

COMMUNAL LAND RIGHTS ACT 11 OF 2004: OVERVIEW, INSTITUTIONAL ARRANGEMENTS AND IMPLEMENTATION GUIDELINES

1 Introduction

In order to locate communal tenure reform within the context of the constitutional imperative to bring about wide-ranging land reform with reference to access, control, gender, management, categories of rights, security of tenure, and restoration, this note gives a brief summary of the focus of the three land reform programmes, the status quo in respect of each, the major gaps, and the absence of a hands-on implementable comprehensive strategy for land reform support in South Africa (especially at provincial and local government level). This is followed by an overview of the background to, and the contents of, the Communal Land Rights Act 11 of 2004. As regards the communal tenure reform programme, cognisance is taken of the need for all-encompassing, appropriately co-ordinated structures and related systems and programmes (including sufficient human, financial, infrastructural and other resources) that would, if effectively implemented, result in the sustained transformation of land control (and the concomitant security of tenure), significant and enduring improvement of quality of life for the millions of South Africans who occupy traditional community areas, and the improvement of agricultural output. In conclusion, ten key implementation steps as well as a number of challenges are listed.

2 Land reform

In terms of the Constitution of the Republic of South Africa, 1996 (hereinafter "the Constitution") and the concomitant South Africa Land Policy White Paper (1997), the need to deal decisively with the reform of the existing skewed land distribution, access and control systems is being addressed by the implementation of the following three land reform programmes (which are underpinned by a statutory framework and related administrative implementing structures and systems):

- 2.1 The *Restitution Programme* deals with restoring land to the descendants of communities and individuals who were removed from ancestral land in terms of racially discriminatory legislation and practices. This involves the transfer of both urban land and rural (primarily commercial agricultural) land. The detailed regulatory framework is found in the Restitution of Land Rights Act 22 of 1994, which provides for a detailed process for the submission, consideration, validation and recognition of claims, the determination of the appropriate approach (restoration, alternative land and/or monetary

compensation), and the legal and actual transfer of the land in question to beneficiaries (if applicable). The vast majority of urban land claims have been dealt with. However, very few rural claims have been finalised; according to a recent (2005) announcement by the Chief Land Claims Commissioner, 22 347 claims (13 347 urban and 9 200 rural) still have to be finalised. It is estimated that these rural claims might involve approximately 4 000 commercially active farms. At present there is no comprehensive support strategy nor any effective co-ordinating structure (as well as monitoring and evaluation systems) in place – neither at national nor at provincial level.

2.2 The *Redistribution Programme* provides government-subsidised access to commercial agricultural land (which in some instances includes national and provincial state-owned farms) to emerging black farmers, who in the past were excluded from acquiring such land on account of racially discriminatory legislation. It is intended that at least 30% of remaining agricultural land (that has not been transferred in terms of the Restitution Programme) will be transferred between 2006 and 2014 to emerging black farmers. The same need for the co-ordinated implementation (after transfer to the beneficiaries), monitoring and evaluation of a comprehensive and all-encompassing post-settlement programme exists in the case of the Redistribution Programme. The current LRAD (Land Redistribution and Agricultural Development) Implementation Manual does not deal in detail with post-settlement issues.

2.3 The *Tenure Reform Programme* consists of four categories:

- The conversion of permits and less secure rights in urban areas, to ownership and other forms of secure rights;
- The improvement of security of title in respect of, as well as the regulation of access to and the management of, the so-called Coloured Rural Areas (in terms of the Transformation of Certain Rural Areas Act 94 of 1998);
- The allocation and protection of tenure rights of different categories of farm workers; and
- The transfer of communal areas occupied by traditional communities to the communities concerned and the conversion of their weak and insecure rights into registerable and secure new order rights.

