MUNICIPAL COMMONAGE

How to Access and Use it!

PRODUCED BY **LRC** (LEGAL RESOURCES CENTRE) AND
TCOE (TRUST FOR COMMUNITY OUTREACH AND EDUCATION)
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1. Introduction

Municipal commonage poses a unique opportunity for rural development and land and agrarian reform. The law says that municipal commonage must be used to contribute towards land reform. It must be made available for agricultural purposes to those who were previously excluded from accessing commonages. Poor town residents who want to engage in agricultural activities must therefore organise to demand access to municipal commonage.

Throughout this booklet, we are emphasising "**town residents**" because commonages must be used for agricultural purposes and not for the farmers to live on the commonage. Land for settlement and ownership by land reform beneficiaries is provided for in the other (main) redistribution programmes of the state.

It is essential that anyone who is involved in a commonage project should know the relevant laws and policies applicable to the administration of municipal land, especially commonage as a special category of municipal owned land.

It should be noted that for a community to pursue a land claim against a municipal commonage is wrong, because under 'commonage' the land 'belongs' to the community, but is held in ownership by the municipality. The municipality takes on a special relationship of trust (or fiduciary responsibility) with regard to the land, similar to that of a trustee, for and on behalf of its residents.

Similarly, people incorrectly say that 'existing' municipal owned commonage land should be redistributed - but this is also wrong. Commonage land became effectively 'redistributed' after 1994 when local government was democratized and had to start taking care of the needs of ALL its residents.

Commonage is 'family silver' and it should be protected as municipal property for generations to come.

2. The purpose of this pamphlet

The purpose of this pamphlet is to explain:

- What municipal commonages are and the important land reform and rural development opportunities they create;
- The history of commonages in order to create a better understanding of:
  - Your rights to **municipal** commonages;
  - How to protect commonages against rampant sale and regain them for community benefit; and
  - The steps that poor residents may take to access municipal commonages to supplement their livelihoods.
- That it is essential that in all commonage projects the rights of individual commonage users must be determined, allocated and provided with administrative support by municipalities. Unless this is done, we are bound to see the same failure rate in commonage projects as in the rest of our land reform initiatives since 1994.
- That state funds are available from the Department of Rural Development and Land Reform (the Department) for municipalities to:
  - Purchase land to establish new commonages or extend existing ones;
  - Establish and improve infrastructure on commonages;
  - Plan and implement commonage projects so that they work to ensure equity in access and secured rights for poor people; and
  - Do audits to: establish "the history of the acquisition"[1] of commonages; establish the conditions of grant and the title deeds conditions that protect them; and disclose information for it to be used by residents to secure access. Many municipalities are simply leasing their commonages to white commercial farmers.

[1] See section 25(3)(c) of the Constitution.

3. What is a municipal commonage?

In this pamphlet we distinguish between two types of municipal commonage: "**existing**" and "**new**" municipal commonages:

'**Existing' (municipal) commonage** (as opposed to a so-called "tribal commonage" on trust land) is land that was (usually) granted free of charge to ('white') municipalities by the state for the use and benefit of (mostly white) town residents during the 1800s and later. The section on the history (section 4 below) tells you more about this.

'New' (municipal) commonage is former 'white' owned commercial agricultural land that was purchased with state funds by a municipality in ownership as 'commonage' (since 1994) in terms of the Department's Commonage Programme.

A municipal commonage is like a municipal parking allotment or caravan park. It should be administered and made available as a public amenity. We now need to ensure that town residents, in particular their poorer inhabitants, get the use and benefit from **ALL** commonages.

The title deeds of 'New' and 'Existing' commonages are subject to special title deed conditions and these conditions prevent a municipality from alienating (or getting rid of) commonage land by sale, donation or swap. A municipality may also not agree to the registration of a bond against commonage to secure a loan.

When a piece of former white owned commercial land is transferred in ownership to a municipality as a 'new' commonage or when the Department pays for the improvement of infrastructure on 'new' or 'existing' commonage, the title deed of the new or improved land will state that the municipality is obliged to only make the land available to its residents, with the emphasis on the poor and less privileged, on a secure and equitable basis.

If a municipality breaches these conditions, the provincial or national government may take steps to take ownership of the land without the payment of compensation.

