

Discussion document for LandNNES

Concept note for a national land observatory



The document is for discussion purposes

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1. Background

LandNNES is a broad platform-based civil society platform which brings together over 22 civil society formations (members) with a common medium-to-long term vision around the broad theme of people centred land governance. The initial impetus for LandNNES came from the International Land Coalition (ILC) and has its eyes on both the policy and implementation dimensions of land governance through the multi-stakeholder forum.

In late September 2017, a national Multi-Stakeholder Platform (MSP) was established with the FAO Country Office playing a catalysing role. With the MSP created, being co-chaired by Department of Rural Development and Land Reform (DRDLR) and the Association for Rural Advancement (AFRA), it was important that the synergies and complementarities between the National Engagement Strategy (NES) chaired by AFRA and supported by the International Land Coalition (ILC), and the UN-FAO Voluntary Guidelines on Governance of Tenure (VGGT) related activities merge into a single approach to strengthen tenure governance, especially for marginalised and vulnerable groups.

Civil society organisations took the decision to organise themselves into a national network, called LandNNES, to ensure that civil society voice is strengthened and able to participate effectively in policy level engagements with government and other actors in the Multi Stakeholder Platform (MSP). The overarching goal is to strengthen land governance and land rights in South Africa. LandNNES has developed a 'Multi-year Action Plan 2019-2021' adopting the NES approach '*to connect, mobilise and engage*'. The objectives are fully in line with the objectives of FAO's global support to the Voluntary Guidelines on Governance of Tenure (VGGT) implementation program aimed at achieving:

- An increased number of good fit national policies and legal framework adopted and promulgated: this relates to facilitating and providing technical assistance to the review of existing and draft policies resulting in recommendations for alignment with VGGT principles and internationally recognised best practices; and
- An increased number of organisational frameworks and coordination mechanisms are strengthened in functioning and performance.

2. Purpose of the Discussion Document

This document is primarily intended for internal discussion purpose among LandNNES members, for the purposes of clarification of our own proposal for a national land observatory. Secondly, the other purpose of the document is for LandNNES to use as a basis for engagement with other stakeholders such as government, parastatals, business and labor. Thirdly, the purpose of the document is for LandNNES to use in engagement with parliamentarians of all political persuasions.

In 2018 LandNNES prepared three related internal discussion documents;

- *Inclusive Land Administration in the Context of People-centered Land Governance*
- *Developing a People-centred Land Governance Policy Framework: Towards a pro-poor program built on equitable access to land*
- *An overview of South Africa's Land Data Ecosystem for a People--centred Land Governance system*

The three documents were used by LandNNES in its engagements with various stakeholders advocating for specific reforms in land governance and land administration institutions. While institution building is at the center of the proposals advocated by LandNNES for repurposing of land administration systems, the establishment of a national land observatory is conceived as an informational infrastructure tool to support land governance.

Among other processes LandNNES participated in a number of sessions arranged by the Presidential Expert Advisory Panel (PEAP) towards the end of 2018 and beginning of 2019, culminating in The *Final Report of the Advisory Panel on Land Reform and Agriculture* dated 4 May 2019. While the report erroneously conflates land administration with administration of land tenure, supports the idea of a land observatory, partly for the recordal of unregistered rights, and idea originally proposed by the RSA Parliament, High Level Panel (HLP). The PEAP report while foregrounding land governance and administration, it supported LandNNES' idea of the establishment of a National Land Observatory.

The proposals that have thus far been mooted by the Expert Advisory Panel now need to be flashed out into detail as the process moves to design stage. LandNNES warns against a narrow and technicity approach to the proposed national land observatory, but one that should be located within be understood as only a small, but a critical infrastructure within a broader new way of government conduct. If this proposal is to fly, it has to be supported by a whole new set of institutions.

3. A glimpse at our vision

3.1 Open Government Data Trajectory

LandNNES is an advocate of Open Government (OG) and Open Government Data (OGD). The notion of Open Government is about the mission to “make government more inclusive, responsive and accountable, boiling down to what everyone refers to as transparency.”¹ What OG does is to make effective participation in decision making possible. It is important to make a distinction between Land Information Systems (LIS) and Land Information Management Systems (LIMS), the latter placing emphasis on the use of information in management. LIS imply a combination of human and technical resources, together with a set of organizing procedures, which results in the collection, storage, retrieval, dissemination, and use of (land) data/(information) in a systematic fashion. LIS and LIMS are technical tools for collection, storage and dissemination of land information, while the idea of OGD carries technical, philosophical undertones. At a technical level, the use of computers creates new opportunities for integration and sharing of data/information in ways which were not possible in the past. While LIS do not necessarily imply the use of computers, utilisation of computer technology is not a prerequisite in LIS, whereas the use of computers is a quintessential for OGD. LandNNES subscribes to the belief that a key element of democracy entails popular participation process by the citizens, and access to data/information, and OGD is an enabler. This underlying philosophy is founded on the assumption that participation and engagement are essential ingredients democratization.