The process of transferring, in full ownership, the communal areas in South Africa to the traditional communities concerned and the conversion of their weak and insecure rights, will start as soon as the Communal Land Rights Act 11 of 2004 is promulgated. At present there are approximately 800 officially recognised traditional communities in South Africa. These communities are mostly located in the former homelands and TBVC countries. In addition, in KwaZulu-Natal (with its 286 officially recognised traditional communities) the Ingonyama Trust Board (which will be re-established as the KwaZulu-Natal Land Rights

Board) is an important role player as regards the implementation of the Communal Land Rights Act 11 of 2004.

Rights enquiries, investigations into current land use patterns and the determination of the development potential of each of these areas (which also includes the drafting of land use and development plans) will have to take place prior to the transfer of the land in question in ownership to the communities concerned.

After transfer, the communities will have a choice of

- Continuing the determination that will have been made by the Minister of Land Affairs (maintaining a system of (strengthened) communal tenure, transferring the total area concerned to individual community members by means of rights less than ownership, or transferring part thereof to individual community members, whilst maintaining the remainder in communal tenure);
- Subdividing the total area (or parts thereof) and transferring such subdivided areas to individual community members by means of rights less than ownership; and/or
- Approving the conversion of land rights in respect of some or all such individualised land parcels into full ownership. Such land may thereafter be transferred without any further community involvement or approval to any third party (which may also be a non-community member).

Although the three land reform programmes (restitution, redistribution and tenure reform) differ in origin and focus, they do have a number of key aspects in common. One of the most important common denominators is the need for a comprehensive support programme. At present there is no such generally applicable programme dealing with the crosscutting issue of post-transfer support affecting the three pillars of land reform.

The *status quo* as regards these three programmes is as follows:

Table 1: Status Quo of Land Reform Programmes

Land Reform Programme	Completion Date	Statutory Framework	Pre-transfer Implementation Manual	Post-transfer Implementation Manual
Restitution	31/03/2008	Restitution of Land Rights Act 22 of 1994 and regulations issued in terms thereof	X (in part: University of Pretoria (2006): <i>Operational Framework for Post-settlement Support Interventions</i>)	University of Pretoria (2006): <i>Operational Framework for Post-settlement Support Interventions</i>
Redistribution	2014	Various pieces of legislation	LRAD Manual	X
Tenure Reform	2012	Communal Land Rights Act 11 of 2004 (not yet commenced and no regulations issued as yet)	X	X

3 Communal Land Rights Act 11 of 2004

3.1 Background

After an extensive period for the drafting of various earlier versions of the Bill, the Minister of Land Affairs decided to start the process of drafting anew. Prior to the publication of the Communal Land Rights Bill, various workshops were held across the country. Subsequent to the publication of the Communal Land Rights Bill [B67-2003], an extensive consultation process was implemented. Serious concerns were raised as regards a number of issues, especially the legal status of women in respect of the existing skewed situation as regards access to, and control of, land, as well as the lack of effective participation in decisions pertaining to the administration and management of land. (See, *eg*, Plaas/NLC Community Consultation Project on the CLRB (2003) *Submission to the Portfolio Committee for Land and Agriculture: the Communal Land Rights Bill* www.uwc.ac.za/plaas/publications/CLRB%20-%20Submission%20-20%PLAAS-NLC.doc; Cross and Hornby (2002) *Opportunities and Obstacles to Women's Land Access in South Africa* 87-110; <http://www.info.gov.za/otherdocs/2002/landgender.pdf>; Commission on Gender Equality (2003) *Submission to the Portfolio Committee on Agriculture and Land Affairs: Communal Land Rights Bill [B67-2003]* http://www.cge.org.za/userfiles/documents/cge_parliamentary_sub_16sep03.doc.) In addition, many groups were of the view that traditional institutions should, in future, not play any role as regards the allocation and administration of land. Other concerns were, amongst others, that the Bill would not protect human rights in communal areas, the issue of overlapping rights was not addressed sufficiently, the lack of clarity regarding the content of the old order and the new order rights, as well as that service delivery and development would be more difficult to implement. (See, *eg*, Plaas/NLC Community Consultation Project on the CLRB (2003) *Submission to the Portfolio Committee for Land and Agriculture: the Communal Land Rights Bill* www.uwc.ac.za/plaas/publications/CLRB%20-%20Submission%20-20%PLAAS-NLC.doc.)

