



## **A to Z of the Transformation of Certain Rural Areas Act, 1998 (Act No. 94 of 1998) (TRANCRAA)**

### **Where does the Act apply?**

The Act currently applies to 23 rural areas in four provinces in South Africa. These are the so-called “coloured rural areas” where the land is held on a communal basis by the residents in that area. The four provinces are the Western Cape, Northern Cape, Eastern Cape and the Free State.

The land is presently held in a trust for the communities by the Minister of Rural Development and Land Reform {in terms of the Rural Areas Act, 1987 (Act 9 of 1987) which has since been repealed}. No residents in these areas hold individual title deeds for their residential plots.

There are 12 such areas in the Western Cape, 8 in the Northern Cape, 2 in the Free State and 1 in the Eastern Cape:

### **Western Cape**

The areas being dealt with in the Western Cape are:

- Friemersheim (hectares unknown),
- Haarlem (559.0012 hectares),
- Kranshoek (189.8325 hectares),
- Slangrivier (804.2801 hectares),
- Zoar (5902.0744 hectares),
- Rietpoort (15 003.4101 hectares),
- Ebenhaeser (18 257 3294 hectares + 61.3000 ha unregistered State land)
- Mamre (4277.7858 ha),
- Saron (3 323.5025 ha),
- Suurbraak (4 156.4219 ha),
- Genadendal (4 641.3832 ha) and
- Pniel (55 ha).

(The Pniel area of 55 hectares is governed in terms of township establishment legislation and no transformation process is envisaged).

### **Free State**

In the Free State the areas affected by TRANCRAA are Oppermansgronde and Thaba Phatsoa.

Because a land claim had been lodged on the Oppermansgronde, it has since been dealt with by the Land Claims Commission.

Thaba Phatsoa is situated near the town of Tweespruit in the Motheo District Municipality. The local Municipality is Mantsopa Local Municipality. Service providers are to be appointed to execute a land rights enquiry and assist with the development of a Land Management Plan.

## **Eastern Cape**

The area is known as Enon/Bersheba, occupied by African and coloured communities respectively. The physical description of the area is Farm No 40 in the division of Uitenhage in the Sundays River Valley municipality. It is about 11 000 hectares.

## **Northern Cape**

Information pertaining to the Namakwa district is as follows:

- Leliefontein,
- Concordia,
- Pella,
- Komaggas,
- Steinkopf and
- Richtersveld.

The extent of these areas are approximately 1 188 670 hectares.

The Leliefontein land is held by the Kamiesberg Municipality, while the other rural areas have Communal Property Associations (CPAs) as legal entities.

### **Information pertaining to the Siyanda district is as follows:**

The Mier and Eksteenskuil Projects each include a group of rural areas (and informal settlements in the case of the Mier project).

Both have the Siyanda Municipality as the land-holding entity.

## **What is the purpose and what are the objectives of the Act?**

To a large extent, the lack of development in these areas is caused by the restrictions and inadequacy of Act No. 9 of 1987 – this Act is also in contradiction with the Constitution. To address the problems experienced in the management of these areas, a new Act, namely TRANCRAA was passed by Parliament in 1994, with the view to:

- Make provision for the transfer of land to Municipalities and other entities (for example Communal Property Associations (CPAs);
- Lift restrictions on the transfer of land;
- Make provision for mineral rights and related issues;
- Repeal Act No. 9 of 1987 and other relevant legislation.

The Act ensures that a facilitated process is followed to assist the Minister to take an informed decision on how the land, which is presently held in trust by him, should be held and managed in the future.

## **What does the Act provide for?**

The Act has been designed to:

- Provide content to section 25(6) of the Constitution.
- Provide for the repeal of the Rural Areas Act, 1987 (Act No. 9 of 1987) – after an 18-month transitional period.

## **The Constitution and TRANCRAA**

The latter is one of the Acts pertaining to Section 25(6) of the Constitution which gives individuals and communities the right to security of tenure. There must be a balance to ensure that the rights of individuals are protected against the rights of other members of the same community, individual non-community members and other communities.

Section 2 of TRANCRAA ensures that the rights of both individuals and the community are considered: It states that:

*“No transfer of land referred to in subsection (1) must take place unless the Minister is satisfied that, in the event of a transfer to –*

- (a) a municipality, the legislation applicable to such a municipality; or*
- (b) a communal property association or other body approved by the Minister, the rules of such association or body make suitable provision for a balance of security of tenure rights and protection of rights of use of –*
  - (i) the residents mutually*
  - (ii) individual members of such a communal property association or other body;*
  - (iii) present and future users or occupiers of land”.*

Exact details/regulations regarding the management of the land are not provided for in TRANCRAA.

## **What are the implications regarding communal rights in terms of TRANCRAA?**

TRANCRAA does not end the communal responsibilities of the state, the communities and the community members.

### **• What happens during the transitional period?**

The transitional period commences in terms of a Notice published in the Government Gazette. During this period, the residents of a rural area will consider the various options available to them on how the land will be held and managed in future, and make a decision.