The OGD logic is founded on the idea of undertaking the data capturing, storage and dissemination for the primarily purpose of empowering ordinary citizens to participate in governance processes, while the logic of LIMS is limited to satisfying state management requirements and no more. LandNNES understand that *Governments the world over have always collected, analyzed, and used information in their legislatively mandated duties; such activities are essential to delivering any service to citizens. But government has rarely been in a position to have to think about what users, in a wide variety of roles, would find personally, politically, professionally, economically, or medically valuable to know from among the data that government already possesses or could move to acquire.*

South Africa is at a crossroads in respect of land governance and administration saddled with a land administration system that is archaic, fragmented, broken and incoherent, desperately in need for shift to modern land knowledge sharing system which facilitate a break with the past. Typical examples of fragmentation could be demonstrated by the fact that DRDLR, DAFF Environmental Affairs, Department of

¹ <https://www.opengovpartnership.org/about/about-ogp> (Last visited 02 June 2019)

Human Settlements all generate their own data infrastructures that are not integrated or do not talk to each other. The multiple infrastructures are not only costly to the fiscus in setting them and maintaining them, but make alignment very difficult. Various private sector bodies also have their own data infrastructures. In a nutshell, South Africa's land knowledge administration systems have lagged far behind the rapidly developing geotechnologies.



Figure 1: Interoperability

South Africa's proposed land observatory requires some level of interoperability of systems between and across different generator of land data. Figure 1 above illustrates the principle of pooling data from multiple computers into a single system. The need to complete legal, legislative and policy reforms in ways that anticipate and allow for the harnessing of the data revolution for accelerated sustainable development

At a global level there is a growing realisation for governing land (land, aquatic and air spaces) holistically, and work is underway towards interdisciplinary approaches of earth systems governance which bring together environmental history, international organisations, science and technology studies focusing on social and political consequences of human on earth systems. At a global level, work on global warming and climate change is primarily focusing on preventing negative consequences, by setting bounds and limits to human activity, in various domains, such as local and aggregate levels of pollution, exploitation of resources, the extinction of species, etc. Modern GIS tools, remote sensing technologies, cloud-based earth observation techniques support the ability to monitor changes in their condition (land cover, water, air quality) and significant. A national land observatory could potentially provide a repository for these data sets.

For South Africa in particular to be able to take advantage of the data revolution as well as the fourth industrial revolution (4IR), a holistic strategic approach is necessary. A phenomenon such as climate change, which unquestionably the deepest and most profound event in recent history, presents an unequalled opportunity to develop a

national land data infrastructure. The climate change phenomenon in which the "history and geology have become interwoven" in a manner that poses a challenge to the survival of humanity, requires new ways of collecting, storing and dissemination of land information. There is growing acknowledgement that availability of data is meaningless unless the technical infrastructure is matched with the country's capacity to make use of the land data/information, as well as the corresponding laws and policies which allow people free access, use and reuse of data need to be put in place.

In the context of SA the democratic dispensation inherited a data ecosystem which was designed to be purposefully racially and class exclusionary. Logic then follows that, at the center of transformation of SA's data ecosystem should inspirationally be about breaking race and class barriers to data.

There are a number of small OGD initiatives in the developing country context, which are focusing on different aspects of OGD. While these are different to OGD in the land sector, which South Africa is proposing.

Table 1:

Country	Initiative
Ghana Country	Open data as a tool in empowering small-holder farmers.
India	Open energy data real-time power supply monitoring system.
Jamaica	Open data to benefit tourism
Kenya	Improving voter turnout with Open data.
Nepal	Open data to improve disaster relief
Paraguay	Open data to monitor dengue fever, which is endemic in that country
South Africa	In 2014 Code for South Africa, a nonprofit started monitoring medicine prices using data from government
Uganda	Being used to help improve health outcomes and revolutionise a health care industry marred by staff shortages, lack of resources, and corruption

The Southern Africa Development Community (SADC), has started setting up its own informational infrastructure, which is land related, with a visible data/information

collection focus and specific land governance themes via the following organs, the Climate Services Centre², the Regional Climate Data Processing Centre³, Regional Early Warning Centre⁴, Regional Poverty Observatory⁵, Regional Plant Genetic Resource Centre⁶ and El Nino Response Coordination⁷. Instead of developing new sub-regional level rules/institutions SADC plays a crucial role of data/information sharing, by collecting, storage and dissemination of data/information that have a bearing on land governance and administration at a regional scale. Similar land informational infrastructure, scaled at national level is what South Africa needs.

