

Agrarian Reform and Communal Property Associations: An Analysis of the Functionality of CPA's in Mpumalanga

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Abstract: Communal Property Associations (CPA) are established in terms of the Communal Property Association Act no: 28 of 1996, which was enacted to enable communities to form juristic persons, to be known as CPAs in order to acquire, hold and manage property on a basis agreed to by members of a community in terms of a written constitution; and to provide for matters connected therewith. Communal Property Associations were also established to ensure that such institutions are established and managed in a manner that is non-discriminatory, equitable and democratic, and that such institutions be accountable to their members. This paper is a desk top analysis of the causes of CPA dysfunctionality in Mpumalanga Province of South Africa. Communal Property Associations are supposed to operate in a fair, inclusive decision-making process. This however seems to be a problem with a majority of CPAs in Mpumalanga due to the fact that committee members refuse to be accountable to CPA members, they fail to convene Annual General Meetings, do not provide audited financial statements and so forth. Even though it is against the law, previously CPAs used to sell land, use it as collateral and pocket all the proceeds without involving other members. Using data on the extensive literature written on Communal Property Associations, using the available data from the Department of Rural Development and Land Reform, this paper explored the reasons for the failure of Communal Property Associations in Mpumalanga Province. The paper concludes that the reason for the dysfunctionality of CPAs is because of committees that fail to submit financial statements, factionalism and infighting, lack of capacity to support CPAs by the Department of Rural Development and Land Reform, and corruption and looting happening within CPAs by committees.

Keywords: Audited Financial Statements, Communal Property Associations, Compliance, CPA Act

1. Introduction

Racial segregation and its dire impact on land for the black population of South Africa began as early as the 1700s with the arrival of Dutch settlers in the Cape of Good Hope. When the apartheid government got into power it also came up with more laws to dispossess black people of their land and to control their movement. Prime agricultural land was in the hands of whites whereas barren land with poor rainfall patterns was set aside for black people. This inability of black people to farm their land affected household income and contributed to high poverty levels and ultimately hunger. The aim of the 1913 Native Land Act was to allocate more land to whites, plunge black people into poverty as it prohibited any form of farming that could enable black people to be self-sufficient, thus creating a cheap pool of labour for white farmers (Adams, 2000; Walker, 2002; FAO, 2002; Rugege, 2004; Ikdahl, Hellum, Kaarhus, Benjaminsen & Kameri-Mbote, 2005; Thwala, 2006; Kahn, 2007;

Sebola & Tsheola, 2014). It was then imperative that the new South African democratic government come up with strategies to restore land and secure black people's land rights hence the promulgation of the Communal Property Associations Act. Communal Property Associations have the ability to reduce unemployment and eradicate hunger, they have the ability to assist rural communities play a role in rural economies and also increase food security at household and community levels.

2. Literature Review

2.1 The Establishment of Communal Property Associations

Communal Property Associations are established in terms of the Communal Property Association Act no: 28 of 1996. The act was enacted to enable communities to form juristic persons to be known as CPAs in order to acquire, hold and manage property on a basis

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agreed to by members of a community. This is to be done in terms of a written constitution. The act states that such institutions are established and managed in a manner that is non-discriminatory, equitable and democratic, and are accountable to their members. This is to ensure that members of such institutions are protected against abuse of power by other members (Badenhorst, Pienaar, Moster, 2003; CPA Act, 1996; Alistair, 2006; Clark & Luwaya, 2017; Lahiff, nd; Centre for Law & Society, 2015; Nkuna, 2013).

