

# Land rights Enquiry Roundtable

Facilitator: Sibulele Poswayo

27 September 2016

East London



## PURPOSE

- Facilitate broader discussion on the concept of land rights enquiries (LRE),
- Address questions like:
  - how do LREs fit within broader land administration processes, and
  - how can LREs be conducted.
- The insights gained through the roundtable will be used to inform future plans for how a LRE process could be conducted in communal areas.

## AGENDA

1. Welcome
2. Inputs
  - Introduction
  - Communal land tenure
  - Case study - rural
  - Case study - urban
  - LAPSIS
3. Facilitated discussion
4. Way forward
5. Evaluation and closure

## **Presentations**

1. Introduction to land rights enquiries in context of land administration – Ronald Eglin (Afesis-corporation)
2. Land administration in communal land areas – Chris Williams (Eastern Cape Survey General Office)
3. Local experiences with land rights enquiries in communal areas - Siyabulela Manona (Phuhlisani )
4. Experiences of recording land rights in informal settlements –Thandeka Tshabalala (Community Organisation Resource Centre)
5. Land and Property Spatial Information System (LaPSIS) – Zimasa Biyana (Housing Development Agency - HDA)

## **Introductions**

1. What's your name, organisation you are from, and position in the organisation?
2. Why are you interested in the concept of land rights enquiry?

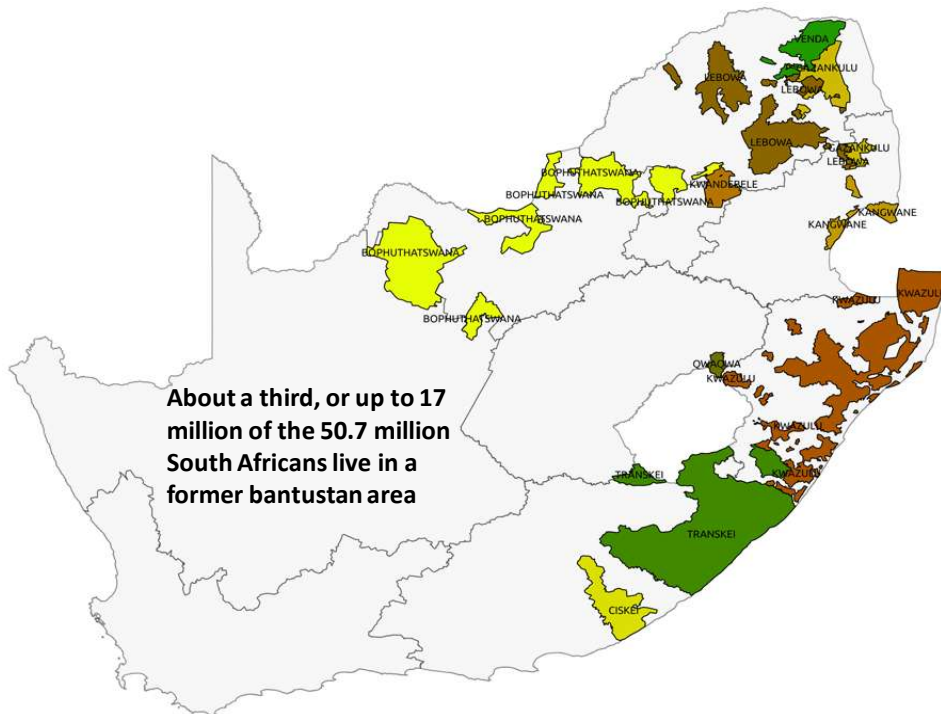
# Introduction to land rights Enquiries

Ronald Eglin  
Afe-sis-corplan



## The challenge

- There is no legally recognised process for recording who has what rights to which piece of land in communal land areas
- This has serious implications for:
  - Providing proof of residence for voting purposes, getting a vehicle licence, opening bank accounts, etc
  - Being able to confirm who has rights to make land use change applications
  - Willingness of investors to invest in hotels, shopping centres, agricultural projects and other development intervention



## Legislation - the Past

- The main legislation that dealt with land administration in communal areas prior to 1994 was the Bantu Areas Land Regulations, Proclamation No.R.188 of 1969 that, amongst other things, provided for the administration of Permission to Occupy (PTO) certificates through magistrate offices
  - This legislation has been repealed

## Legislation - the Present

### IPILRA - 1996

- Continues to provide legal protection for a variety of users and occupants on state trust land (i.e. in the 'communal areas'), which fall mainly within the former bantustan areas.
- The Act defines beneficial occupation as:
  - *the occupation of land by a person, as if he or she is the owner, without force, openly and without the permission of the registered owner*
- The effect of the Act is that it grants the holders of these rights very strong legal protection in theory (but not always observed).
- The rights are similar to real rights to land in that they can only be taken away by formal processes of expropriation.

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## Land administration

- What is land administration?