Once the residents have made a decision, a report for the area must be submitted to the Minister, in which recommendations are made about the land-holding entity and the appropriate body/person the land should be transferred to.

### **• What are the criteria for residency?**

If the Minister is satisfied that the recommendations guarantee a balance between security of tenure rights and land use rights, the Minister will take steps to transfer the land to the entity concerned.

- **What are the land-holding options referred to?**

The land may be transferred to a Municipality, a Communal Property Association (CPA) or another legal entity (such as a trust or a closed corporation) to hold and manage the land.

There are specific advantages and disadvantages regarding each of the options (contact the Provincial Offices for more information).

- **May the transitional period be extended if necessary?**

Yes. The period may be extended for a period not exceeding six months. The Department now wishes that the process may be shortened, if possible.

- **What does the entire transformation process entail?**

The process consists of five distinct, but overlapping phases that deal with the following issues:

1. Preparation for transformation
2. Land rights enquiry
3. Land use planning
4. A tenure management plan
5. Choice of a land-holding and land management entity and its implementation.

- **What happens during the preparation for the transformation phase?**

The local authority or municipality responsible for the area should be made aware of the Act and the proposed process: this entails information meetings with the local municipality and where necessary, the district municipality. They need to be informed of their obligations in terms of the Act, as well as their role to ensure that a viable land management system is established.

Secondly, public participation forms an essential part of all the phases. The process and procedures are explained to the community (this is a capacity building process).

- **How is public participation ensured?**

Each community has to form a Land Development Forum that has been democratically elected and instituted.

- **What is the function of this Land Development Forum (LDF)**

Its function is to ensure that the interests, needs and wishes of the community are protected. On behalf of the community, a LDF:

- Participates in meetings/workshops during the transformation process.
- Considers land use practices and land ownership and develops appropriate land holding and land-use models/options.

- Submits these models/options to the community for approval.

Thirdly, a Transformation Committee is established by the local municipality, consisting of the Department of Rural Development and Land Reform (RD&LR), the provincial department responsible for local government matters, the local municipality, the district municipality (where applicable), and the consultants appointed to execute the land rights enquiry. The local municipality, with the assistance of the Transformation Committee, formulates a plan of action.

- **What is the role and function of the Transformation Committee?**

Transformation Committee meetings are held at least once a month: feedback is given on progress made and discussions held on various subjects required by the Act. Community meetings are also arranged by the Transformation Committee to ensure that community members have a clear understanding of and interest in the process.

- **What does the land rights enquiry process entail?**

The objective is to establish land use and land tenure/ownership and to list all residents in the area who qualify to participate in the decision making process:

- Investigate land use practices;
- Determine land tenure/ownership;
- A registration campaign is initiated and administered;
- A voters role is compiled.

- **What does the land use planning phase entail?**

The objective of this phase is to facilitate a collective understanding of the current land usage, development projects in the planning process stage and to prioritise land use needs of the respective community/communities. A land use map is then compiled. (The Transformation Committee assists in this regard.)

- **What does the determination of land tenure/ownership entail?**

The objective is to obtain a complete picture of existing rights and interests in the land. The different parties/individuals who have an existing material interest in the affected land are identified. Land disputes are also identified and resolved.

- **Why is a Tenure Management Plan necessary?**

A tenure and land management plan representing a range of tenure and land management options should be prepared. Once the land-use plan has been compiled, the Transformation Committee will begin exploring different options in which the land will be held and managed.

- **What does the process of selecting a land holding entity entail?**

During this phase the residents will be presented with an opportunity to scrutinise the land use plan and the recommendations concerning the various landholding and management options. Information about the various landholding and management options will be distributed and a referendum will be convened to adopt a legal entity that will hold and manage the land. A final

report will then be submitted to the Minister to request for transfer of the land to the selected entity (as approved by the community/residents).

- **What preparations are necessary for a referendum?**
  - The registration of residents, using the voter roll compiled during the land rights enquiry and checked against the IEC's voters roll. The Transformation Committee verifies if a person wanting to vote is a resident or not.
  - Preparation of ballot papers: a draft ballot paper is first approved by the Department and the Transformation Committee.
  - An information session is held and the referendum is announced by the Transformation Committee.
  
- **These steps are taken by the Transformation Committee to ensure awareness of the referendum in the relevant community/communities**
  - Pamphlets containing the purpose of the referendum, the options and the referendum date and venue are distributed in all settlements;
  - Community meetings are held in all the settlements explaining the referendum's procedure and the purpose of the referendum;
  - The referendum is advertised on local radio;
  - Announcements are made at all churches in the community;
  - Arrangements are made by the Transformation Committee for referendum day;
  - The Independent Electoral Commission (IEC) presides at the referendum, in conjunction with the Department and the Transformation Committee

Based on the results of the referendum, the consultants make proposals which are then evaluated according to the relevant legislation, taking into consideration the security of tenure of each resident as well as the socio-economic status and sustainability of each option.

### **Tenure Reform Implementation Systems**

0800 007 095 (toll-free)

#### **Provincial offices:**

Western Cape	021 426-2947
Northern Cape	053 831-4090
Eastern Cape	043 700-7000
Free State	051 400-4228