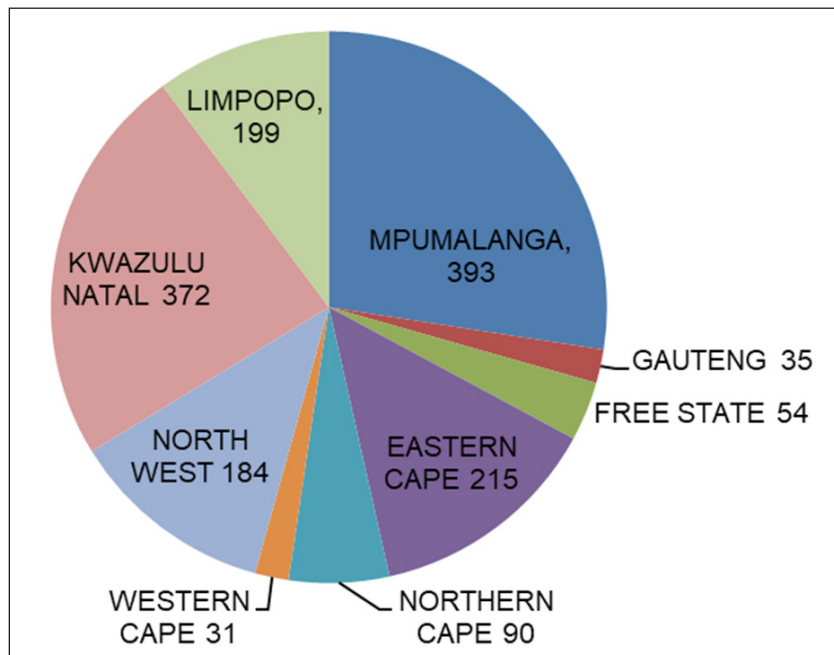
The Department of Rural Development and Land Reform encouraged the registration of CPAs in line with the CPA Act as a way of encouraging small scale farmers to also participate in the economy of the country and also contribute to the GDP growth of the country whilst also dealing with the unemployment issue. Section 17 of the Communal Property Associations Act No. 28 of 1996, requires that the Director General of the Department of Rural Development and Land Reform compile an annual report detailing compliance to the act by CPAs to the Minister. The Minister then tables the report to Parliament. The first report regarding CPAs by the Department of Rural Development and Land Reform was in 2010. To date (2019) one thousand five hundred and seventy-three (1573) CPAs have been established and registered since the passing of the act. Hereunder is a table indicating the breakdown of established and registered CPAs per province.

According to Figure 1 below, Mpumalanga is a leading province in terms of a high number of CPAs (393) followed by KwaZulu-Natal (372), Eastern Cape with two hundred and fifteen (215). Limpopo has one hundred and ninety-nine and North West has one hundred and eight-four (184), followed by Northern Cape with ninety (90), Free State with fifty-four (54), Gauteng with thirty-five (35) and Western Cape with thirty-one (31) registered CPAs each.

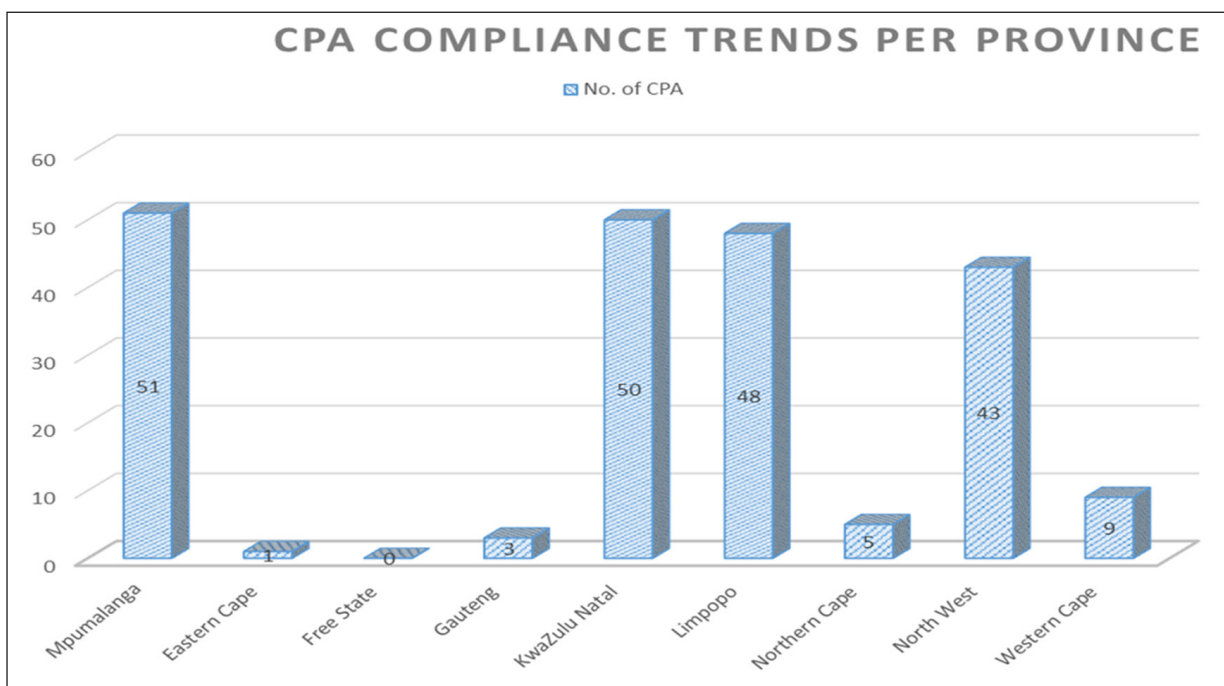
3. Overall Compliance Trends of CPAs in the Country

