



Spatial Planning and land use Management (SPLUMA) training seminar report
Afesis-corplan and the Eastern Cape NGO Coalition
21 October 2015 – East London

1. Purpose of seminar

This report summarises the discussions from the Spatial Planning and Land use Management Training Seminar organised by Afesis-corplan in partnership with the Eastern Cape NGO Coalition on 21 October 2015.

The purpose of the seminar was to:

- inform participants about SPLUMA (Spatial Planning and Land Use Management Act, 16 of 2013) and its associated laws and regulations;
- inform participants about the process of developing provincial spatial planning and land use management legislation; and
- form a provincial civil society task team of people from that are interested in SPLUMA who will be tasked to develop a draft policy position on spatial planning and land use management for consideration by Civil Society Organisations (CSOs).

Ronald Eglin summarised the background briefing document that was sent out with the letter of invitation. (See annexure 1: background briefing document)

2. Introduction

The following are example of what participants think about when they hear the terms spatial planning and land use management.

- spatial planning
 - space
 - environment
 - how to use land
 - coordinating communities according to today's wealth
- land use management
 - how to manage the land you are using
 - profitable use of the land

Just over one third of the participants indicated that they had heard of the Spatial Planning and Land Use Management Act or (SPLUMA).

3. Presentations

Ronald Eglin and Johan Jonas gave presentations on SPLUMA. Copies of presentations were handed out at the seminar and are also available at <http://goo.gl/MYV5Ht> (case sensitive)

4. Questions and Discussions

The following summarise the questions and discussion that occurred after the presentations.

Question (Q) 1: In the past there has been token community participation in the development of Spatial Development Frameworks (SDF's). Does SPLUMA propose any bold changes in rules for participation?

- No, SPLUMA is framework legislation and leaves it up to provinces and municipalities to go into more detail as to how participation should happen. SPLUMA just reiterates importance of public participation found in the Municipal Systems and other Acts.

Q2. Are all spheres of government aware of the changes that SPLUMA is introducing as to how planning should take place?

- Yes, SPLUMA was developed after significant consultation with all spheres and departments within government.

Q3. Can you explain the tribunals in more detail?

- Tribunals are independent bodies elected by the municipal council to make decisions on land use change requests. They can have at least five officials and external experts sitting on them. No councillors can sit on tribunals. They must make decisions based on the policy approved by the council (e.g. take into account the SDF that council has adopted).

Q4. How do joint tribunals work and how could a joint planning service work?

- Municipalities must agree to join with other municipalities to establish joint planning tribunals. It is possible for the Eastern Cape to develop policy encouraging the establishment of joint planning services, not just tribunals, which can support municipalities in all planning and land use change activities. The process of establishing joint or district tribunals is very complex and the provincial government is assisting municipalities in this regard.

Q5. How will SPLUMA help address challenges created by apartheid spatial geography (e.g. moving people away from opportunities)?

- SPLUMA requires municipalities and government as a whole to take into account the spatial principles in SPLUMA when planning and making land use decisions. These principles, like spatial justice, are there to get planners and decision makers to consider spatial transformation to more equitable spatial patterns.

Q7. How does SPLUMA relate to the existing land reform policy of redistribution, restitution and tenure reform?

- All spatial planning and land use changes, including future redistribution and reform projects etc, have to be undertaken within the framework provided by SPLUMA.

Q8. Does SPLUMA give powers to Traditional leaders to make decisions?

- No, SPLUMA just says traditional leaders must be involved in land use change but it specifically says they can't make land use change decisions. This is the role of the municipality. You could have a situation where the traditional leaders and the municipality disagrees on a land use change decision, in which case the parties must use existing conflict resolution mechanism to

reach a common decision. Traditional councils should not be seen as a fourth tier of government. SPLUMA says that local government can enter into agreements with traditional councils that outline the roles and responsibilities of the parties in land related matters.

Q9. What is an urban edge?

- It is a line that the municipality draws on SDF maps beyond which they do not want to encourage new settlement development. The municipality and others must use this to guide them when deciding on development beyond the urban edge. Development can happen beyond this edge but it must be well motivated. Municipalities can also establish resource edges like agricultural zones within which they want to encourage certain agricultural and other activities.

Q10. How can communities use SPLUMA to force government to follow its own rules?

- SPLUMA provides for public participation. Communities can ask questions and hold government to account for decisions they have made through this process.

