability for housing development on communal land.

2.5.4 FACILITIES

Facilities looks at what facilities can be built by whom on what land using what funding.

Depending on the context of the particular local project, make use of various tenure methodologies to allocate land to facilities, such as halls, schools, clinics, police stations, businesses, etc.:

- Occupation and Use Rights certificates
- lease agreements
- title deeds, expropriation and transfer

Again depending on the local context allocate these portions of land to an appropriate land use purpose (e.g. institution, business, etc.).

Make use of funding instruments like the Socio-Economic Facilities Grant for development of facilities on communal land.

2.5.5 LAND FINANCE

Land finance looks at what 'land taxes' and development fees and levees, etc. need to be paid to whom for what purposes; and at how decisions are made on these amount; as well as how to use such taxes and fees obtained.

Engage with CoGTA and Treasury to investigate 1) what past and existing policies and practices have been used for the purposes of collecting land related revenue from people living in communal land areas, including the *Ingonyama* Trust land; and 2) what options and plans there are for collecting and using land taxes and fees in communal land areas in the future. The nature of these taxes and fees will depend on the tenure form that is used within communal land areas.

Link the locally administered land-records system to the municipal rates and services system. Policy and legislation still needs to be developed to allow for this.

3 THE LOCAL LAND ADMINISTRATION SYSTEM

This section provides an overview of a possible local land administration system, which looks at:

- recording who is on the land (social)
- what piece of land they can occupy (physical)
- what activities that can undertake on this land (use)
- and what fees/ land taxes they need to pay to stay on this land (finance).

SOCIAL

Who can be on the land? – land tenure

The focus around which land administration occurs in communal land areas is the social unit.

At the local level, from the perspective of those administering the locally administered land Occupation and Use rights system, the boundary of this social unit can include:

- The family or the extended household. The exact boundary of this household unit is determined through local cultural practices. Family members have rights to land as a result of their participation in family affairs as well as a result of need. Inheritance and succession with respect to land rights is determined by local living custom.
- Group of individuals.
- Individuals, which can be people or companies or similar legal entities. This option corresponds to the conventional system of viewing land as being owned by a head of household, who is able to do with as they want to the land, and with inheritance following through clear inheritance laws.

At a slightly larger or higher scale the relevant social unit is the 'community', as determined by local custom. There may even be multiple tiers of communities each overlapping and intersecting with lower and/or higher tiers,

The details of determining these social units for the purpose of local land administration should be determined through regulations developed under IPILRA. These regulations should however make provision for using local custom in determining social boundaries at the community scale.

PHYSICAL

What piece of land can these social units be on? - Land demarcation

At the local level, from the perspective of those people administering the locally administered land Occupation and Use Rights system, the boundary of this physical unit can be:

- an undefined boundary. This occurs in instances when community members and social units as defined above, are recorded as being part of a particular community living within a specifically demarcated area (such as an Administrative Area found in the eastern Cape, or a Communal Property Association). The exact location of where these people are living within these areas is left to local living custom and rules. The records system only notes that the person is living somewhere within this broader demarcated area.
- a 'fuzzy' boundary: This occurs in instances where the land administrative system notes a geo-referenced point of (for example) the front door of the house where the person or social unit as described above is living. This point can be derived from a scaled map or taken from a handheld GPS device. This point is determined by an approved land official. The boundary of the piece of land for which this social group has Occupation and Use Rights is determined through local living custom and practice.
- an imprecise boundary: This occurs in instances where the land administrative system notes points and lines derived from drawings on a scaled map and/or from corner points from a hand held GPS device. These points and lines are determined by an approved local land administrative official. As a result of the fact that the hand held device and the scaled map are not as accurate as if these points were determined by a qualified land surveyor using state of the art technology and techniques these boundaries are imprecise up to about meter. It is proposed that the portion of land enclosed by such an imprecise boundary be referred to as a 'plot' to differentiate it from an 'erf' that is the land portion within a precise boundary.
- a precise boundary: This occurs in instances where the land administrative system uses surveyed boundaries that have been developed by a qualified land surveyor and shown on an approved General Plan diagram. These boundaries are precise within a tolerance of millimetres. Precise boundaries are determined following conventional 'township establishment' or land subdivision processes.

At the larger community scale, in the context of the Eastern Cape, this boundary is the precise boundary of the Administrative Area. In other provinces it would be a Traditional Authority/Council area or in Limpopo (former Venda) a Territorial Council area. These Administrative Area boundaries generally need to be precise as they often butt onto other land portions (e.g. farm portions) that form part of the formal 'on-deeds' registry system.

Between the undefined, fuzzy, imprecise or precise boundary for the household, individual or group of individuals at the household scale, and the precise boundary of the Administrative Area (using the Eastern Cape as an example) lie a number of possible 'community' boundaries. From the perspective of the locally administered land office, these 'community' boundaries can also be undefined, fuzzy or imprecise boundaries.

However from the perspective of the communities concerned these physical community boundaries are determined through local living custom, depending on the nature of the community and the reason the community needs to determine such boundaries.

The details of how these physical boundaries are determined for the purposes of local land administration will either be through regulations under IPILRA and/or through new provincial SPLUMA laws or national/provincial SPLUMA regulations.