The Portfolio Committee on Agriculture and Land Affairs considered various amendments, taking into account a number of comments received during the public participation process.

However, a number of contested areas still exist, of which the following are two important examples:

- The submission of the Bill to the National Assembly as if its subject-matter were exclusively within the national domain. A divergent view was that, although land was not a Schedule 4 (Part A) national and provincial concurrent or Schedule 5 (Part A) provincial exclusive functional area, provincial and local government did have a clear role to play as regards implementation, and in light thereof that provinces should – through the Council of Provinces – have been involved in deliberations regarding the bill.

- The role that the new style Traditional Councils might play within the context of land administration and allocation. (Traditional Councils are the reconstituted versions of the old style Traditional Authorities as required by the Traditional Leadership and Governance Framework Act 41 of 2003, which also provides for 40% of the membership to be democratically elected, as well as for 30% female membership.)

The Communal Land Rights Act 11 of 2004, assented to by the President on 14 July 2004, is still to come into operation as it has not been promulgated in terms of section 47 in the Government Gazette. In addition, no regulations have been issued. As indicated above, neither a pre-transfer tenure reform implementation strategy nor a post-transfer coordination and support strategy as regards the CLaRA areas is currently in existence.

It is envisaged that a number of pilot projects (focusing on base line surveys) will be conducted in five provinces (Free State, KwaZulu-Natal, Limpopo, Mpumalanga and North West) (Personal communication: DLA officials 02 December 2005). These pilots will hopefully provide guidelines and benchmarks for the implementation of CLaRA across South Africa.

The following background (as contained in the Explanatory Memorandum to the Communal Land Rights Bill [47D-2003]) gives an overview of the historical roots and present day skewed situation as regards communal tenure in South Africa:

“South Africa’s inequitable and racially based system of land tenure causes an unsustainable imbalance in its citizens’ access to land, legal recognition afforded to land rights and the consequent levels of security of tenure, and the registration of those rights.

On the one hand, much of the country’s land is held by a minority of people under a system affording secure registrable (mainly individual) rights which are legally protected and enforceable.

On the other hand, the greater majority of people have only insecure tenure rights (held communally or individually), in less advantaged areas and circumstances.

The latter tenure rights (referred to in the Bill as ‘old order rights’) are often informal and unregistered and have a lower legal and social status, with title to the land vesting paternalistically in the State and the Ingonyama Trust.

The resultant overcrowding on communal land, lack of title to secure (‘new order’) rights, conflicting claims to land, gender inequities in the ownership and administration of communal land and the chaotic land administration systems occasioned by a plethora of disparate laws and administrative systems, perpetuate the imbalance in the enjoyment of the fundamental human and constitutional rights and prevent social and economic advancement of these areas.”

The Constitution contains the constitutionally mandated context for land reform and reform of access to natural resources. With reference to section 25(7) (tenure reform) and section 25(8) (natural resources), the Explanatory Memorandum to the Communal Land Rights Bill [47D-2003] identified a number of objectives. These objectives are also provided for in the final Act, the Communal Land Rights Act 11 of 2004.

The objectives of the Communal Land Rights Act 11 of 2004 make it clear that the skewed system of land control and insecure interests in respect of

communal land will be addressed in a comprehensive manner. Provision is made for the recognition and regulation of the “African traditional system of communally held land within the framework of the Constitution”. In providing legally secure tenure to communities, special emphasis will be put on the advancement of women, the youth and the disabled. The old, incomplete and disused territory-based registers will be replaced by a uniform national registration system. Comparable redress will be provided in cases where individuals’ rights cannot be secured. Constitutionally aligned community rules regarding land use will be registered. A systematic and democratic administration of communal land (involving the communities, the national and local spheres of government and traditional institutions) will assist communities in the administration of land and tenure rights.