Q11. Why are traditional leaders not at this seminar? Were they consulted in the development of SPLUMA?

- Traditional leaders were significantly involved in the process of developing SPLUMA. This seminar has been organised by Afesis-corplan and the ECNGOC to specifically inform CSOs about SPLUMA and the traditional leaders were not invited. Traditional leaders can ask government to arrange special presentations for them on SPLUMA.

Comment (C) 1: Traditional leaders must not be equated with customary practices. Custom is not about what traditional leaders want, but about how the community does things.

C2: It must be remembered that SPLUMA mainly deals with what can happen on the land, it does not deal with who can be on the land. Different processes need to be followed, including getting approval from the appropriate local traditional leaders, to determine who can stay on communal land. The municipality, when approving land use changes must get confirmation that the person or group applying for the land use change is the rightful land rights holder to that piece of land.

C3: In SPLUMA it is very clear that for certain developments the applicant will have to get multiple approvals; such as from the local community and traditional leaders, as well as the department of environment, department of agriculture (for changing agricultural land to residential etc) as well as the municipality for a land use change. None of these role-players overrides the decisions of any of the others. All approvals are needed before a development can take place.

C4: In conclusion it was emphasised that SPLUMA allows for each municipality to develop its own unique rules taking into account local circumstances. Different municipalities can learn from the experiences of other municipalities to see what works for their situation.

5. Provincial spatial planning and land use management

Tony Williams, from the Eastern Cape Provincial Department of Cooperative Governance and Traditional Affairs (EC-CoGTA), gave a presentation on the thinking of the department in relation to spatial planning and land use management in the province.

The province does not accept that spatial planning and land use management has to be done like it has always been done in the past. The role-out of SPLUMA provides us all with an opportunity to relook at how best to do planning and land use management in a context where the majority of

people in the province live in rural areas. The province recognises that there is no one size fits all and that any planning system needs to accommodate diversity.

From a western perspective land is seen as a commodity to be bought and sold, while from a traditional Xhosa (and African) perspective land cannot be bought or sold - land has social meaning. Space is a social construct. In other words what space looks like is shaped by the people that use and make the spaces. A rural village looks very different to an urban suburb. One perspective of development is seeing it as accumulating wealth while another perspective sees development as a process of becoming human. The second perspective is the 'ubuntu' perspective that looks at how one relates to other people - at how people have rights to land within their communities as a consequence of belonging to the community.

Planning and land use management in the province needs to build on and draw inspiration from how people have been planning and managing the use of the land for decades and centuries.

The province accepts that there is difference and diversity in how planning is done in former 'white' areas and former 'homelands'. This needs to be seen as an opportunity. We need to support mutual dialogue between all role-players in the province, e.g. municipalities, communities and traditional leaders, so as to build trust between each other.

Customary law is recognised in the constitution and needs to be respected. South Africa is also a signatory to conventions on Rights for Indigenous Peoples, and is able to draw from international best practice on how to work with custom.

The EC-CoGTA is planning to conduct a series of consultations across the province to involve all stakeholders in a decision as to how spatial planning and land use management should be done in the province. This workshop that Afesis-corplan, in partnership with the ECNGOC, has organised is just the start. It is an event on a longer journey. We all need to be given the time and space to think what would be best for the province.

An example of how communities could influence how planning happens in the province is in looking at involving communities in the data and information collection processes, through asset mapping tools used in the Asset Based Community Development (ABCD) approach.

The EC-COGTA has been conducting background research for at least three years looking at how planning has and could be done in rural and urban areas of the Eastern Cape. A summary of this research is being produced, including a Xhosa translation.

The findings from the research will be made available in a 'Green Paper' in the near future. The plan is for a white paper and/or a provincial Bill on spatial planning and land use management to be developed after consultation on the green paper. This will ultimately lead to a provincial Act on spatial planning and land use management.

Chalo Mwimba, from the regional office of the Department of Rural Development and Land Reform (DRDLR) explained that SPLUMA officially came into effect on 1 July but there is still a lot that needs to happen at national, provincial and local government level to make its implementation effective. Municipalities are in the process of developing municipal by-laws and appointing municipal planning tribunals.

Much of how SPLUMA will be implemented, especially in communal areas, remains unanswered. The province and municipalities are still engaging traditional leaders.