Commonage is therefore a separate and special category of municipal land. It is owned by a municipality and, more importantly, it should remain in the ownership of a municipality for the use and benefit of town residents, **forever.**

4. A brief history of 'existing' municipal commonages

- **Before the 1950's**

The history of 'existing' municipal commonages is a part of the legacy of colonial land dispossession. White settlers became the 'owners' of the land while black people became 'squatters'.

The establishment of commonages goes back to the 1800's when 'white' towns (mainly in the old Cape Province) were formally established. It was during this time that cities and small towns received surrounding land for free, from the state. Such land was transferred in ownership to municipalities, subject to two main conditions:

(1) A municipality could not alienate the land unless the Governor (later the State President) gave permission; and
(2) That the land be made available for the use of the residents of the town as commonage- for instance, as pasturage for their draught oxen graze; to keep cows for milking and sheep for slaughter; and in some cases for townsfolk to grow their crops.

However, due to past racist laws, municipal commonages were used by whites only. It was only in exceptional cases that black people were permitted access to these lands. In the old Cape Province, each town and city had (and many still have) a set of commonage regulations informing the rights of inhabitants to the use commonage land. In most cases these regulations have now fallen into disuse - although a number of municipalities have adopted new sets of regulations.

- **1950-1994**

From the 1950's onwards, as white people grew more wealthy and technology changed (from oxen to motorcars and the introduction of fridges), 'white' municipalities started leasing commonages to white commercial farmers to generate income - instead of permitting poorer black residents access.

In addition - and more recently and still ongoing - municipalities have started selling commonage land. Newspapers often report on corrupt property deals where town councils are selling municipal land.

- **After 1994**

After 1994, with the introduction of democratic municipalities, all town residents became entitled to access municipal commonages. But by then most of these commonages were already being leased to white commercial farmers; some with long term leases of up to 50 years in place.

5. The main challenges

In the past, many communities were excluded from access to commonage land. Although much progress has been made to gain access to commonage land since 1994, commonage as a land reform initiative is faced with the following 'run of the mill' problems in most projects, namely:

- Municipalities are inappropriately making their commonage lands available on the basis of joint leases[1] or as a single lease to a legal entity. This is done without determining the rights of individual users.

  The results are:

  (i) That individual users cannot be held liable to pay maintenance fees for the extent to which they use the commonage. The result is also that administrative support is not provided for the rights of individual commonage land users;
  (ii) Where residents have accessed the land, equity in access is badly skewed (one farmer keeps 250 sheep and another only 12);
  (iii) Exploitative practices are the order of the day and women and poorer members loose out. The resource is hi-jacked by an elite who gain a monopoly at the expense of women and poorer or weaker users; and
  (iv) Overgrazing, non-payment and free-riding are the order of the day

- Infrastructure remains weak and no efforts are made by municipalities to access state grants to improve it;
- Information on the history of commonages and the rights of residents have not been researched and used to advance access and build a commonage movement;
- Except for grazing projects, hardly any projects for the development and allocation of allotments or small holdings have been initiated;
- Municipalities fail to draft and adopt budget linked plans for the ongoing financially sustainable management of the land as part of their Integrated Development Plans (IDPs). Area Based Plans (ABPs) have also not embraced commonage as a viable land reform opportunity to promote the social and economic development of the community;[2]
- New commonage land is often situated very far away from residential settlements, which makes it impossible for poor people to access.

It is now generally accepted that the first 16 years of land reform went badly wrong. An enormous effort is needed to rectify approximately 4000 land reform projects on almost 6 million hectares of land. Because commonage land has remained in the ownership of a municipality it will be much less complicated to remedy such projects than is it going to be to fix redistribution and restitution cases where land has been transferred in private ownership to a Trust or a Communal Property Association.[3]

[1] In such cases individual tenants are held jointly and severally liable. This means that any one tenant can be held liable to pay the full rental.
[2] Section 153 of the Constitution.
[3] During May 2010 the Minister acknowledged that 90% of an estimate 4000 projects on 6 million hectares of land are experiencing severe problems.

6. How much 'existing' and 'new' commonage land?

We do not know this because the Department has, despite repeated commitments, not prepared a public land register. Municipalities have also not kept adequate records nor carried out land audits (see Box 1 as an example).

