THE COMMUNAL LAND TENURE POLICY FRAMEWORK
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LIST OF ABBREVIATIONS

CLTP  Communal Land Tenure Policy
CPAs  Communal Property Associations
CRDP  Comprehensive Rural Development Plan
DRDLR Department of Rural Development and Land Reform
RADP  Recapitalisation and Development Programme
RIDFF Rural Investment and Development Financing Facility
1 INTRODUCTION

The Comprehensive Rural Development Plan (the CRDP), which was adopted by Cabinet in 2009, serves as the overarching policy trajectory and strategy for the Department of Rural Development and Land Reform (DRDLR). The strategy of the CRDP is "agrarian transformation", which denotes "rapid and fundamental change in the relations (meaning systems and patterns of ownership and control) of land, livestock, cropping and community".

In practice, this strategy entails amongst other things, integrated and strategically planned rural development programmes; and an enhanced land reform perspective (in terms of conceptualisation, institutionalisation and implementation). The objective of the strategy is social cohesion and inclusive development of rural economies. Rural-urban linkages are critical to engendering this inclusivity.

The Agrarian Transformation System, as represented in Figure 1 attached, serves in the main, two purposes:

Firstly, it summarises the mandate of the DRDLR; and secondly, presents four Development Measurables, laid out in phases, which are meant to run sequentially (for effective planning) and simultaneously (guided by the plans). These are: a) meeting basic human needs; b) rural enterprise development; c) agro-village industries, sustained by credit facilities and value-chain markets; and d) improved land tenure systems (embedded in meeting basic human needs).
2. INSTITUTIONAL ROLES AND ROLE-RELATIONSHIPS

2.1 The State

The State will perform all roles and responsibilities as set out in the Constitution and other relevant legislation. Figure 2(c), attached, depicts the correlation between the authority of the state and the administrative responsibilities of the governance structures (Traditional Councils and CPIs, holding land in trust for the community).

Figure 2 (c): RURAL ECONOMY TRANSFORMATION: INSTITUTIONAL ROLES AND ROLE-RELATIONSHIPS

As set out in the Constitution and the law of the Republic
- Traditional Councils
- CPA Committee/Trust, as the case may be.
- Key elements of accountability:
  - Substantive, NOT numerical quorum
  - Quarterly meetings
  - Annual reports to Parliament via drdl
  - Regular elections, as defined by the law

IDTT: Representative of Households,
- Traditional Councils,
- Municipal Councils,
- Local Business,
- Civic Structures

2.2 Governance Structures (Traditional Councils and CPIs)

The traditional council (or CPI Executive, where applicable) is vested, throughout this area, with the responsibility of administering the land and related resources on behalf of and in consultation with the households based upon decisions made through substantive quorums. "Substantive quorum" has been defined within the context of the CLTP as meaning 60% of households within the community.

Routine meetings to determine use, account for progress and substantively decide on the way forward will take place at least three times per year and annual reports to Parliament will be required to report on how governance is improving and equitable development being advanced. Regular elections must be held to ensure adequate and sufficient accountability and legislative compliance relating to the law governing the relevant governance structure.
In addition, the relevant governance structures must ensure that the household components (numbered 1 to 8 in Figures 2(a) and (b), attached hereto) are formalised as individual title-holders, acknowledging therefore the household as the basic unit of production, irrespective of the model being applied.

These rights will be a legal form of institutionalised use rights, awarded irrespective of gender, with the following features:

- Perpetual right in law;
- Right may be willed/bequeathed in terms of the law;
- Right may be used as collateral; and
- Right to be protected against land sharks, through:
  - Awarding of the right of first refusal to the Rural Investment and Development Financing Facility (RIDFF), still to be created; and
  - Awarding of the second right of refusal to the Government.

The governance structures will therefore be title-holders, only in respect of the communally owned portions of land (such communally owned land portions reserved for collective and individual enterprise and industrial sector activities, including, but not limited to grazing, cropping, forestry, mining, tourism, infrastructure and manufacturing).

Central to and underpinning this model, is the principle that the governance structures are accountable to the households, having fundamental rights to and in the land (both individually and communally)
Figure 2 (a): RURAL ECONOMY TRANSFORMATION: COMMUNAL TENURE MODEL

Roles:
- Title Holder
- Adjudication of disputes on land allocation and use
- Reference Point
- Allocation of Resources

TRADITIONAL MANAGEMENT

COMMUNITY-PUBLIC-PRIVATE-COLLABORATION

COMMUNALLY OWNED:
- Grazing
- Cropping
- Development Corridors
- Forestry
- Residential
- Economic
- Social Services

ROYAL HOUSEHOLD

MINING

1-7 HOUSEHOLD SECTOR:
Basic unit of production

PRINCIPLE: COMPLEMENTARITY ACROSS TRADITIONAL & DEMOCRATIC INSTITUTIONS

Figure 2 (b): RURAL ECONOMY TRANSFORMATION: COMMUNAL PROPERTY INSTITUTION MODEL

Roles:
- Title Holder
- Adjudication of disputes on land allocation and use
- Reference Point
- Allocation of Resources

