

## Government wakes up with Communal Property Bill

The arrival of the Communal Property Associations Amendment Bill before the NCOP's Select Committee on Land and Minerals in a few days could start to bring some order to the many divergent aspects of government's land reform policy.



The Bill, an attempt to some bite into the Communal Property Association Act, was first tabled in 2016 by the then Minister of the Department of Rural Development and Land Reform, Gugile Nkwinti, and designed to bring investors and the banking world into farming developmental projects.

### Burning issues

No doubt the pressure of recent events has resulted in a major push to get the draft dusted down again, and since it is already approved by the National Assembly, put into effect. However, to do this, as the Bill is Section 76 legislation, it requires a majority of mandates from provincial legislatures after holding hearings themselves, followed by debate. Much will probably be mis-interpreted in the process by rural parties with vested interests.

One of the reasons for the delay last year was stated as being the backlog in sorting out legislative aspects of title deeds and in the logistics of recording who owns what and whether a holder of land can prove it.

### Creating a person

The objective of the Act, when it was signed into law originally, was to create a new form of juristic person, a communal property association (CPA), to allow disadvantaged communities to acquire, hold and manage property in common and raise funds as a group.

Putting the cart before the horse has always therefore been the sequential issue behind the approval of some four Bills to bring clarity to land ownership in rural areas; heightened, of course, by the more aggressive approach to holding or acquiring land adopted by traditional chieftains.



This last-named issue has very much led into further confusion as politicians took sides on land reform issues.

### Cloning urban systems

The Bill, promoted by the Department of Rural Development and Land Reform (DRDLR), focuses on developing the practical and legal aspects of ownership of communal land by any CPA, whilst at the same time providing security of tenure with a new initial procedure of naming the householders to benefit. The draft of the amending Bill was originally approved by Cabinet under past president Zuma.

When past Minister of Rural Development and Land Reform, Gugile Nkwinti, introduced the Bill to Parliament, he said, "The apartheid system had dumped black people in the rural areas and simultaneously denied them meaningful access to productive agricultural land. But subsequent transfer back was without the provision of follow-up training and support and programmes of financial help were therefore set to fail."



### Quality of land

**He admitted** that the ANC also had failed to provide immediate answers, but he said the damage done prior to 1994 “should not be run away from”. He said, “The degradation map of South Africa showed that the ‘homeland’ areas had very little arable land. The way land was distributed during white South Africa must be addressed.”

Minister Nkwinti concluded, “Degradation was worsened by over-crowding and over-grazing. In addition, people felt the interventions made so far were merely tinkering and not a substantive response.” Despite this statement, however, there still appeared no will on the part of government to get going.

### **Game changer**

**As is well known**, the EFF’s motion in Parliament to acquire land without compensation put a bomb under the whole situation on the question of land reform and it became question of what had to be said by the ANC to hold the position.

The new Minister replacing Nkwinti, in the form of Minister Maite Nkoana-Mashabane, said on Woman’s Day August 18 this year, after a week in office, whether it was appropriate that land reform could have spent R50bn to deliver 4% of land to the majority since 1994.



### **Getting back control**

**With 400 guests at** the function in question, which included some 100 diplomats, several business leaders and community groups from rural communities, Minister Nkoana-Mashabane said, “The land must be returned to its rightful owners”.

She told her audience that “the recent passing of a motion by our Parliament to allow for the expropriation of land without compensation is an important step toward this long over-due process of a greater and accelerated restitution and redistribution of our land”. Whilst this Minister is not only known for sleeping regularly in Parliament, she is well known for ill-informed remarks made at awkward moments.

Those behind the scenes that see a logical way forward know that the subject has become an election soccer ball and before worse things could happen with activists from both sides of the land reform debate.

### **Fake news and tweets**

**The pressure therefore** is now to get the Communal Property Associations Amendment Bill through as fast as possible and get a land tenure system going in much of the rural areas. Talking to MPs, not many seriously believe that a list of designated white farms to “grab” has been circulating in the DRDLR, despite the Minister being a UDF activist in the rural areas in 1980 and having some odd moments overseas as Minister of International Relations.



Whilst in the provinces, the Communal Property Associations Amendment Bill will touch on a number of hot buttons with various groupings, a time limit has been set by the NCOP for the return of mandates to proceed with the Bill.

### **What is good**

**In essence**, the Bill now will ensure that householders have security of tenure and thus have the ability to raise capital before they enter into any agreement on the management of communal land. This simple fact does indicate the reality of the situation faced by emergent farmers where they need to acquire machinery or build farm structures but cannot.



Whilst the thrust of government policy on land reform has always been to bring ownership of self-sustaining agricultural land to previously disadvantaged communities, the process has been much bedevilled by conflict over land falling under the control of traditional chiefs. All are aware that some of the pot-stirring in this area has emanated from Nkandla.

Whether Minister Maite Nkoana-Mashabane is the right person to handle such a highly-nuanced subject is highly doubtful. Her department, however, might keep things on the right track.