3.2 Scheme of the Communal Land Rights Act 11 of 2004

Chapter 1 of the Act deals with definitions (s 1) and the application of the Act.

Juristic personality of the community concerned (s 3) and legal security of tenure (s 4) are provided for in Chapter 2.

Chapter 3 provides for various matters relating to the transfer and the registration of communal land: registration of communal land and new order rights (s 5); transfer of communal land by the Minister of Land Affairs after determination (s 6); functions of conveyancer (s 7); registration of subsequent transactions (s 8); conversion of registered new order right into freehold ownership (s 9); transfer costs and stamp duties (s 10); and surveying and registration costs (s 11).

The complex issues pertaining to comparable redress where the tenure of a particular individual cannot be legally secured, are regulated in Chapter 4: this involves the award of comparable redress (s 12) and the cancellation of old order rights (s 13).

One of the most time-consuming and potentially contentious matters determined in the Act is the Land Rights Enquiry (Chapter 5). Chapter 5 provides for land rights enquiry (s 14), designation or appointment of a land rights enquirer (s 15), notice of land rights enquiry (s 16), powers and duties of land rights enquirer (s 17), and determination by the Minister of Land Affairs (s 18).

An interesting innovation is the statutory recognition of the right of a community to make community rules pertaining to the administration and use of communal land within the framework of laws relating to spatial planning and local government. These rules must be registered after approval by the Director-General of Land Affairs (s 19 of Chapter 6) and can be amended or revoked by means of a general meeting (s 20).

As regards the governance of land administration matters, Chapter 7 envisages the establishment of a Land Administration Committee (LAC), of which the composition is prescribed to the extent that at least one third of the

total membership must be women and that all members must be elected by the community in the prescribed manner (ss 21-22). However, in cases where a Traditional Council, as established in terms of the Traditional Leadership and Governance Framework Act 47 of 2003, is in existence, such Traditional Council *may* – if so decided by the community concerned – act as the Land Administration Committee. In such a case its functions as LAC would – for purposes of all land related matters – be determined exclusively in accordance with the Communal Land Rights Act 11 of 2004 (and not in terms of the Traditional Leadership and Governance Framework Act 47 of 2003). The term of office of an LAC is five years (s 23). The powers and duties of LACs are enumerated in section 24; the most important being the allocation of new order rights to persons, including women, the disabled and the youth, the registration of communal land and of new order rights, the establishment and maintenance of registers and records of all new order rights and transactions, providing assistance in the resolution of land disputes as well as liaison on a continuous basis with the relevant municipality, Land Rights Board and any other institution regarding the making available of services and the planning and development of the communal land concerned.

At provincial (and possibly also at sub-provincial) level, the composition Land Rights Boards (LRBs) will be established (s 25 of Chapter 8), of which is prescribed in section 26 (including two members nominated by each Provincial House of Traditional Leaders). Disqualification as a board member is dealt with in section 27. The following are the most important powers and duties of a Land Rights Board (s 28):

- To advise the Minister of Land Affairs;
- To advise and assist a community generally, and in particular with regard to sustainable land ownership, land use and development issues (whilst providing for access to land on an equitable basis);
- Liaison with all three spheres of government, civil and other institutions; as well as
- To exercise such powers and duties assigned to and vested in the Board.

Resources of the Land Rights Boards are to be provided by the Department of Land Affairs from monies appropriated by Parliament (s 29). Service conditions must, in compliance with the Public Finance Management Act 1 of 1999, be determined by the Minister of Land Affairs.