Box 1: Commonage land in the Langeberg Municipality in the Western Cape

Details of the extent of commonage land in the Langeberg Municipality are sketchy.

According to the Langeberg (former Breede River Winelands) Municipality's Area Based Plan (ABP), this municipality owns about 18 portions of land of which 8 are used by small-scale black farmers. The ABP and IDP do however not provide information on the total number of hectares owned by the municipality, nor on how many hectares are being leased to commercial white farmers due to the lack of adequate records.

In a study by TCOE and the Mawubuye Land Rights Forum small-scale farmers were able to point out commonage land portions known to belong to the Municipality that are currently being leased to commercial farmers. In addition they also pointed out commonage land that belonged to the Municipality in the past but that had been sold to developers for other purposes such as golf courses. These included Hoek se Vlakte in McGregor and the Silverstrand in Robertson.

According to the Department the 'new' municipal commonage programme accounted for 44% or 380 819ha of land redistributed in 2002. At the time it accounted for the greatest amount of land redistributed by any of the land reform programmes. However, of this amount, 67% was transferred in the semi-arid region of the Northern Cape where the land has a limited stock carrying capacity of 8 ha to 1 small stock unit and sells at R250 per hectare. This can partially explain the greater progress in accessing commonage land in nine small towns in the Hantam, Karoo Hoogland and Kareeberg local municipalities (illustrated in Box 2), which came about as a result of sustained campaigning by small-scale farmers and the NGOs that support them.

In contrast, in the Stellenbosch municipality (Western Cape) most of this land is being leased to white commercial farmers with a mere 65 hectares having been made available to 13 black small holder farmers. This municipality has a seemingly small portion of 1700 ha of commonage land – but here land has greater farming potential and fetches greater market value (land sells at between R500 000 to R1 000 000 per hectare).

Box 2: Municipal commonage reform in some Northern Cape municipalities

Prior to 1994 the Northern Cape Province had 314 371 hectares (ha) of 'existing' commonage land. The Surplus People's Project (SPP) reports that as a result of 16 years of its sustained practical work and the campaigning by black farmers to gain access to municipal commonages, most of the 'existing' commonages and all 'new' commonages in three local municipalities are now being used by black farmers. The breakdown per local municipality is as follows:

- The Karoo Hoogland municipality (Sutherland; Fraserburg and Williston) has a total of 53 540 ha of commonage (25 172 ha of 'existing' commonage and 28 368. 3455 ha of 'new' commonage). Out of the total, 29 000 ha are being used by black farmers and 24 000 ha of the existing commonage are used by white farmers.
- The Hantam municipality (Calvinia; Brandvlei, Loeriesfontein and Nieuwoudtville) has a total of 70 701 ha of commonage (41 338 ha 'existing' and 30 363 ha 'new'). More than 60 000 ha of the existing commonage are being used by black farmers.
- Kareeberg Municipality (Carnavon and Van Wyksvlei) has a total of 39 578 ha of commonage (20 043ha existing and 19 535 ha new). Out of the total, 32 578 ha are being used by black farmers and 7 000 ha by white commercial farmers.

In total, 417 'emerging' farmers (men and women) have gained access to 121 578 ha of the 163 819 ha of commonage lands in these three local municipalities.

7. The Constitutional developmental obligations of municipalities

Under apartheid, 'municipalities' were created to minister to the needs of 'whites', while other forms of local government failed dismally to meet the basic needs of the majority of South Africans.[1] Since the introduction of (wall to wall) municipalities as the single form of local government, municipalities now have new constitutional obligations to:[2]

(a) Structure and administer their budget and planning processes to give preference to the basic needs of the community and to promote the social and economic development of the community; and
(b) Participate in national and provincial developmental programmes.

While our Constitution does not oblige municipalities to initiate and undertake land reform, municipalities are indeed obliged to participate in national land reform programmes to achieve municipal developmental objectives. Municipalities therefore have an important role to play in rural development and land reform by ensuring that poor black town residents have access to municipal commonages for food production and the grazing of their stock.