# Land administration

1. **Land tenure:** Who can be on land?
2. **Land transmission:** How are land rights transferred from one rights holder to another?
3. **Land records custodianship:** Who keeps record of who has what rights where? How are these records changed?
4. **Land adjudication:** How are land right claims verified and checked?
5. **Land planning:** What activities are envisaged to take place in future where? Who decides?
6. **Land use management:** How is land use changed? Who decides?
7. **Land taxes and fees:** How are taxes/ fees determine and collected? What is income used for? who decides?
8. **Enforcement:** How is above enforced?

## Summary land administration

### Urban

- Land tenure: deals with who has right to use the land
  - Deeds register and survey diagrams
- Land use: Deals with what can be done on the land
  - Land Use Scheme (changed through land use change applications taking SDF into account)


### Rural

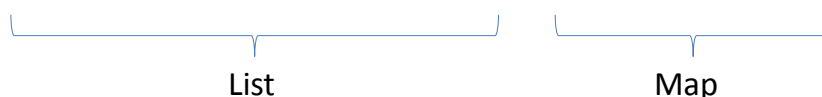
- Land tenure: ?
  - Custom
- Land use: ?
  - Custom
  - new land use schemes

A persons right to use the land is directly linked to what they can use it for.

## Who has what rights where?

Who ...	... has what rights ...	... where
Individual	Occupy	Erf
Fixed list of individuals	Use for specified purpose	Plot
Flexible list of individuals	Dispose	Point
Broad category of people	Bequeath	Cloud





## Urban 1 & 2

	House	business
Who	Person A	Company B
What right	To live in residential house, sell, bequeath, lease.	To use for business, sell, lease, etc.
Where	Fixed erf	Fixed erf

## Communal 1 & 2

	1. Homestead	Allotment
Who	Broad family members as determined by living customary law, under name of family 'guardian'	Broad family as determined by living customary law
What right	To occupy, and use for homestead purposes (living, gardening, small business, etc), NOT to sell	To grow crops, NOT sell
Where	At and around point with boundary confirmed by customary law	On portion of arable allotment within demarcated 'plot' with allotment portion determined by living customary law

## Communal 3 & 4

	3. grazing	4. Firewood etc
Who	List of identified homesteads	People from defined villages as determined by living customary law
What right	To graze cattle (following living customary law rules)	To collect wood and medicinal plants
Where	On land as defined by physical features on ground and aerial photo from that stream to that tree, and the other rock outcrop)	In forest area as marked on aerial photo



## Communal 5 & 6

	5. business, hotel, etc	6. school, clinic, etc
Who	Company name	Government department
What right	To operate business	To operate a school, clinic, police station, etc
Where	On surveyed erf	On surveyed erf

## Land rights authority

- The power to set and enforce laws and rules concerning rights, responsibilities, and benefits.
    - Legally derived
    - Socially derived
  - Source of authority
    - Legal: title deed found in Deeds Act
    - Administrative: municipal services bill; or municipally recognised locally managed register of occupants
    - Social: If local leadership is legitimate
    - Custom: Recognised way of deciding on land tenure issue
- Authority should be clear, known and used.

## Evidence of claim to land right

- Title deed
- Legitimate PTO
- Unauthorised PTO
- Quitrent title
- Long term lease
- Letter/form from traditional leadership structure
- Letter/form from ward councillor
- Verbal confirmation from elders in community
- Other?

## Registered vs.. recorded rights

### 'Registered' land rights:

- Recorded and registered in the Deeds Registries and offices of the Surveyor Generals according to the
  - *Land Survey Act No.8 of 1997*
  - *Deeds Registries Act No.47 of 1937*

### 'Recorded' land rights:

- Recorded in a locally administered land administration system, as yet not found in national legislation.
  - Similar to Permission To Occupy (PTO) certificates of the past.

Able to move  
from one to the  
other



# OUR certificate

## Occupation & Use Rights Certificate\*

- Certificate issued by 'government' confirming that:
  - mentioned social unit
  - has rights for specified bundle of rights
  - over specified physical unit
- That is also confirmed by local custom

\*this is a suggested new form of tenure recognition certificate

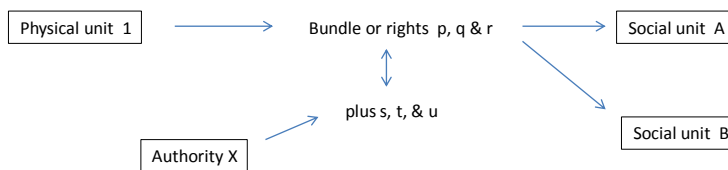
## Land rights enquiry process

1. Collect information
  2. Create record of information
  3. Verify information is correct
  4. Deal with and rule on conflicting land claims
  5. Produce future land development plans
  6. Transfer land rights
- Land rights enquiry
  - Land rights adjudication
  - Land development

## Broad questions relating to land rights enquiries

1. How to collect and verify data on who is claiming what land with what rights?
  - Using existing records
  - Doing door to door survey
  
2. How to link the collected data into government processes?
  - Records kept at local level
  - Records integrated into national system

## Issuing and transferring land rights



- A. What happens when social unit A transfers bundle of rights to social unit B?
  