The EC-CoGTA and the DRDLR will be conducting more capacity building sessions to empower municipalities, traditional leaders and communities on what SPLUMA and its associated laws and regulations are all about. These departments will also be monitoring that municipalities effectively role out SPLUMA.

The EC-CoGTA and the DRDLR are open to further communication on spatial planning and land use management and invite civil society organisations and communities to engage with them on these matters.

The DRDLR, the 'father' of SPLUMA, is also working with the province and municipalities to implement SPLUMA. The DRDLR is providing resources to municipalities to develop Spatial Development Framework, to develop land use schemes and to develop by-laws for implementing SPLUMA. The DRDLR has started training municipalities to implement the act, and plans to still go to traditional leaders and NGO's and civil society.

6. Discussion: Issues emerging

The following lists the key issues identified by participants that have emerged from the presentations and discussions.

1. We need to research what the existing critiques of SPLUMA are and circulate them amongst participants.
2. The suggestion of establishing a task team for CSO/ NGOs is a good idea. This task team should be used to raise awareness of SPLUMA within civil society.
3. We need to monitor the whole implementation of SPLUMA. We need to be clear on the role of stakeholders in SPLUMA and monitor that they are performing these roles. CSO's can help communities monitor implementation of SPLUMA.
4. We need to explore how future re-demarcation of municipal and other boundaries could affect the implementation of SPLUMA.
5. It looks like it is unclear how implementation of SPLUMA will happen in rural areas. This is an opportunity for us to influence the outcome.
6. More investigation needs to be done on the roles and relationships between traditional councils and democratic municipal councils. Democratic Councillors often do not have a voice in rural areas. Both democratic and traditional councils need to be more involved in attending training about their roles in SPLUMA.
7. More research is needed on the relationship of IPILRA (Interim Protection of Informal Land Rights Act) to SPLUMA. We also need to find out what is happening to the Communal Land Bill.
8. We also need to explore s20 of the Traditional Leadership and Governance Framework Act that gives powers to Traditional leaders in relation to land. We need to also see how SPLUMA relates to the TLGFA and other related acts. NGO's need to consider writing a discussion paper on all this for circulation.
9. We need to audit SDF's in our municipalities and communities to see if they are using the principles found in SPLUMA.
10. We need to consider establishing a communication network for CSOs like e-mail lists that can be used to spread the word about this spatial planning and land use management training and advocacy project.
11. The task team can be used to monitor the implementation of SPLUMA. But CSOs more generally also need to be monitoring the development and implementation of the IDP and SDF's in their areas. CSOs must push for better consultation within these IDP/ SDF processes.

12. CSOs need to consider and ask others to consider how to ensure improved community participation in all planning and land use management processes.
13. We need to ensure community driven development occurs. This can be done by, for example, pushing for the ABCD methodology to be incorporated into provincial laws dealing with how municipal plans are produced.
14. Government and others giving people money for projects has not always helped the communities concerned. An alternative is to 'give' people land. Consideration needs to however also be given to how to support land recipients to use the land 'profitably' for themselves.
15. Traditional leaders often undermine Communal Property Associations. SPLUMA and other laws need to recognise these other type of land holding entities.
16. More investigation is needed as to how to improve the appeals process within SLUMA making it accessible and affordable for communities. Consideration can be given to requiring appeals structures to be independent, but at the same time they also need to be accountable.
17. CSO's themselves should look at how they can improve their own conflict management skills, and also what role they can play in the conflict management processes that may emerge from SPLUMA
18. There will be problems with implementing SPLUMA that we are not aware of at the moment. We will pick up issues as we move along so we need to monitor issues as they emerge.
19. CSO's need to monitor and consider if any public participation guidelines that get developed as part of SPLUMA are sufficient and appropriate. For example, such guidelines need to ensure that the unique circumstances of rural areas are taken into account.
20. CSO's need to ensure that more longer term monitoring and evaluation processes and institutional arrangements are put in place as part of any SPLUMA implementation process in the province.

7. Way forward

The following points were discussed as part of the way forward.