The CPA Act requires CPAs to submit annual report to the Director General of Department of Rural Development and Land Reform (DRDLR). For CPAs to be regarded as compliant, they are expected to submit annual financial statements or an affidavit if there were no business activities, records of annual general meetings, information of transactions such as leases and sales and records of new and terminated members. Even though DRDLR has a responsibility to monitor CPAs and provide mediation support in conflicts over rights, the department had previously not developed any strategy to deal with the challenges within CPAs. The fact that that communal property associations lack cohesion and are dysfunctional is not a new thing but has been an on-going issue since the inception. There has been an emergence of opposing groups that

Figure 1: Distribution of CPAs per Province



Source: Department of Rural Development and Land Reform 2018/19 Annual CPA Report

Figure 2: CPA Compliance Trends Countrywide

Source: Department of Rural Development and Land Reform 2018/19 Annual CPA Report

fight for control of CPA assets, groups that fight for leadership within CPAs, executive committees that refuse to vacate office despite the expiry of their term of office and general lack of compliance with CPA constitutions. Despite many efforts by the department with the assistance of stakeholders, this has not seen any fruition as problems continue to plague CPAs and render them dysfunctional.

Figure 2 above depicts compliance trends from 2009 until 2018.

Mpumalanga has the highest number of complying CPAs at fifty-one (51), followed by KwaZulu-Natal with fifty (50), Limpopo with forty-eight (48) and North West Province with forty-three (43). There is a slight increase of complying CPAs when comparing the 2017/18 financial year and the 2018/19 financial year. KwaZulu-Natal, unlike other provinces, has the highest number of traditional leaders which are a cause for concern because that creates a lot of conflict between them and CPAs. This compounded with the lack of matched support by DRDLR, affects the number of CPAs that could be compliant. This then means that the number of compliant CPAs for KwaZulu-Natal could improve more if there was support. Limpopo has forty-eight (48) CPAs that are complying but does not have a large number of registered CPAs when compared to KwaZulu-Natal and Mpumalanga. Free State is the

only province which has no compliant CPAs because of the fifty-four (54) registered, none is compliant. Eastern Cape has only one (1) compliant CPA out of the two hundred and fifteen (215) registered CPAs.

4. General Challenges within Communal Property Associations

Communal Property Associations are supposed to operate in a fair, inclusive decision-making process. The major challenge is the selling of land, because of the twenty (20) CPAs, eight (8) in the Eastern Cape, eight (8) in the Free State and four (4) in the Northern Cape has sold land since the inception of the CPA Act. There is however an annexure on the sale and purchase agreement which cites restrictive measures that should also be on the title deed. The sale and purchase agreement indicates that nobody shall dispose of the Property or any portion thereof or use it as security for any obligation without prior written authorisation of the Minister of Rural Development and Land Reform. Despite all the corruption happening within CPAs, no one to date has ever been prosecuted. In order to address these challenges, the Department of Rural Development and Land Reform had to come up with the following measures to support CPAs. The following have been identified as general problems that render all CPAs non-compliant with the CPA Act:

4.1 Submission of Audited Financial Statements

DRDLR requires that CPAs annually submit audited financial statements as encapsulated in the CPA Act (sec 9(1)(e)). The aim is to provide an opinion whether the information being verified is in accordance with specified criteria as required by law. The opinion of the audit outcome is intended to provide reasonable assurance that the financial statements in accordance with the financial reporting framework. Auditors then release an opinion of the overall financial statements in the form of a report. Since CPAs are entrusted with properties belonging to the community, they are compelled by law to submit financial statements that have been audited by reputable audit firms (Republic of South Africa, 2017/2018). Due to misappropriation of funds and other irregularities, most CPAs fail to submit such statements. Mpumalanga is a leading province with a large number of dysfunctional CPAs followed by KwaZulu-Natal and Eastern Cape. Out of the three hundred and ninety-three (393) registered CPAs in Mpumalanga, only fifty-one (51) submitted their audited financial statements.