- B. What happens when authority X issues/ confirms additional bundle of rights (s, t & u) to physical unit 1?

## Further issues emerging

1. At start, how does one confirm who has what rights to which piece of land?
2. Who pays whom how much when person A transfers the bundle of rights to person B?
3. Who has the authority to change the bundle of rights?
4. Who benefits from the increase in land value due to change in bundle of rights?

## Next steps

- Start with land rights enquiry to identify who is claiming what rights to which piece of land
  - Where there are no competing claims issue some form of tenure recognition
  - Where there are competing claims follow land rights adjudication process before issuing some form of tenure recognition
- In future develop and implement a processes to transfer and change land rights

## Way forward

- Conduct pilot land rights enquiries
  - Establish 'partnerships' where communities and government collect information
  - Followed by adjudication process where necessary
- Amend legislation so that the land right claims process and records can be fed into government processes
  - IPILRA – amend and introduce regulations
  - SPLUMA – provincial / municipal legislation
  - Other

## Discussion on Land Rights Enquiry

Facilitated by Sibulele Poswayo  
Afesis-corplan



## Discussion questions

1. How can local stakeholders work together to undertake land rights enquiries?
2. How can land rights enquiries feed into broader government land administration processes?
3. How can technology be used in support of land rights enquiries?

### 1. Conducting a LRE exercise

- How can local stakeholders work together to undertake land rights enquiries?
1. What steps need to be followed to conduct a LRE process
  2. Who needs to be involved in each step
  3. What challenges can be anticipated & what ideas are there to overcome these challenges

## 2 Integration LRE into government processes

- How can land rights enquiries feed into broader government land administration processes?
  1. What are the steps involved in the broader process?
  2. Who should be involved in these steps?
  3. What, if any, legislative changes are needed to accommodate this broader land administration process?

## 3. Using technology in LRE process

- How can technology be used in support of land rights enquiries?
  1. What aspects of the LRE process could benefit from the use of technology
  2. What examples of technology are we aware of that could be further explored
  3. Who could be approached to provide further advice and support in using technology



## Way forward, evaluation & closure

Sibulele Poswayo







### **Way forward**

1. What should be the next steps?
2. Who should do what by when?
3. How could we hold each other to account?

## Evaluation (1)

1. What key lesson(s) did I learn from this dialogue?
  
2. What, if anything, will I be doing differently in future as a result of what I gained from this dialogue?

## Evaluation (2)

	Poor 	OK 	Good 	Excellent 
1. Pre-preparation				
2. Workshop facilitation				
3. Content of presentations				
3. Level of discussions				

- What general comments do you have? (write on piece of paper and hand in)



**Thanks**

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To find out more about land rights enquiries see:

<https://goo.gl/VxgZ7d>

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Other possible slides

# Recognition vs.. Permission

Is it useful to distinguish between recognition & permission?

- Recognition of occupation
  - Recognising that the person is staying in a place and using the place for specific purpose
- Permission to occupy
  - 'Giving' permission for person to stay in a place and use the place for specified purpose

## Authority to back up land claim

- Survey and Deeds registration act
- Customary law
- The word of a community elder
- Physical / emotional power

## Long term institutional recommendations

- Conduct participatory based land rights enquiries/ surveys
- Accommodate dispute resolutions mechanisms
- Local land clerks record rights on 'central' data base using for example: STDM, talking titler, FLOSSOLA, LaPSIS, etc.
- Issue OUR certificates to confirm rights
- Local land clerks continue to maintain and update records

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## Comparison: registration vs. records (a)

Aspect	Registration system	Records system
Enabling legislation	Land survey act (no 8 of 1997) Deeds registries act (no 47 of 1939)	Future amendments to IPILRA (no 31 of 1996)
Responsible for enabling legislation	DRDLR	DRDLR
Responsibility for administering system	National DRDLR through national deeds registry and surveyor general system	Short term: DRDLR/ CoGTA Long term: municipalities

## Comparison: registration vs. records (b)

Aspect	Registration system	Records system
Spatial location/ boundaries	Surveyed erven	An approved form of geospatial referencing (point, plot, cloud, etc.)
Custodian of spatial records	Records of erven kept by surveyor general office	Maps/geo-referenced points and areas kept at municipal level – linked to national data base
Social units around which system based	Individuals, nuclear families, corporate bodies	Extended families, individuals, groups of individuals
Custodian of social records	List of names kept in deeds registries in Deeds office	List of names kept at municipal level – linked to national data base

## Comparison: registration vs. records (c)

Aspect	Registration system	Records system
Adjudication of rights to authorise ownership and transfer	Registered land surveyors and conveyancers	Local land records offices (under legislated guidelines)
Evidence of registration or record	Title deeds in deeds office; copies to owners	Occupation and use rights certificate, stored at municipal level – copies to owners
Procedures for dealing with disputes	Professional conveyancers, land surveyors and courts	Local structures as appropriate, only escalated to DRDLR etc, and courts as last resort