1. A task team will be established made up of about 12 people who will meet for a day or two to reflect on the issues that emerged from today's workshop and begin to explore possible recommendations that CSO's can make to address these challenges.
2. The recommendations from this task team workshop will be circulated to CSOs for further comment and feedback, before they are forwarded to government.
3. When the organisers of this seminar circulate the report from the seminar, they need to also circulate a terms of reference for a working group that will be established to hold a follow up workshop to look at what recommendations can be made by civil society to improve spatial planning and land use management in the province. Organisations will be invited to suggest people to form part of this task team. A set of criteria will be included in the invitation. Afesis-corplan and the ECNGOC will use the criteria to determine who will be on this task team. This includes for example, organisations that are part of this workshop today, are familiar with SPLUMA, and there is at least some form of geographic spread, and women and youth are represented.
4. Afesis-corplan will be the secretariat of the task team. Afesis-corplan and the ECNGOC will make the final decision as to who will be on the task team.
5. Consideration was given to electing the task team immediately at the training seminar but it was felt that it would be better not to rush this process and to give people a chance to think who to nominate and to find people with expertise and commitment.

8. Attendance register - See attached.

Annexure 1:
Spatial Planning and Land Use Management Act (SPLUM)
Background Briefing Document
September 2015

Spatial planning involves government following a public participation process to outline what our cities, towns and rural areas should look like in future. This includes, where we would like the new bus routes to be located, where new schools and clinics should be built, where new low cost housing projects should be located, which land needs to be conserved for agriculture and nature reserves, where we would like the private sector to establish new business and industrial areas, and much more.

Land use management involves government controlling what land use activities can happen on which pieces of land. It involves the process of deciding if a new shopping centre can be built in a particular area, or if the municipality can build a new low income housing development on an existing piece of agricultural land. It also involves deciding what type of buildings will be allowed to be built in certain areas.

The core around which all the new spatial planning and land use management legislation is being developed is the Spatial Planning and Land Use Management Act (SPLUMA act number 13 of 2013) and its associated Regulations of 23 March 2015. SPLUMA officially came into effect on 1 July 2015. Municipalities were supposed to have approved SPLUMA municipal by-laws before this date, but most municipalities were still in the process of developing these by-laws on this date.

One of the big new issues introduced by SPLUMA is the fact that municipalities are now totally responsible for spatial planning and land use management in their municipal areas. In the past, provincial planning tribunals, established under the now repealed Development Facilitation Act 67 of 1995, and other structures, made certain planning and land use management decisions and now they are unable to do so. Provinces can only play a support and capacity building role when it comes to municipal planning.

In relation to spatial planning, SPLUMA reinforces the importance of Spatial Development Framework (SDF) Plans as part of the Integrated Development Planning process. Provinces are also now able to develop their own provincial or regional SDF's.

In relation to land use management, all municipalities must establish 'wall to wall' land use schemes (or zoning maps) showing what land use is permitted in all areas of the municipality, including rural and communal areas. All municipalities need to establish or partner with other municipalities or district municipalities to establish municipal planning tribunals (MPT). These MPT are made up of five or more government officials (councillors are excluded) and people with relevant knowledge and experience. Any public or private entity who wants to make a land use change (e.g. to change the land use from residential to business or from agriculture to housing) will have to submit applications to the local municipality who will submit a report to the MPT who will make a decision to allow this change or not. An appeals process is also accommodated in the legislation.

The Eastern Cape Provincial Department of Local Government and Traditional Affairs is also in the process of conducting background research that they plan to use to inform the development of provincial spatial planning and land use management policy and legislation. This initiative provides civil society organisations with a unique opportunity to have an internal discussion amongst each other and engage government around what they would like to see in any provincial spatial planning and land use management policies and legislation.

Spatial planning and land use management affects us all, it is something we all need to know about and have a say in what we think should happen. Afesis-corporation, working with the Eastern Cape NGO coalition and others, is organising a training seminar to raise awareness amongst Civil Society Organisations on all the above new Spatial Planning and Land Use Management legislation.

Out of this seminar a small civil society task team will be established that, through a series of workshops, will develop a draft policy position for what they would like to see in provincial (and national and municipal) spatial planning and land use management policies and legislation. This draft policy position will be circulated to civil society organisations for input and comments. A final civil society policy position will be drafted and submitted to the provincial and other appropriate government departments. A lobbying and advocacy campaign will be implemented to motivate for as many of these policy recommendations as possible to be adopted by government.

Please contact Afesis-corporation if you require any more information on SPLUMA and progress being made by the provincial department of human settlements in developing new provincial spatial planning and land use management policies and legislation.

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SPATIAL PLANNING AND LAND USE MANAGEMENT SEMINAR

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