One of the ways in which a municipality may achieve its constitutionally imposed developmental obligations is to apply for grant funding from the Department of Rural Development and Land Reform in terms of the commonage policy to enable it to make municipal commonages available to their residents and to establish and upgrade the infrastructure on the commonage.

1 From the preamble to the Systems Act 32 of 2000.
2 Ss 153 of the Constitution.

8. Municipal commonage as part of a national land reform and rural development programme - the national legal and policy framework

Current policy and legislative provisions that permit the Department to make available grant funding to municipalities for municipal commonages are incorporated in:

a) The White Paper on Land Policy (April 1997); and
b) The Provision of Land and Assistance Act 126 of 1993 (amended as Act 58 of 2008) - (please see Box 3 for details).

Read together, these provisions as well as the Department's policy directives, provide for municipalities to:

- **Acquire land** to establish a 'new' commonage or to extend the 'existing' commonage;
- Establish and improve the **infrastructure** on new or existing commonage;
- Prepare a **plan** to implement the facets of a land reform commonage project - including how the land will be developed and managed; and.
- Do a comprehensive **land audit** of municipal-owned agricultural land to ensure that the administration of this land is placed on a sound legal and administrative footing.

Box 3: Policy and legislative provisions for the Department to make available grant funds to municipalities for municipal commonages:

a) The White Paper on Land Policy (April 1997) outlines the role that municipalities may play in land reform by enabling poor people to 'gain access to grazing land and small arable/ garden areas to supplement their income and to enhance their household food security'.

In this White Paper the new democratic government also committed itself to provide grant funding for municipalities to acquire additional land as 'new' commonages and to develop infrastructure in both 'existing' and 'new' commonages.[1] This White Paper also noted that the Department may consider helping municipalities cancel long term leases to free up commonage land for the poor. Meanwhile the Department has also formally adopted a commonage policy which it has implemented. NOT MANY PEOPLE KNOW ABOUT THIS!

b) The Provision of Land and Assistance Act 126 of 1993 (amended as Act 58 of 2008) provides the legal basis for municipalities to comply with Section 25 of the Constitution. Section 25(5) states that:
"*The state must take reasonable legislative and other measures, within its available resources, to foster conditions which enable citizens to gain access to land on an equitable basis"*.

Section 10 of Act 126 of 1993 authorises the Minister of the Department to make money available to municipalities to acquire, maintain, plan, develop or improve (also infrastructural) municipally owned land. Section 10 also authorises money to be made available for capacity building, skills development, training and empowerment.

9. Important municipal laws that must be taken into account

Municipal officials are often not aware that a municipal council may indeed make commonage land available at a tariff / maintenance fee basis. People who ask municipalities for access to existing commonage are often confronted by these officials who tell them that the commonage may only be leased out to poor people at market rental and subject to a tender process. The consequence is that poor people are excluded from the commonage.

But the usual rule that municipal land must be leased at market value is not applicable to municipal commonage land. The fact that the land was donated to the Municipality free of charge (as the Constitution refers to it, "the history of the acquisition" [1]) and the purpose for which the land was acquired or infrastructural improved (for 'land reform' and 'in the public interest') obliges the municipality not to charge market rental to poor inhabitants, but to make it available on a "financially sustainable" basis, as determined in the Municipal Systems Act.

The following laws are directly relevant when such situations arise (please see Box 4 for details):

a) The Municipal Systems Act 32 of 2000 and
b) The Municipal Finance Management Act 65 of 2003 (MFMA).

Municipal Managers should be reminded that they are constitutionally obliged to administer municipal rented housing stock, parking allotments, swimming pools, libraries, caravan parks and city halls. They are also obliged to properly and duly administer commonages.

Box 4: Important municipal laws that apply to the lease and administration of municipal land and commonages:

a) The Municipal Systems Act 32 of 2000, in particular, concerning:

- Tariffs - sections 73 to 75A and the section 1 definition of 'financially sustainable', in addition to the local municipality's Tariff policy guide;
- Integrated Development Plans (IDPs) – sections 23 to 37 and the most recent version of the local municipality's IDP;

b) The Municipal Finance Management Act 65 of 2003 (MFMA), in particular:

- The Municipal Supply Chain regulations promulgated by the Minister of Finance in terms of the MFMA.: Here the key provision is section 40(2)(c)(i) which provides that: "immovable property is let at market related rates except when the public interest or the plight of the poor demands otherwise";
- The local Municipality's Supply Chain policy in terms of the section 111 of the MFMA; and
- the Credit Control and Debt Collection: sections 95 to 104 of the MFMA and the local municipality's policy document in this regard.