Numerous African countries has already setting up land informational infrastructure, in the form of land observatories. The countries that have set up land observatories include Burkina Faso, Cameroon, Madagascar, Mali, Uganda, Senegal, Chad and South Africa' failed University of Pretoria based South African Land Observatory. Most of the land observatories in Africa were largely inspired by and a response to the phenomenon of 'large scale land acquisitions' or 'land grabs' that were driven by developed countries, rather than as part of land governance machinery, as LandNNES is proposing for South Africa. Compared to many African countries, South Africa has a relatively more extensive land data/information, but unfortunately in a fragmented ecosystem, which implies a specific need for a land observatory that is geared to pulling together land data/information which is already in place.

While there are a number of national land observatories that are in place in various African countries, there is no single ideal model, but South Africa should draw lessons from various countries, given that a land observatory presents multiple opportunities. In the short to medium term LandNNES proposes the following focus areas;

- Land reform planning tool
- Land reform project monitoring tool
- Repository of spatial planning data (zoning, cadaster, etc.)
- Weather data/information Climate change information already generated by SAWS.
- Repository for Spatial Data Infrastructure currently generated by DRDLR.

² <https://www.sadc.int/sadc-secretariat/services-centres/climate-services-centre/> (Accessed 02 July 2019)

³ <https://www.sadc.int/sadc-secretariat/services-centres/regional-climate-data-processing-centre/> (Accessed 02 July 2019)

⁴ <https://www.sadc.int/sadc-secretariat/services-centres/regional-early-warning-centre/> (Accessed 02 July 2019).

⁵ <https://www.sadc.int/sadc-secretariat/services-centres/regional-poverty-observatory/> (Accessed 02 July 2019).

⁶ <https://www.sadc.int/sadc-secretariat/services-centres/spgrc/> (Accessed 02 July 2019)

⁷ <https://www.sadc.int/sadc-secretariat/services-centres/sadc-el-nino-response-coordination-centre/> (Accessed 02 July 2019)

- Repository for national address database
- Repository for land data currently in the archives
- Data repository for informal land rights
- Database of national heritage resources
- Environmental data/information (Including EIAs)
- Geology data currently generated via Council for Geoscience.
- Water resources management data (rivers, lakes, dams, underground water sources and oceans). This should include data cemeteries, sewage treatment and sanitation facilities; etc.)

The list above is not exhaustive but demonstrative and LandNNES proposes an incremental approach to the development of the land observatory. The next section clarifies why the LandNNES proposal fits into the current constitutional order.

3.2 The policy environment

The preamble of the Constitution of the Republic of South Africa (RSA), makes references to South Africa as “open and democratic society”, committed to the values of open government (OG), repeatedly making reference to South Africa as an “open society” in s36(1), s39(1) (a), s59(2), 72(2) and s118(2). Section 32(1) of the Constitution, reads;

Every person has the right of access to all information held by the state or any of its organs in any sphere of government in so far as that information is required for the exercise or protection of any of their rights.

Chapter 10 of the Constitution of the Republic of South Africa deals with matters of public administration. Section 195(1) (f) and (g) commits to a public administration that is underpinned by a certain set of basic values,

(f) Public administration must be accountable.

(g) Transparency must be fostered by providing the public with timely, accessible and accurate information.

The drafters of the South African Constitution clearly made a distinction between a commitment to Open Government (OG) and Open Government Data (OGD). It is also important to note that these are constitutional imperatives. There is no doubt that s195 (1) (f) and (g) commit South Africa to Open Government and Open Government data, respectively. The HLP report makes a lackluster proposal for transparency, accountability mechanisms and governance measures, without making concrete proposal how that could be realised (Parliament of RSA, p32 - 40). These are also emphasised as principles that should be built into the proposed Land Reform Framework Act. This is an issue which cuts across land reform programmes, and is not limited to restitution.

3.3 Institutional anchoring funding model

There are a number of options for institutional anchoring and financing options for a national land observatory. LandNNES supports the idea of a land observatory that is established and managed through statute, with a proportion of funding provided by the state, a portion provided by the private sector and a small portion financed from cost recovery. South Africa's national land observatory should be governed by a partnership between government, the private sector and civil society. During the set up and upscaling phases, donor funding is necessary.

4. Immediate steps

4.1 State of readiness study:

This is a whole new trajectory, which is a fundamental departure to how South Africa has been going in the first two and a half decades. As indicated before embarking on the new trajectory requires more than putting in place a land observatory, but a range of policies, statutes and institutional arrangements. It is recommended that South Africa undertakes a state of readiness study which should focus on issues of political commitment, public sector readiness, existing legal frameworks, public sector institutional frameworks, public sector culture, financial and sustainability considerations and technical infrastructure considerations (i.e. interoperability) (Sope Williams-Elegbe et al, 2017). At the center of the study will also be to identify specific institutional adjustments that are required. The United Nations Economic Commission has some guidelines for more detailed planning procedures.