Chapter 9 (ss 31-35) provides for the continuation, with amendments, of the KwaZulu-Natal Ingonyama Trust Act, 1994 (Act 3 KZ of 1994) whilst also determining that the KwaZulu-Natal Ingonyama Trust Board would in future be known as the KwaZulu-Natal Land Rights Board. Once the term of office of the present trustees has expired, its composition must comply with sections 26 and 27 of CLaRA. The above-mentioned provisions of Chapter 8 apply to the KwaZulu-Natal Land Rights Board. Section 34 vests some of the current Ingonyama Trust Board's functions in the Minister of Land Affairs. The regulatory framework for the KwaZulu-Natal Land Rights Board will in future also consist of the 1994 KwaZulu-Natal Act; however in the event of

any inconsistency with the Communal Land Rights Act 11 of 2004 Act, the latter will prevail (s 35).

Chapter 10 lists the normal general provisions: the provision of assistance to a community (s 36); the provision of municipal services and development infrastructure on communal land (s 37); the acquisition of land by the Minister of Land Affairs by means of expropriation (s 38); the application of the Act to other land reform beneficiaries of communal land or land tenure rights in terms of other land reform laws(s 39); the extension of access to courts to include the Minister of Land Affairs and a Land Rights Board (s 40); offences (s 41) and penalties (s 42). In addition, provision is made for the delegation of powers (s 43) and the making of regulations by the Minister of Land Affairs (s 44). This Chapter furthermore provides for the binding of the State by this Act (s 45), the amendment and repeal of laws (as indicated in the Schedule to the Act) whilst declaring that any law which regulates old order rights which is not mentioned in the Schedule would remain in force until repealed by a competent authority (s 46). Part 1 of the Schedule referred to in section 46 deals with the repeal and/or amendment of certain sections of the Black Administration Act 38 of 1927, the Deeds Registries Act 47 of 1937, the Upgrading of Land Tenure Rights Act 112 of 1991, the Interim Protection of Informal Land Rights Act 31 of 1996, and the Land Survey Act 8 of 1997. Part 2 of the Schedule deals with the repeal and or amendment of certain sections of the KwaZulu-Natal Ingonyama Trust Act, 1994 (Act 3 KZ of 1994). In addition, a number of homeland acts are repealed or amended: the Bophuthatswana Land Control Act 39 of 1979, the Venda Land Control Act 16 of 1986, the Venda Land Affairs Proclamation 45 of 1990, Ciskei Land Regulation Act 14 of 1982, the Qwaqwa Land Act 15 of 1989, the KwaNdebele Land Tenure Act 11 of 1992 and the Administrative Area Regulations – Unsurveyed Districts: Transkeian Territories Proclamation 26 of 1936.

3 3 Governance and relationship issues

One of the most complex issues, the resolution of which would impact directly on the extent of success of the Communal Land Rights Act 11 of 2004, relates to the relationship between the respective governance structures. Within this context, the relationship between the LAC and the Traditional Council concerned is of paramount importance. In addition, a working relationship will have to be established between each LAC and the local municipality; issues that might be divisive include the spatial planning and integrated development plans (IDPs) of the municipality concerned. Another matter that should be approached carefully is the relationship between the LAC and the Land Rights Board to which it is linked. At national level, a co-ordinated process led by the Department of Land Affairs to inform affected communities and all governance structures within the three spheres of government would be required prior to the actual implementation of the Communal Land Rights Act 11 of 2004.

It is expected that the regulations to be issued in terms of the Communal Land Rights Act 11 of 2004 will address the majority (if not all) of the

relationship issues. However, the actual realisation of sound and effective relationships is dependent on the implementation of appropriate training programmes as regards all the CLaRA structures as well as monitoring and evaluation at national level.