1 See Section 25(3)(b) of the Constitution

10. The approach of the Department

The Department is busy finalising its programmes for Rural Development and Land Reform. We can safely say that it will not stop supporting the commonage programme - for two reasons:

- Because there is at least 1 million hectares of 'existing' commonage land available which may be used to realize the instruction of section 25(5) of the Constitution; and
- At least 500 000ha has been redistributed as 'new' commonages.

If it does stop supporting the programme, communities need to mobilise and organise and make their voices heard.

In cases where the Department has been approached to help, it has taken the following approach in terms of existing law and policy:

a) A Municipality that applies for assistance must provide an undertaking that the land (acquired or infrastructural improved) will be made available to its residents on a secure and equitable basis with the emphasis on poor and less privileged residents;

b) A Municipality that applies for departmental aid, must draft a development plan that indicates how the project will address the basic needs and promote the social and economic development of the community.

The development plan needs to:

- Indicate how the land will be used, developed and managed;
- Make an assessment of the type and costs of infrastructural needs and an explanation of how it will be used and maintained;
- Discuss the viability of the different potential land uses (such as irrigated allotments, grazing, etc) that takes into account that the land will be made available on a maintenance fee basis;
- Detail the process and procedures that will be followed to ensure that the rights of individuals to use the land, water and other resources are protected;
- Provide for a process which determines how land will be allocated and administered to ensure equity in access amongst the individual land users;
- Explain the administrative support that the municipality will provide to ensure the enforcement agreements and the protection of the rights of individual users; and
- Include pro forma or existing agreements to secure the rights of individual land users;

c) The application of the Municipality must be accompanied by a disclosure of information on its existing agricultural land and the arrangements in terms of which the municipality is currently making it available.

d) Should the Municipality apply for a grant to acquire additional land, the municipality must agree to do a comprehensive audit of its agricultural land to ensure that its land administration is sound from a legal and administrative perspective.

If a new piece of land is transferred to the municipality as commonage, or a piece of existing or new commonage is infrastructurally improved (for instance where the Department assists with securing water rights to irrigation and water meters, etc) the Department will insist that a Notarial Deed of Commonage Servitude is registered against the title deed to ensure that the land is indeed used as commonage and not for other purposes. The title deed conditions will provide that the municipality:

- May not transfer the land pursuant to an agreement to sell, swap or donate the land or register a mortgage bond against the land without the written permission of the Minister of Rural Development and Land Reform;
- Will make the land available to its residents on a secure and equitable basis with the emphasis on poor and less privileged community members;
- Agrees that the (national) Minister may acquire the land in ownership for land reform purposes from the Municipality without the payment of compensation, if the municipality fails to meet the notarially imposed conditions of title.

As noted that Department may also be prepared to pay for planning services for the implementation of a project.

11. Problems and lessons from the recent past

- Many municipalities have refused to assist poor town residents in accessing municipal commonages – this is in violation of constitutional instructions and the conditions of grant subject to which the existing commonage land was initially given to the Municipality;

- Many commonages remain in the hands of the white commercial farmers or are leased to private interest groups - and in many cases at below market value - for golf estates and private development. Information on the history of commonages and the rights of residents have not been researched and used in community action to turn around this state of affairs;

- New commonage farms are being bought tens of kilometres away from towns making it impossible for poor people to access them;

- In a number of cases commonages are being made available to black small-scale farmers on short term leases (eg: three and a half years in the Langeberg Municipality). As noted below, such leases should be done away with and users should get the land for prolonged periods of time, subject to them meeting their obligations. A negative result of short term leases is that users are unable to qualify for the Comprehensive Agricultural Support Programme (CASP). To qualify for CASP one's right to the land needs to be at least longer than five years;

- Municipalities fail to draft and adopt plans linked to their budgets to ensure the ongoing financially sustainable management of commonage land as part of their IDPs. Area Based Plans have also not embraced commonage as a viable land reform opportunity (see Box 5);