4.2 Discussion on institutional anchoring

Largely due to the interdepartmental nature of the endeavor, leadership of the process is critical from the highest office in the land, the Presidency. Leadership by a line function department will not be able to break the silos.

5. Why is this important for SA?

- LandNNES takes up the challenge of land governance as entry entry-point into what is an international development imperative: land rights are reflected in many of the UN Sustainable Development Goals (SDG). They are explicitly linked to poverty eradication (SDG1), food security (SDG2) and gender equality and women's empowerment (SDG5). Several other goals have implicit links to land-related outcomes.

- Government departments and local government stand to benefit from economies of scale associated with an integrated informational infrastructure, and reduce costs associated with leakage arising from multiple fragmented systems.
- A land observatory provides a one stop shop for land information making South Africa visible to South Africans.
- An integrated national information infrastructure for land, which includes a national land observatory will benefit multiple purposes such as, recordal of tenure rights. In this day and age of climate change, it could well be used to manage climate change impacts which require multiple data sets.
- Credible and current data is critical to planning at all levels of government as well as vertically. The planning as well as monitoring for both land reform and land management in general is greatly enhanced. Municipalities could benefit from centralisation of valuation rolls.
- Reliable and current data will facilitate better sharing of data/information within (intra-governmental relations) as well and between state institutions, thus facilitating better and faster decision making within state institutions. The time and cost of sourcing land data/information will be greatly reduced. In South Africa the Intergovernmental Relations Framework Act No. 14 of 2005 can only work optimally in conditions where there is reliable and up-to-date data/information, which can only augur well for service delivery.
- Electronic data infrastructures provide a platform and an opportunity for digital submissions and processing of development applications. This would reduce the time for processing and approval of development applications between different spheres of government and line departments.
- A national land observatory, provides infrastructure for the storage of informal land rights which impact on the majority of ordinary citizens, including people in informal settlements, people in communal areas, labor tenants and farm dwellers who are currently off the formal register will be included in a national land information system and their rights will be easier to administer and enforce.
- Land records which are currently not possible (outside freehold areas), such as recordal of transactions or servitudes, management of valuation and taxation, management of land use, planning, environmental protection, development control, regulation etc.
- A national land observatory potentially presents infrastructure for the development of an authoritative national address system and database for the country. Data quality is critical to the country's street address system for the purposes of managing interaction between people, places and activities. Various government agencies ranging from Independent Electoral Commission (IEC) to SASSA depend on valid street address information.

- The proposed national data infrastructure coupled with OGD includes other related and mutually reinforcing potential benefits, such as making government accountable to the citizens.
- National statistics are critical to how the country benchmarks itself to international standards. A reliable land data infrastructure will have an effect of improving the quality of statistics. Improved statistics will enhance South Africa capability of reporting accurately, in relation to a number of international and regional protocols or agreements which bind national governments to abide by certain agreed standards. *While public policy instruments, such as new laws and regulations, are a popular method for upholding these standards at a national level, adherence can only be measured and vindicated with nationally aggregated land information.* (R. Bennett, et al, 2012). The Kyoto protocol is just one example of many such international treaties. For example, Annex 1 of binds nations to the reduction of greenhouse gases by 5.2% from the 1990 levels (UN, 1992). It is, however, not enough to have these statements articulated in policy or legislation. The application of, and adherence to legislation is far more critical.
- Making raw and aggregated data readily available from different government sources creates new opportunities for value addition, as it creates opportunities for different actors to add value to the data and in the process enhancing knowledge (data analytics). In a nutshell, Open Government Data creates new opportunities for South Africa into the 4IR.
- Open Government Data will greatly reduce the cost of doing business in South Africa, and thus create an environment for new businesses emerging.
- An integrated national land information system also presents opportunities for managing land holistically through incorporation and overlaying of data from other sectors beyond land, such as disaster management, climate change etc.
- It creates opportunities for reducing costs of doing business, thus supporting economic growth. In the absence of reliable and integrated land information infrastructure, business is overburdened with costs of opening a range of government doors to find information. Where data is located in a one-stop-mall, it creates opportunities for reducing the cost of doing business. It creates certainty about correctness or validity of data or information.
- Most importantly, Open Government Data does not only enhance government accountability to citizens, but it creates conditions for citizens to get involved in policy and governance decisions (active citizenry).
- South Africa's university fraternity stand to benefit tremendously from Open Government data for research purposes. In turn, the country would benefit from the enhanced knowledge arising therefrom.

LandNNEs takes a view that its proposal will save the country money rather than require money. A number of land information repositories such as those held by parastatals and SOEs could benefit from a specialised land information infrastructure, which relieves them of managing current infrastructures.