COMMUNITY-PUBLIC-PRIVATE-COLLABORATION

COMMUNALLY OWNED:
- Grazing
- Cropping
- Development Corridors
- Forestry
- Mining
- Residential
- Economic
- Social Services

ENVIRONMENTAL MANAGEMENT

INVESTMENT AND

1-8 HOUSEHOLD SECTOR:
Basic unit of production

PRINCIPLE: COMPLEMENTARITY ACROSS TRADITIONAL & DEMOCRATIC INSTITUTIONS
2.2.1 Traditional Councils – moral authorities

In addition to the above responsibilities (facilitating substantive quorum, holding quarterly meetings, reporting annually to Parliament and ensuring that regular elections take place), Traditional Councils should function as Moral Authorities in traditional areas, in particular to deal with all aspects of development aimed at eradicating the scourge of poverty, inequality and unemployment of the communities within these areas.

Specific roles have been assigned to Traditional Councils, as title holders, and are depicted in Figure 2(a), attached hereto. These are:
1. Title holder of the entire cadastral unit;
2. Reference point (governance structure);
3. Adjudication of disputes (solving of problems); and,
4. Allocation of resources (according to principles decided upon (not ad hoc) with a clear developmental perspective).

2.2.2 CPIs

In addition to the above responsibilities (facilitating substantive quorum, holding quarterly meetings, reporting annually to Parliament and ensuring that regular elections take place), CPIs, as title holders, have been assigned the following specific roles, depicted in Figure 2(b), attached hereto:
1. Title-holder of the entire cadastral unit;
2. Reference point (governance structure);
3. Adjudication of disputes (solving of problems); and
4. Allocation of resources (according to principles decided upon (not ad hoc) with a clear developmental perspective).

2.3 Households

Figure 2(c) depicts the correlation between the authority of the state and the administrative responsibilities of the governance structures (Traditional Councils, CPIs). The model is premised on the “voters”/ communities and households in respect of which investment and development is targeted.

The households have rights and responsibilities and duties (enshrined in the Constitution) and require services and development opportunities. Through an active and responsible citizenry the state becomes more informed about the needs of communities and made more capable in its communications planning, service delivery and its realisation of outcomes envisaged by the NDP.
In particular, households will be:

1. Basic units of production;
2. Consumers of Goods and Services;
3. Ratepayers; and
4. Voters.

2.4 Investment and Development Structures

The separation of the governance structure and the Investment and Development entity will ultimately ensure adequate accountability, management and oversight in respect of integrated landholding and development within the respective communal areas.

These structures will be resourced, during the first 5-year period of existence, through the allocation of departmental Recapitalisation and Development Programme (RADP) funds. The allocation of these funds will be based on adequate needs assessments undertaken within these areas and appropriate resource allocations linked thereto. This will ensure that adequate institutional support is provided during the period of government assistance, and that institutions are therefore strengthened and capacitated during this same period to undertake their respective mandates post termination of support by the DRDLR.

All households within the specific communal area will form part of the RIDFF, as well as the Traditional Council, Municipal Council, Local Business and Civic Structures, as the case may be. The composition of the elected executive, however, should be of such a nature that it is separate and distinct from that of the landholding governance structure (i.e. the Traditional Council or the CPI), ensuring independent decision making and accountability.

2.5 Local Business Enterprises

The Share-Equity "Joint Venture" Enterprise model (Figure 2(d), attached) depicts the nature of new enterprises to be established (and in certain instances already established) in rural communal areas. In terms of this model, both landowners (title holders) and business owners agree to the establishment of a new joint venture (holding company) on mutually acceptable terms and conditions.

Through the implementation of the model, real rural economic transformation will be achieved, ultimately ensuring the attainment of the overall goal of "A rapid and fundamental change in the relations (systems and patterns of ownership and control) of land, livestock, cropping and community".
The application of this model will be customised to suit the relevant legal provisions and real conditions within each of the respective communal areas.

**FIGURE 2 (d) : SHARE-EQUITY ENTERPRISE MODEL**

3 **LEGISLATIVE REFORM**

In so far as legislation development and institutional reforms are concerned, the following Bills will be finalised to complement the implementation of the CLTP:

- Regulation of Land Holdings Bill, 2014
- Extension of Security of Tenure Amendment Bill, 2014
- Communal Property Associations Amendment Bill, 2014
- Communal Land Tenure Bill, 2014.