4.2 Annual General Meetings

According to the Communal Property Associations Act 28 of 1996, CPAs are required to hold annual general meetings and submit basic information to DRDLR. All dysfunctional CPAs have committees that fail to submit financial statements and that is the cause for the non-existence of annual general meetings where committees account to general members about how they have utilized CPA resources. The failure of most CPAs to convene annual general meetings is because of corruption and looting happening within CPAs by committees (Republic of South Africa, 2017/2018). CPA records are thus not accessible to CPA members because those who were put in power are hiding the misuse of CPA property.

4.3 Verification of CPA Membership

It is required by law (CPA Act) that the requirement for the registration of a CPA includes the full details regarding the proposed name of the association and also a list of names and identity numbers of the potential members of the association (Carey-Miller & Pope, 2000; CPAA, 1996). The membership list should be an updated one, or to be continually updated where there is a need. Most of the time

accusations surface where members are intentionally excluded, or those who are not supposed to be forming part of the CPA due to them not being the original or direct descendants emerge as new claimants and question the legitimacy of verified claimants. This is a common problem within CPAs that leads to dysfunctionality. Mpumalanga is still struggling with the verification of CPA members which is a cause of factionalism and division for those excluded in the initial phase of CPA inception. Other community members who allege to be the original or direct descendants within a community feel they were deliberately omitted.

4.4 Land Transactions

The CPA Act 28 of 1996 only states that "*the association may not sell or encumber the property of the association, or any substantial part of it, without the consent of a majority of the 45 members present at a general meeting of the association*". Of the twenty (20) CPAs, eight (8) in the Eastern Cape, eight (8) in the Free State and four (4) in the Northern Cape are reported to have sold land since the inception of the CPA Act of 1996 (Republic of South Africa, 2017/2018). DRDLR now has an annexure on the sale and purchase agreement which restricts CPA members from selling land or using it as collateral without permission from the Minister. This however is not on any policy of the department and as such it can be safely assumed that officials preparing the sale and purchase agreement may or may not instruct the conveyancer to capture that information on the title deed.

4.5 Lack of Capacity

Just like all other provinces, Mpumalanga lacks the capacity to support CPAs. In the whole country, there are only one hundred and ten (110) personnel dealing with CPAs. Mpumalanga has only fourteen (14) staff members, the post of a Director just recently filled (2019), there are three project coordinators, the posts of senior project officers and legal officer are still vacant (Republic of South Africa, 2018/2019). This fact was also cited by the then Acting Director General Ms. Leona Archary during CPA deliberations in Parliament in 2017. The lack of support means there is no monitoring of CPAs hence they are left to fend for themselves, especially community members who have no powers to hold those that have been elected accountable (Lahiff, nd; Clarke & Luwaya, 2017). There is a plethora of skills and

competencies that are required in running a farm and leaving CPAs to function without support adds to their failure.

4.6 Political and Traditional Interferences

Traditional leaders are said to also play a role in causing division within CPAs especially where there are mineral resources or the land is prime agricultural land (Matukane, 2011; Centre for Law & Society, 2015; Terblanche, Stevens & Sekgota, 2014). CPAs face extreme interference and antagonism from traditional leaders who do not believe in the right of CPA members to establish and run CPAs but feel they should be the ones managing such CPAs. Prominent conflict is more visible in cases where CPAs are located in mineral rich areas or if a particular CPA has resources and in this case where DRDLR offer some funding (Republic of South Africa, 2016/17). The interference comes out in a form of the emergence of concerned groups which fight any progress within CPAs and thus render them dysfunctional.

5. Intervention by the Department of Rural Development and Land Reform

5.1 Capacity Building

The Department of Rural Development and Land Reform offers training on the management of CPAs paying particular attention to corporate governance. This is however not having any impact since about 90% of CPAs are dysfunctional despite the training or skilling of members (Republic of South Africa, 2018/2019). Lack of personnel does hamper the process, because the limited staff members have a mammoth task of supporting four hundred and twenty registered CPAs. This then means that CPAs are left unsupported and thus not assisted with problems they are encountering; hence committee members are left to believe that they are a law unto themselves (Manenzhe, Zwane & van Niekerk, 2016). It can be safely assumed that the absence of the visibility of DRDLR staff members within CPAs does add to the exacerbation of corruption and creation of a *laissez-faire* environment.