4 Ten key implementation steps

As regards the implementation of the Communal Land Rights Act 11 of 2004, a distinction should be made between two phases: (a) pre-transfer (up to the transfer of ownership to the community concerned); and (b) post-transfer (after transfer of ownership has been effected). Within this context, ten consecutive key implementation steps can be identified:

- 1 An inquiry should be made as to the policy framework, legislative framework, regulatory framework, institutional framework and the status of land registers (if any).
- 2 A Status Quo Report (comprising a comprehensive site by site and household by household Land Rights Enquiry) should be compiled, containing the categories of land parcels, types of rights and/or interests, rights and interests of people presently occupying sites, the claims of people (either present or absent) who do occupy land, the resolution of disputes, *etcetera*.
- 3 A comprehensive Baseline Survey should be conducted, collecting and analysing information on all present land uses, the potential use of the land (with regard to natural resources and their potential sustainable use in order to benefit the communities concerned in a sustained manner), as well as socio-economic information (*eg*, health, education, income, employment, skills, *etc*).
- 4 The drafting of an integrated, co-ordinated and all-encompassing Business Plan (Land Use and Development Plan) for each individual traditional community area.
- 5 The establishment of land administration structures (especially Land Administration Committees) and the drafting of their constitutions.
- 6 The transfer of ownership of the traditional community area by the Minister of Land Affairs to the community concerned.
- 7 The determination by communities of options of land rights or combinations thereof.
- 8 The development of the community areas (through implementation of the approved Land Use and Development Plan (business plan)).
- 9 The establishment and functioning of an appropriate co-ordination structure that would ensure the appropriate co-operation of all stakeholders (government and private sector, as well as of the community concerned).
- 10 The establishment and implementation of structures and systems for autonomous monitoring, evaluation and reporting, that would provide information on a regular basis in respect of key deliverables as

determined in the Land Use and Development Plan. Successful project-based monitoring and evaluation will result in timeous intervention and the taking of remedial action in appropriate cases.

5 Key challenges

Certain key challenges have been identified that should receive urgent attention. As regards the old order land legislation that has not yet been repealed, it would be advisable to initiate a rationalisation programme to identify and repeal such legislation whilst re-enacting matters that are not dealt with sufficiently in the Communal Land Rights Act 11 of 2004. In addition, the continued existence of old order legislation that has not been identified will in all probability result in legal uncertainty and possible conflictual situations.

There is an urgent need for subordinate legislation to be enacted in order to provide for any as yet unregulated issues pertaining to the Communal Land Rights Act 11 of 2004. An implementation plan must be drawn up for the Communal Land Rights Act 11 of 2004 Programme where goals are clearly stated against which progress can be measured. At project level, comprehensive land use and development plans need to be drawn up and monitored.

Although the Communal Land Rights Act 11 of 2004 provides the broad framework for tenure reform, it is imperative that a pre-transfer implementation manual, as well as a post-transfer support manual, be compiled. Funding is also a key challenge and sufficient funds should be made available for the successful implementation of the Communal Land Rights Act 11 of 2004. The training of officials and service providers is also a key issue which should be dealt with.

As regards governance, there is a need for the establishment of co-ordinating structures (both at provincial and project level). The same applies to monitoring and evaluation (including impact assessment), reporting and intervention mechanisms at programme level and project level.

The accommodation of the various roles of key stakeholders and the establishment of successful relationships will play an important part in the success of the Communal Land Rights Act 11 of 2004. Amongst these, the most important stakeholders are the Department of Land Affairs; the National Department of Agriculture; Provincial Departments of Agriculture; local government; new style traditional governance structures (Traditional Councils and Traditional leaders); Land Rights Boards (eg, the KwaZulu-Natal Land Rights Board (ss 31-35 of Chapter 9)) and Land Administration Committees.

Social facilitation, such as dispute resolution between communities and within communities, will form an important part of the implementation process. In addition, implementation planning should accommodate national, provincial and local development priorities such as the Poverty Alleviation, Sustainable Livelihoods and Food Security programmes, *etcetera*. Within this context Local Economic Development Programmes (LEDs), Provincial

Growth and Development Strategies (PGDSs), district municipalities' IDPs and local municipalities' IDPs should be aligned with the tenure reform agenda. Furthermore, the impact of tenure reform on related strategic government programmes, for example, new order water rights and community forestry management, should be appropriately integrated. Measures and systems should be put in place to provide for the impact of the Communal Land Rights Act 11 of 2004 on municipalities, for example, the implications of the Local Government: Property Rates Act 6 of 2004, of section 37 of the Communal Land Rights Act 11 of 2004 (with reference to the provision of municipal services and development infrastructure on communal land) and of the alignment of local and district municipalities' IDPs (including programmes, projects and funding, as well as human resources).

