



UPDATE ON COMMUNAL PROPERTY ASSOCIATIONS

Centre for Law & Society
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What are CPAs?

Communal Property Associations (CPAs) are landholding institutions that were established under the Communal Property Associations Act No. 28 of 1996. CPAs were created for groups who needed to organise themselves as legal bodies in order to be able to receive title deeds to land under the restitution and redistribution programmes.

CPAs under threat

According to the Department of Rural Development and Land Reform's only report on CPAs, from 2009/2010:

- As of 2010, there were about 1 500 CPAs, provisional associations and similar entities, and the Department had managed to investigate 887 so far.
- Of these 887 that the Department had investigated: 34 CPAs had not yet had their land transferred to them.
- At the end of the document is the following: "In the long run it may be necessary to interrogate whether or not the current Communal Property institutions are sufficient as a vehicle for holding land. That is a political debate." It seems this political debate is now happening.

Many CPAs do not know why they are still waiting for their land. For example in Masakhane in the Eastern Cape, two CPAs have been waiting for their title deeds since 2000, despite the then minister having signed the transfer forms. In the meantime, the people of Masakhane, like those in other CPAs, are suffering.

A court case about the Cata CPA in June 2012 exposed how the government has been put under pressure from chiefs to block CPAs. According to an affidavit, the government is hesitant to transfer land to CPAs because traditional leaders have complained that CPAs undermine their authority. The affidavit says that Minister Nkwinti has frozen land transfers to CPAs.

Traditional leaders demand that CPAs should be done away with and that instead, traditional leaders should own all land in the former homelands. This causes serious problems in cases where historically the chief had agreed to the initial forced removal on behalf of the 'tribe'.

For example Chief Mhinga objects to the Makuleke CPA in Limpopo province because he says the Makuleke fall within the boundaries of the Mhinga tribe and their land should therefore belong to the Mhinga tribe:

'The Restitution of Land Rights Act is not meant to interfere in the affairs of traditional communities. In any event, the Restitution of Land Rights Act as an interim measure cannot supersede existing legislation such as the [Traditional Leadership and Governance] Framework Act, the Constitution and the Limpopo Traditional Leadership Act.'

This does not make sense given that the Restitution of Land Rights Act is required by section 25(7) of the Constitution. If land went to chiefs, land rights in Makuleke would be handed over to the very chief that participated in their forced removal.

Due to lobbying from the traditional leaders, the Communal Land Rights Act (CLARA) of 2004 had a provision that enabled the Minister to transfer the title deeds of CPAs to the 'community' – in other words, to the 'tribe' headed by the traditional council. But the CLARA was struck down by the Constitutional Court in May 2010, so these provisions fell away. Nevertheless it appears that the government is trying to achieve the same thing again by other means. This includes through amendments to the CPA Act and the Restitution Amendment Bill. See for example the Department of Rural Development and Land Reform's response to a question in July 2013:

Question: Will restitution land go to traditional leaders or CPAs?

Answer: The establishment of new CPAs on existing communal land shall no longer be promoted by government.

It may be that the opposition to CPAs comes from organisations like CONTRALESA and the Houses of Traditional Leaders at a national or provincial level rather than the specific chiefs in the areas where CPA transfers have been held up. We know of some chiefs who do not oppose CPAs. Therefore it is important to investigate and describe whether there has indeed been any actual practical opposition by chiefs at the local level.

Government's view of CPAs in 2013

Minister of Rural Development and Land Reform Gugile Nkwinti's comments at the Land Divided Conference in March 2013 triggered warning bells about how the government views CPAs today. Nkwinti described CPAs as "communal areas within communal areas" and said he had a legal team looking into dismantling CPAs that already exist.

At a workshop hosted by parliamentary portfolio committees at Parliament, Cape Town, on June 7-8, 2013, more government officials spoke against CPAs. Patekile Holomisa (head of CONTRALESA and ANC MP) said that even if people had been evicted from the land and had gone to live elsewhere, there was no area where land had been taken which had not belonged to a traditional leader.

The comments of Minister Nkwinti and others in government are worrying. They seem to confirm an approach to customary law which sees custom only as a part of chiefly power, not something that ordinary people use in their day-to-day lives. It also confines the people living in the former homelands to being 'tribal subjects' as opposed to equal citizens of a united South Africa.

Extracts from Affidavit in Support of an Application for Postponement, by Chief Director of the Department of Rural Development and Land Reform in Cata Communal Property Association vs. Minister of Rural Development and Land Reform and Others (6 June, 2012):

5.4. Despite the optimism with which the settlement agreement was done and the time frames set therein, the practicalities in the facilitation of the transfer of the land have been cumbersome and have now **encountered fierce objections by the Traditional leaders** who state that the **agreements transferring ownership of rural land to community based associations undermined their authority**. In various discussions with Traditional Leaders they are resolute in objecting to the transfer of land falling under their authority to CPA. The land in question falls under Chief Ulana and **in order to get a long lasting solution it is imperative that Chiefs should accept the process**.

7. In the circumstances whilst it was felt that the order sought by the applicants in this matter should not be opposed the Minister has issued an instruction that these matters be opposed on the grounds that **discussions for the implementation of CLARA are still continuing** and no state land has to be transferred until this process has been finalised...

Extracts from Minister Nkwinti's speech at Land Divided Conference in Cape Town (24 March, 2013):

...There is no replacement of the CPA Act; there is an amendment.

... it is an exaggeration to think that it is only traditional leaders who have a problem with the CPA. It's not entirely correct. It is a wrong model from us as government, which we introduced. You see you have a communal area and part of it, maybe a quarter of it is excised by apartheid government to do whatever it wanted to do. They removed people from that 25% of the communal land area and put them in another place. Come 1994, people are able to claim the land back. When they come back, they are now coming back home. They are creating a **communal area within a communal area** and there is no development taking place there.

... So what we are doing is to correct ... what I don't know for now – I have asked lawyers to look at it - is whether that [undo CPAs] could be done retrospectively or not. Because you see what we are doing now is we say: if you have come back to land which was part of your home, you can't create a new communal area. That's why chiefs and people are conflicted. It's not just chiefs; the owners of the land in the first place, from whom that land was excised – they want their land back. They won't welcome other people who are coming back to that land.