5.2 Communal Property District Forums

Communal Property District Land Committees have been established in accordance with the recommendation by the National Development Plan (NDP). These suggested bodies have been established in

each district municipality and consist of diverse stakeholders including all agricultural landowners in the district, key representatives of the private sector, government agencies such as the Land Bank and Agricultural Research Council, and provincial government departments addressing rural development, land reform and agriculture. The main function of district land committees are to develop standard operating procedures, formats, spreadsheets, checklists and business process flows, ensure compliance with Departmental strategic plans, policies and Legislation and ensure quality control for all land and Recapitalization applications before submission to subsequent approval structures. The forums have been utilized to link CPAs with each other so that they are able to share best practices with those that are doing well (Republic of South Africa, 2017/18). These are however said to be dysfunctional.

5.3 Advisory Committee on Judicial Administration

The aim of this committee is to assist in screening recommendations made by The Department of Rural Development and Land Reform to put CPAs under administration. For the first time in Mpumalanga, three CPAs have been referred to this committee requesting that the Director-General refer the matter to the Land Tenure Security Policy and Systems Development Directorate to place them under administration (Republic of South Africa, 2017/18).

5.4 CPA Amendment Bill

The CPA Act No. 28 of 1996 is currently undergoing amendments owing to the gaps and loopholes identified during its implementation. The CPA Amendment Bill is currently undergoing parliamentary consultations process to allow the public to make inputs before it is considered and passed into law. The Bill makes provision for the creation of the office of the CPA Registrar and his/her deputies which will enable efficient oversight of the CPAs. The Bill further aims to extend the establishment of CPAs for Labour Tenants and Farm dwellers as they were not catered for in the Act as it is currently. It was discovered that the Act has significant gaps with regard to protecting the rights of ordinary CPA members and was less strict on those individuals who were found to have contravened the Act and CPA constitutions. In order to deal with disruptive individuals, the Bill seeks to introduce certain

actions as offenses and remedial actions where necessary. The Bill is however criticized by Clarke & Luwaya (2017) for giving the Minister of Rural Development and Land Reform powers to make decisions regarding CPAs. Their argument is that CPAs should be able to retain their autonomy. The autonomy of CPAs has not produced any positive results because to date out of the four hundred and twenty CPAs, only twelve (12) are functional.

5.5 Tenure Forums

Tenure forums were established to specifically assist CPAs resolve internal conflict as a result shortage of staff to support CPAs by DRDLR. Membership is voluntary and as such anyone in the community or from other CPAs can be a member. The shortcoming is that there are resources such as transport to attend to at CPA meetings where there are identified problems. As such even though people volunteered to be members of the forum their impact is non-existent since these forums are at the moment dysfunctional.

6. Conclusion and Recommendations

This paper revealed that the reason for the dysfunctionality of CPAs is because of committees that fail to submit financial statements, factionalism and infighting, lack of capacity to support CPAs by the Department of Rural Development and Land Reform, and corruption and looting happening within CPAs by committees. The results also show that where there is constant support by DRDLR, CPAs are able to become compliant with the CPA Act. CPAs are supposed to uplift the economic development of rural communities and thus assist government in the eradication of poverty and creation of jobs. However, that does not work as there are those who regard CPAs as vehicles to self-enrichment. This fact is exacerbated by the fact that there are no consequences for those who misuse monies and properties belonging to people. In some instances, committee has gone as far as selling land and pocketing proceeds without the knowledge of community members. The lack of a business model with a policy that will guide CPAs and differentiate normal functions of CPAs and business function is a huge factor that leads to the failure and dysfunctionality of CPAs. The huge number of CPAs that are dysfunctional is an indication that government has failed to use CPAs as a vehicle to create jobs, eradicate poverty and hunger, and as such there

are no small scale farmers who are contributing to the GDP of the country. Based on the results of this paper regarding the dysfunctionality of CPAs in Mpumalanga, it is recommended that:

- CPAs should be structured within a business model where a separate entity that reports to the CPA board of directors, runs the business side of the CPA. One or two members of the board should form part of the business entity so that there is skill transfer and monitoring of reporting on the business plan of the CPA. This will assist in lessening disruptions especially when there is a change in the CPA leadership.
- A policy on CPA business operations should be enacted as a matter of urgency. This will enable a uniform application of the law when running the business side of CPAs.
- CPAs should be strengthened through monitoring and enforcement of compliance measures under the law. Barriers and constraints identified that hinder the progress of CPAs to be addressed under the ambit of the CPA Act.
- Whilst the CPA Amendment Bill is being processed, the DRDLR needs to allocate or appoint dedicated personnel with the required skills to work solely with CPAs.
- Legal steps be taken against CPA structures that misappropriate properties of CPAs.
- Training should focus more on the green economy rather than the payment of dividends. This however should balance the need of the young and those of the aged since the youth can wait longer for the fruition of their plans whilst the old members wouldn't able to do so. It is important to invest and grow CPA business instead of focusing on instant gratification.