The legal and administrative report and the subsequent Status Quo Report (including the rights enquiry and the baseline survey) would serve as a management tool for the communities, as well as providing a better understanding of the implications of the Communal Land Rights Act 11 of 2004 as regards the ownership of the land. In addition, the LED and IDP offices within local and district municipalities should play a major role in determining where various development projects should be located. The Status Quo Report and the Land Use and Development Plan will also determine the framework for access to natural resources by individual community members, the implications of any development projects focussing on the sustainable use of natural resources undertaken on the land that might be privatised, and the implications for future development programmes of the municipalities concerned and for the operation of their LED departments.

6 Conclusion

The above overview underscores the need for two strategy documents, each focussing on a specific phase in the tenure reform process: (a) a pre-transfer implementation strategy, and (b) a post-transfer support strategy. Both documents should provide clear guidelines spelling out the specific role of each stakeholder, its deliverables, due dates as well as coordination, monitoring and evaluation mechanisms and systems at national (programme), provincial and local (project) level.

The pre-transfer implementation strategy would be used by community structures, officials, services providers and the private sector in implementing the first phase of tenure reform. These parties would conduct all the background and empirical research, draft a Status Quo Report, a baseline survey and a comprehensive Land Use and Development Plan (business plan), as well as recommend to the Minister of Land Affairs the transfer of land in question to the community reserved.

The post-transfer support strategy would deal with all developmental and support issues as well as coordination, monitoring and evaluation, with a specific focus on the sustainable improvement in quality of life of beneficiaries in terms of the tenure reform programme, and the sustainable

development and effective utilization of the land and related natural resources concerned.

This need for an effective co-ordination structure represents a major challenge that needs to be addressed urgently by the provincial governments concerned (both as co-ordinating and implementation institutions), key role players within the national sphere of government (eg, the regional offices of the Department of Land Affairs and the Department of Labour), the relevant district and local municipalities, and other stakeholder institutions (eg, the KwaZulu-Natal Land Rights Board).

These government institutions – with the provincial government being the lead support institution – have to co-ordinate and implement (as well as monitor and evaluate) the comprehensive and all-encompassing pre- and post-transfer support programmes which would have as their main objectives the sustained security of tenure, the sustained improvement in quality of life, poverty reduction, food security, sustained agricultural production, as well as the economic development of the community area concerned.

The above set of guidelines indicates the necessity to specify the role and functions of all key role players. At provincial government level the following three departments are of crucial importance:

- The Premier's Office as regards its constitutionally prescribed coordinating role;
- The Department of Agriculture, taking into account its pivotal role as the initiator and driver of sustainable development within the agricultural, environmental, nature conservation and related fields; and
- The Department of Local Government that has a support and supervisory role as regards local and district municipalities.

In conclusion, the implementation of the Communal Land Rights Act 11 of 2004 requires the provision of sufficient resources (human, financial, training and infrastructural) by the different national and provincial departments as well as by the district and local municipalities concerned. To the extent that national development agencies will be involved (eg, the Development Bank of Southern Africa, the Land Bank, the National Development Agency, and the Independent Development Trust), the necessary resources and mechanisms for the access thereof by beneficiary communities should be made available to ensure their sustained involvement in the tenure reform programme.

If the above challenges are addressed in a comprehensive and co-ordinated manner, the successful implementation of the Communal Land Rights Act 11 of 2004 in South Africa will serve both as an example and a framework for tenure reform in other southern African countries – in their case, the percentage of citizens living under various forms of communal tenure is significantly higher compared to South Africa.