

## COMMUNAL PROPERTY ASSOCIATIONS (CPAs)

### What is the policy and law on CPAs?

Communal Property Associations (CPAs) are landholding institutions established under the Communal Property Associations Act No. 28 of 1996. Beneficiaries of the land reform, restitution and redistribution programmes who want to acquire, hold and manage land as a group can establish legal entities to do so. The CPA Act provides for government registration of CPAs and also government oversight to enforce the rights of ordinary members.

### Challenges with CPAs

- CPAs can and do work, especially for poorer members, but socio-economic pressures on them are huge. While the CPA Act has been poorly implemented, it remains an important option.
- CPAs are extremely under-resourced legal entities compared to sectional title estates and companies; and they operate in a wide variety of social contexts.
- There has been very limited support and oversight of CPAs from the government, and a lack of communication between officials and CPAs.
- In some areas where traditional authorities are present, traditional leaders have tried to undermine the functioning of CPAs as they see them as challenging their authority.
- Long delays in transfer of title to a CPA undermine the authority of a CPA committee, and the uncertainty that ensues allows opportunists to challenge or take control of the CPA.
- In some CPAs there is abuse of power by the committee and powerful CPA members and neglect or abuse of ordinary members. Committees are sometimes unaccountable. But it is not clear who CPA members can appeal to when conflict or abuse occurs.<sup>1</sup>
- Substantive rights of CPA members are often not clearly specified. Women's land rights are often particularly vulnerable and insecure.
- The processes by which CPAs are set up and offered assistance pay little attention to land tenure realities and dynamics on the ground. Many CPAs have constitutions that have been 'cut-and-pasted' from other CPAs, and are therefore out of sync with local land tenure practices. They establish rules that are impossible for people to comply with.

### Recommendations

1. *Land reform beneficiaries should be able to choose the kind of landholding entity they want to form.* Counter to the DRDLR's Draft Policy Paper on CPAs, people should not be prevented from forming CPAs in communal areas or where traditional authorities (TAs) exist, as this would deny people's ability to choose the landholding entity that best fits their needs and their land tenure practices (including customary practices). The problems with land conflicts will not be solved by isolating CPAs from traditional authorities, as there are many situations where traditional leaders are active CPA members and where land disputes exist in the absence of traditional authorities and CPAs.
2. *DRDLR's emphasis should be on ensuring that skilled facilitation is available for setting up and assisting CPAs - not just on CPAs' legal compliance with the CPA Act.* Achieving security of tenure for CPA members is more important than submitting a report to DRDLR every year. Amendments to the CPA Act should make explicit the kinds of support and capacity needed for CPAs to function.

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<sup>1</sup> Section 11(6) of the CPA Act allows the Director-General to appoint a conciliator at the request of a member of the CPA. However the procedure for making such a request is not clear.

3. *Establish institutions with capacity to support CPAs within the Department of Rural Development and Land Reform.* The DRDLR's Policy Paper on CPAs moves in the right direction by suggesting the establishment of the CPA Office and the appointment of a Registrar of CPAs, and by strengthening the capacity of these offices. The focus of these institutions should be to strengthen the capacity of the CPA office by drawing in specialists to train officials, improving communication between officials and CPA members, and deepening the expertise of officials so that they can provide strong oversight and support to existing and new CPAs. There is need to allocate sufficient DLA staff and resources to render support on an ongoing basis to CPAs.
4. *Put resources and capacity into processes for establishing and running CPAs.* The principles of these processes, as set out in the CPA Act, are that they are democratic and transparent. The project cycle of the CPA must incorporate preparing a land administration plan (LAP), which includes CPA membership, specifying individuals' procedural and substantive rights to land and benefits arising from the land (production, mining, leases etc) relative to others and to the group, the land use preferences of individuals within the group, and identifying recourse mechanisms for when internal negotiations fail. These processes can be used to resolve issues in existing CPAs and must be put in place when new CPAs are formed.
5. *Implement mechanisms to allocate and secure individuals' and groups' substantive rights to land and accompanying benefits, in relation to other members of the group and the CPA.* The allocation of substantive rights to use land is a basic requirement in the CPA Act. Individuals' substantive rights must be protected within a group ownership setting. During the LAP process, and ideally before the land is transferred to the CPA, define the nature and content of different parties' substantive rights (ownership rights, use rights, occupation rights, access rights, grazing rights etc) in relation to others, which will be informed by local land tenure practices and systems. Implement guidelines for the recognition of different land use needs within the group, allocation of rights and how to bind the actors involved to recognise these rights. Later, individual members or particular groups within the CPA can assert these rights for protection in the face of power abuses by the CPA as a whole or by strong members.<sup>2</sup>
6. *Define individuals rather than households as members when forming CPAs.* Adult individuals and not households should vote in CPA decision-making processes. This protects and empowers members of households who are often particularly vulnerable, such as women, from making decisions that other more powerful actors, such as men, may not agree with.
7. *The CPA Office and CPA Registrar should be accountable to CPAs themselves and not just to parliament.* This means the DRDLR must produce annual reports to be tabled in parliament, but must also open communication channels through which CPA members can reach them for report-backs.
8. *As the DRDLR's Policy Paper on CPAs suggests (2.1.3.), businesses and economic entities must be separate from CPA committees.* Ensure that when a business is to be established on CPA land, it operates through a separate legal entity, whether individuals or independent companies.
9. *Subdivide or split CPAs into smaller groups and smaller CPAs where appropriate, and in line with local land tenure arrangements and land use patterns of individuals within the larger group.* The LAP can be a place to intervene in this respect or to foresee possible future interventions.
10. *Provide for sub-division of farms* if that is what CPA members choose to do.
11. *Devise detailed regulations to accompany amendments to the CPA Act.* Regulations will flesh out what is meant by each part of the Act and guide implementation of the Act.
12. *Establish an additional independent external recourse institution in the form of a land ombudsman.* The role of this institution can be to trouble-shoot intractable land tenure issues (not just in CPAs) and can step in to negotiate protracted disputes in CPAs when other processes have failed.

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<sup>2</sup> For more details on this proposal, see: Council for Scientific and Industrial Research, *Diagnostic Study into the Functioning of the Communal Property Associations in Land Reform in South Africa* (submitted to then Department of Land Affairs, April 2005)