References

- Adams, M. 2000. Evaluation of ODA to the Land Sector. Department for International Development: London.
- Alistair, F.M. 2006. Geographies of Land Restitution in Limpopo Province, place, territory and class. Ohio State University: Ohio.
- Badenhorst, P.J., Pienaar, J.M. & Mostert, H. 2003. Silberberg & Schoeman's Law of Property, 6th ed. LexisNexis Butterworths Publishers: Cape Town.

- Bennett, J., Ainslie, A. & Davis, J. 2010. Fenced in: Common property struggles in the management of communal rangelands in central Eastern Cape Province. South Africa. *Land Use Policy*, 27(2):340-350.
- Carey-Miller, D.L. & Pope, A. 2000. *Land Title in South Africa*. Juta & Co, Ltd: Cape Town.
- Centre for Law and Society. 2015. *Communal Property Associations*. Centre for Law Society: University of Cape Town.
- Clark, M. & Luwaya, N. 1994-2017. *Communal Land Tenure*. Commissioned report for High Level Panel on the assessment of key legislation and the acceleration of fundamental change, an initiative of the Parliament of South Africa. Land Accountability Research Centre: Cape Town.
- FAO. 2002. *Land Tenure and Rural Development*. FAO Land Tenure Studies. Food and Agriculture Organisation of the United Nations: Rome.
- Ikdahl, I., Hellum, A., Kaarhus, R., Benjaminsen, T.A. & Kameri-Mbote, P. 2005. Human rights formalisation and women's land rights in Southern and Eastern Africa. *Studies in Women's Law*. University of Oslo: Norway.
- Kahn, N. 2007. Land and Agrarian Reform in South Africa. Centre for Policy Studies. *Policy: Issues and Actors*, 20(12):1-38.
- Lahiff, E. n.d. *With What Land Rights*. Programme for Land and Agrarian Studies (PLAAS). University of the Western Cape: Cape Town.
- Manenzhe, T.D., Zwane, E.M. & van Niekerk, J.A. 2016. Factors affecting sustainability of land reform projects in Ehlanzeni District Mpumalanga Province, South Africa. *South African Journal of Agricultural Extension*, 44(2):30-41.
- Matukane, T.E. 2011. *Sustainability of Land Restitution Projects with reference to Shigalo Land Restitution Project in Makhado Municipality*. Unpublished Masters Dissertation. University of Limpopo: Polokwane.
- Nkuna, M.J. 2013. *The evaluation of the sustainability of the communal property association farming project of the Shigalo Wa Muhunguti community, in Vhembe District of the Limpopo Province*. Unpublished Masters Dissertaion. University of Limpopo: Polokwane.
- Republic of South Africa. 1996. *Commual Property Associations Act*. Pretoria: Government Printers.
- Republic of South Africa. 2017. *Commual Property Associations Amendment Bill*. Pretoria: Government Printers.
- Republic of South Africa. Department of Rural Development and Land Reform. 2017/18 CPA Annual Report. Pretoria: Government Printers.
- Republic of South Africa. Department of Rural Development and Land Reform. 2018/19 CPA Annual Report. Pretoria: Government Printers.
- Rugege, S. 2004. Land Reform in South Africa: An overview. *International Journal Legal Information*, 32(283):1-28.
- Sebola, M.P. & Tsheola, J.P. 2014. Economics of Agricultural Land Restitution and Redistribution in South Africa: Willing-Seller, Willing-Buyer Business Imperatives Versus Socio-political Transformation? *Journal of Human Ecology*, 46(2):113-123.
- Terblanché, S.E., Stevens, J.B. & Sekgota, M.G. 2014. A comparative analysis of two land reform models: The Mashishimale farm management model and the Nkumbuleni strategic partnership model, South Africa. *Journal of Agricultural Extension*, 42(2):2014:81-102.
- Thwala, W.D. 2006. *Land and Agrarian Reform in South Africa*. In *Promised Land: Competing visions of Agrarian Reform*. Institute for Food and Development Policy: New York.
- Walker, C. 2002. *Land Reform in Southern and Eastern Africa: Key issues for strengthening women's access to and rights in land*. Report on a desktop study commissioned by the Food and Agriculture Organization. FAO Sub-regional office for Southern and Eastern Africa: Harare.