USE

What activities can the social unit undertake on the physical parcel? – land use schemes

The use or purpose to which land can be used can correspond to a number of physical demarcated areas that correspond to the following boundaries:

- no boundaries. From a local land use administration perspective it is impossible to demarcate a specific land use to a portion of land that has no boundaries. The only option the land administrative office has is to demarcate the whole Administrative Area to a defined and regulated mixed land use purpose such a 'communal land', which would allow residential, grazing, arable development, small scale business, small scale institutional etc. within this broad mixed use area. Areas or 'zones' for grazing, arable allotments, residential etc, can also be shown on the SDF, or a spatial plan as a sub component of the SDF. Such 'zones' however are only indicative and are used to guide those responsible for land use change decisions (e.g. the Municipal Planning Tribunal) when considering land use change decisions. These zones do not in and of themselves confer the associated land purpose or use rights to the rights holder/s of the land.
- fuzzy around a point: From a local land use administrative perspective, land use rights for residential or homestead plots, arable land plots, small business sites, small institutional sites, etc. can be shown as small circles/ dots around the geo-referenced point. The colour of the dot can correspond to a specific purpose as defined in the land use scheme regulations approved in the municipal by-laws. The exact boundaries wherein this specific land use can occur are determined, as described above in the demarcation section, through local living custom and practice.
- imprecise boundaries: From a local land use administrative perspective, a land use purpose can be linked to the imprecise 'plot' of land. The type of land purposes could include, homestead, arable allotments, institutional and business, etc.
- precise boundaries: From a land use management perspective, land use purposes would be linked to precise erven boundaries that have been created following conventional 'township' establishment and/or land subdivision procedures.

The remaining common space around any residential or arable areas would need to have a mixed land use purpose description that allows, for example, for road reserve, grazing, forestry, conservation, etc.

Note that use rights associated with one of these specifically described portions of land often come with additional rights to make use of the common space for grazing, collection of firewood and medicinal plants, etc. Generally these additional rights to make use of the remaining common space are not necessarily recorded in the locally administered system, as they are determined by local custom and living customary law. However, it is possible, if deemed necessary, to record and attach these additional rights to make use of common space, to the primary right associated to the homestead. This would be similar as to what occurs in many townhouse complexes in the suburbs, where one finds, for example, Home Owners Associations or body corporates administering the 'common' space.

In instances where there is high and dynamic change in land uses within an area, the municipality, as part of its land use management system, may require land use to be demarcated within at least imprecise or precise boundaries, leaving fuzzy and no boundary land uses to more stable contexts.

Note that with modern technology it is possible for such locally administered systems to be accessible to both those responsible for land use management within the municipality as well as those responsible for maintaining the locally administered land Occupation and Use Rights systems.

The details of how these land use purposes for identified portions of land are determined for the purposes of local land administration will need to be determined through new provincial SPLUMA laws or national/provincial SPLUMA regulations.

3.1 FINANCE

What social units are expected to pay to occupy and use the land? – land taxes and fees

Questions that need to be addressed when it comes to land finance include:

- who has the right to charge taxes and fees (municipalities, land Trusts, CPA’s etc.)?
- how are land taxes and fees calculated?
- who, which social unit, has to pay these fees (families, individuals etc)?
- what happens if these social units do not pay these taxes or fees?
- what are these fees used for (maintain roads, keep local land office running, establishing a general community fund, etc)?
- who decides what the income from the fees / land taxes can be used for?

The details of how these land taxes and fees are determined for identified social units within identified physical boundaries will need to be determined through consultation between the DRDLR, CoGTA and Treasury. This is an area of enquiry that is beyond the competency of the authors of this report.

3.2 DEALING WITH BOUNDARIES IN A LOCALLY MANAGED LAND RECORDS SYSTEM

Unpacking what is understood by boundaries in communal land areas (referred to as the social tenure system, off-deeds register system, or the land-records system) is crucial if one is to develop a land administration system that accommodates these boundaries.

The second column in the table 1 summarises how social and physical boundaries are conceptualised in the formal deed registry system, while the third column summarises how boundaries are conceptualised in the off-deed or social tenure system found in communal land areas. The focus is on residential household boundaries but similar provisions can apply to boundaries for businesses, institutions, arable land, etc.

Table 1: Comparison of Boundaries in Registered versus Recorded systems

	Formal Deeds registry system (registered system)	Social/ Off register system (recorded system)
Social boundary	Individual (e.g. head of household) with strict legal procedures for inheritance based on nuclear family; and with formal procedures through the deeds office, using registered conveyancers for transferring title.	Individual, or group individuals, or family name, or ‘guardian’/ keeper name with flexible local socially mediated procedures for succession based on the concept of the extended family; and with local socially

	Formal Deeds registry system (registered system)	Social/ Off register system (recorded system)
		mediated procedures and guidelines for transferring rights.
Physical boundary	<p>Specific mathematically accurate coordinated boundaries with longitudinal and latitudinal coordinates of corner points, and reference to specific geological features like the centre line of a river, shown on a survey diagram approved by the Survey General (SG) office, and also surveyed with pegs on site by a registered land surveyor.</p> <p>Note that boundaries for any other rights, like right to cross someone else's land are often recorded in detail as servitudes on the SG diagram.</p>	<p>Range of options ranging from very loose non-precise physical boundary definitions to more strict or precise boundary definitions. Options include: 1) No defined physical boundaries except so far as they are located somewhere within a broadly defined area (e.g. an Administrative Area in the Eastern Cape or a Traditional Authority/Council in other provinces. or a Territorial Council in Venda), 2) very flexible and fuzzy physical boundaries, as located on and around a geo-referenced point, and as mediated through local living customary rules/ law, 3) rough boundaries as shown as 'plots' on a scaled map kept by at least the municipality, and also possibly demarcated on the ground by an authorised land survey technician, 4) precise boundaries shown on a survey diagram approved by the SG office, and also surveyed with pegs on site by a registered land surveyor.</p> <p>Note also that physical boundaries can vary depending on the nature of the rights confirmed. (E.g. the boundary for the right to have a homestead garden is different from the boundary for the right to graze cattle.)</p>