

Communal Property Associations

A review of the findings of the High Level Panel Report on the Assessment of Key Legislation and the Acceleration of Fundamental Change – December 2017

Communal Property Associations and Trusts hold the majority of the land distributed through the land reform programme. These entities remain largely unsupported and many have become sites of capture for elites.

Key issues at a glance

Core problems	Principal HLP recommendations
<ul style="list-style-type: none"> ● More than 8,000,000 ha of land have been transferred through land reform and the majority of these hectares are held by trusts or CPAs. ● CPAs have been used as a vehicle for the amalgamation of land claims which contributes to conflict and institutional collapse ● The vast majority of CPAs are not compliant with the CPA Act. ● The DRDLR has not allocated staff and resources to effectively support and monitor land holding entities. ● CPA constitutions seldom specify individual and family land rights. ● The establishment processes for land holding entities are frequently inadequate. ● Many CPAs do not function effectively. This has implications for the use and management of the land which they hold on behalf of their members. ● There is contestation over the roles of CPAs in communal areas 	<ul style="list-style-type: none"> ● Major investment in supporting existing CPAs and Trusts is required ● Training and building the capacity of departmental staff and service providers contracted to establish and support CPAs and trust is urgently required. ● Decisive and effective intervention with CPAs and Trusts that have become dysfunctional ● The Act must be amended to provide clarity as to how amalgamated CPAs can unbundle themselves. ● Members of CPAs and beneficiaries of Trusts require stronger and more clearly delineated individual and family based rights. ● The content of the Annual Report that CPAs are required to submit to the director-general needs to be clarified. ● The HLP recommends that CPA financials should be attached. ● The functions and capacity of the CPA registrar needs substantial expansion and the allocation of an appropriate budget and powers to support CPAs in their functioning. ● Interim proposals are made for amendments to the Act while far reaching recommendations about CPAs are contained in the Land Records Bill

	<p>proposals.</p> <ul style="list-style-type: none">• An ombudsman type structure should be established to deal with complaints and enforce compliance in terms of the Act
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Problem statement

The HLP panel report notes that:

- In restitution CPAs were used to speedily settle claims by bunching claimants together and creating artificial Communal Property Associations. In the process the commission ignored the definition of community eligible for restitution. These amalgamated claims stand very little chance of success.
- CPAs are frequently reported as being dysfunctional.
- The report explores the role of CPAs and Trusts in land reform. It notes that more than 8,000,000 ha of land have been transferred through land reform and the majority of these hectares are held by trusts or communal property associations which together total about 3000 entities.
- The departments annual report on CPAs for 2015–2016 recorded that only 208 the 1490 registered CPAs were compliant with the CPA Act.
- The landholding entities have been under resourced and have very limited and ineffective support and oversight from government.
- There is a lack of specifications of individual and family rights in land holding entity founding documents. The substantive rights members are not clearly spelled-out defined.
- The establishment of land holding entities is poorly designed and facilitated.
- Currently the Act only provides procedural remedies to families and individuals to enable them to hold CPA committees to account. It does not provide for family based rights to specified areas within the boundaries of the CPA.
- If landholding entities are dysfunctional their land cannot be productively used and the constitutional imperatives of ensuring equitable access to land and tenure security cannot be realised.
- The DRDLR Minister announced in 2013 that he no longer supported the existence of communal property associations in communal areas. It appeared that the Minister had placed an internal moratorium on transferring title to CPAs in former homeland areas. This created delays in the settlement of claims and the redistribution of land.

Voices from public hearings

The public hearings heard stories of capture of resources by elites, embezzlement of funds, the lack of support of government and ongoing tensions between traditional leaders and CPAs. Overall there was a sense that holding land through a CPA has not resulted in any positive change to people's livelihoods.

What government is doing

- The government's draft policy paper on CPAs states that no new CPAs will be established in areas where traditional councils already exist.
- The CPA Amendment Bill introduced in the national assembly has proposed substantive amendments including the introduction of the office of the registrar the requirement of the land use plan and the requirement for consent from the department by the community should they decide to encumber lease or sell their property.
- The amendments propose that the state retains ownership over the property and the CPAs role be downgraded to that of land management as opposed to ownership.

HLP recommendations

- The diagnostic report commissioned by the panel proposes major investment in supporting existing CPAs and Trusts and establishing more robust institutions as recommended by the 2005 CSIR study
- Building staff capacity in the department and in service providers who are contracted to establish and support CPAs and trust is urgently required. The modular staff training program is required for officials to practically understand the complexities establishing CPS
- With regard to restitution the HLP recommends that there be substantive provisions to allow decisive and effective intervention with CPAs and Trusts that have become dysfunctional
- The act must be amended to provide clarity as to how amalgamated CPAs can unbundle themselves and in large CPAs enable dormant and inactive inactive members to withdraw
- The CPA act requires that an annual report be submitted to the director-general but there is no clarity on the content of this report. The HLP recommends that CPA financials should be attached.
- There is a requirement for an expanded CPA registrar and the allocation of an appropriate budget and powers to support CPAs in their functioning.
- The following amendments were recommended to the act:
 - That CPAs should be required to appoint a finance management committee
 - CPA Constitution should require two tier governance structure that distinguishes executive and non-executive responsibilities
 - That amendments are introduced to guide the relationships between CPAs and other legal entities
- As part of these accountability dimensions an ombudsman type structure should be established to deal with complaints and enforce compliance in terms of the Act
- Members of CPAs and beneficiaries of Trusts require stronger and more clearly delineated individual and family based rights to be able to use their land effectively and to hold leaders to account.
- The clarification of rights for CPA members is also addressed in the proposed Land Records Act which will apply to all off -register rights in the country including those of CPAs and Trusts

- The Communal Property Associations Amendment Bill should be put on hold as the panel makes far-reaching recommendations about CPAs as per the Land Records Bill proposals.
- The HLP has however also engaged with the Amendment Bill relating to some urgent matters before the Land Records Act is likely to be tabled.