The Regulation of Land Holdings Bill, 2014 seeks to provide for the establishment and composition of the Land Commission, the appointment, qualifications and remuneration of members of the Land Commission, the classification of controlled land and the regulation of land ownership by foreign nationals. This Bill will also provide a legal framework for the disclosure of race, gender and nationality by owners (both natural and juristic persons) of land and property. It will provide a transparent and more conducive regulatory environment for the generation and utilisation of policy-relevant information on land ownership and usage.
The Extension of Security of Tenure Amendment Bill, 2014, in the main attempts to address legitimate aspirations of the vulnerable groups in commercial farming areas, namely, the farm workers and farm dwellers. The Bill further proposes the establishment of the Land Rights Management Board with District Land Reform and Local Land Rights Management Committees. The latter two will provide a participatory platform for stakeholders. The Bill envisages strengthening, clarifying and protecting the rights of various categories of persons within the Commercial farming space. It is strongly believed that the Bill will help bring about a stable, cohesive and conducive atmosphere in the farming communities.

The Communal Property Associations Amendment Bill, 2014, seeks to ensure greater efficiency in the registration of Communal Property Associations, improved levels of social stability within affected groups or communities as well as improved accountability to Parliament by the department. This Bill will provide for security of tenure through the registration of title deeds in the name of individual households. This will apply to both farm dwellers and labour tenants.

The Communal Land Tenure Bill, 2014, seeks to:

- Reform communal tenure to provide for the institutionalisation of land use rights by individual households, irrespective of gender;
- Define institutional roles and roles-relationships;
- Provide for the distinction between governance and investment and development entities in the communal space;
- Delineate responsibilities of the governance, and investment and development entities;
- Establish the accountability regime for the governance structures and the investment and development entities;
- Ensure the protection of communal land from land sharks; and
- Provide for active participation by households in strengthening the capability of the local sphere of government.

4 THE RURAL ECONOMY TRANSFORMATION MODEL

4.1 The “Wagon Wheel”: Traditional Councils and Communal Property Institutions (CPIs)

In terms of Section 3 of the CLTP, the “Wagon Wheel” Model for communal tenure has been developed. Figure 2(a) applies to conventional traditional communal areas that observe customary laws and Figure 2(b) relates to non-traditional communal areas.

In respect of traditional communal areas observing customary laws, land was usually under the rule of a chieftainship. The nature of the applicable tenure regimes in these areas was inclusive in
character and therefore access to land (as opposed to control over land) was inclusive and based on accepted membership to a group. Both household level and communal decision making processes governed land rights allocation within these areas.

In this regard, the CLTP states that:

"In order to reconstitute the deteriorated accountability of traditional community structures to the communities and households they service as found in original forms of African tenure, the "Wagon Wheel model" for communal tenure reform, emphasizes that, these institutions are responsible for land administration as outer boundary title holders.

The innermost circle located in the middle of the Wagon Wheel suggests a partnership between the municipality and the traditional council. The traditional council administers the land and has the responsibility to ensure that compliance is met based on the household’s decisions, while the municipality provides for sector plans, integrated development and spatial plans. These are accompanied by by-laws that determine land use as well as norms and standards. Both support and co-govern public private partnerships in communal areas based upon decisions made through substantive quorums by the community. In the context of institutionalisation as determined by the Constitution and wall-to-wall municipalities, local municipalities (and by extension democratically elected governments) have executive authority over assigned responsibility areas. With respect to the 51 per cent share equity from corporate investment, the proceeds of this investment will be equitably shared in the interest of business growth and the development of the community and households. This will be incentivized and co-managed through an Investment Development Trust and/or Rural Investment and Development Finance Facility or another appropriate investment model or instrument, supporting such areas.

The second circle in the Wagon Wheel represents the household level, which is the basic unit of production and implies clear allocation of land to each household. Boundaries of household land rights shall be surveyed and registered through locally established, state supported facilities dedicated to these functions. However surveys and registration of such rights shall only be conducted where these are popularly required and must be based on equitably adjudicated land rights assignment. Within this context, the state shall prevent the imposition of any formal process of land surveying and registration in the Communal Areas.

In addition, the household as the basic unit of production holds specific roles and responsibilities and constitutes another focal point of targeted intervention in the CLTP. For their part, households are responsible for playing active roles in ensuring effective land governance as well as paying taxes and rates to local municipalities for service provision and complying with by-laws. This responsibility is further incentivized by recognition of its authority; the affirmed and
formalized rights to the household lands and the commons as well as substantive decisions on the use of natural resources endowments to the benefit of all.

Finally, the outside circle indicates the commons, consisting of communally owned areas designated, well-planned and efficiently managed for economic development and infrastructure investment."

5 SUMMARY AND CONCLUSION

In terms of this policy proposal, it is recommended that the first thing to do is not to create communal property ownership. It is to secure a form of individual tenure to each household, be it a farm-dweller, tenant or communal land occupier, where such individual would have accumulated rights, in terms of relevant law. The approach of starting with CPIs causes strife and potentially compromises production on the land.

That is the essence of this policy, and enabling legislation to follow, as well as amendments to the legislation listed in section 3 of this policy.