Box 5: Failed opportunities by municipalities to contribute towards land reform through municipal commonages (a case study)

In 2007/2008 TCOE together with the Mawubuye Land Rights Forum conducted a land needs survey in the Langeberg Municipality (previously Breede River Winelands) amongst poor landless residents, small-scale food producers and stock farmers who live in the towns of Bonnievale, McGregor, Ashton, Robertson and Montagu. During a visioning exercise participants developed four models for landholding and food production:

- Model A involved plots of around one hectare for food gardens (and occasional sales) cultivated by individuals and families, together with access to commonage grazing. This model accounted for 35% of the total land envisaged for redistribution.
- Model B involved 'smallholdings' of between 2 and 5 hectares for 'small family farms' or co-operatives. This model accounted for 25% of the total land envisaged for redistribution.
- Model C involved small- to medium-scale intensive farms of between 5 and 20 hectares to be operated by families or co-operatives. This model accounted for 25% of the total land envisaged for redistribution.
- Model D was a commercial farming option on holdings of 20 or more hectares and would involve hired labour. This model accounted for 15% of the total land envisaged for redistribution.

Despite the modest land requirements envisaged by participants these had not been taken into account by the Municipality and incorporated in its IDP or Area Based Planning.

- Historically (white) municipalities were centrally involved in the administration of commonages to ensure their sustainable use and to protect the rights of users in terms of municipal grazing regulations, but our new democratized municipalities are refusing to provide administrative support to individual new black users of the commonages.
- In almost all cases the new municipalities are only prepared to:

  (i) lease a piece of commonage land jointly to a group of farmers where the members have to stand surety for each other, or
  (ii) lease a piece of land to a farmers' association and the association has to collect the rental and pay it to the municipality (which usually does not happen).

The municipalities do this because they simply refuse to get involved in the process of individual rights administration, while this was done for white people as a matter of course. The stance of the municipality is to hand over a piece of land without any checks and balances and to then sit back and say: "*Just look at what happens if you give poor people land!"* It is this attitude that gives rise to the failure of land reform.

- The result of these group leasing practices are that the rights of individual stock owners on the commonages are unprotected and open to exploitation.
- Some commonages have been allocated to both subsistence and 'emergent' commercial farmers giving rise to major conflicts of interest and problems inside of the commonage projects as needs and aspirations of groups are different.
- Rights of members of commonage projects have not been secured and municipalities are not supporting rights administration. Thus equity in access remains badly skewed and exploitative practice and overgrazing is common practice in most projects.
- On certain commonages the practice has evolved where all stock owners belong to a so-called 'emergent farmers club' where each member must pay a flat rate of R72 per month, regardless of how many goats or sheep you have. A widow with 6 goats for example, then pays R12 per goat per month and a taxi owner with 288 sheep pays a mere R0.25c per sheep per month. This translates to the widow subsidising the taxi owner's use of the land.
- In other cases the relatively more resourced 'emergent' commercial farmers or individuals with alternative sources of income, have acquired exclusive use rights to commonage lands.
- Gross inequity in the allocation, exploitation and overgrazing occurs in general.
- Most commonage projects are failing as land reform projects because the rights of individual commonage users have not been determined and as a consequence such rights have not been provided with administrative support.

From a land reform perspective, projects fail (in the words of section 25(5) the Constitution) if the project does not *foster conditions which enable citizens to gain access to land on an equitable basis.* The test of a successful land reform project is there not just whether the land is being used productively.

- Post-settlement support has been absent or weak. Infrastructure remains weak and no efforts are made to access state grants to improve it - despite the fact that the Department has had this facility on its policy book since 1997.
- Commonage projects are predominantly grazing projects which often do not include women as men traditionally control stock.
- Hardly any projects for small holders and allotments have been initiated on commonages.
- There are hardly any cases where the "history of the acquisition" of the commonage land has been researched and written up to disclose the conditions subject to which commonage lands were donated for free, or of the conditions of title which obliges municipalities to administer and make commonage land available for the benefit of its residents.
- In many cases the democratically elected town councils are more interested in selling off or leasing out their 'existing' commonage in commercial deals.
- There is a lack of coherent and integrated policies between the different government departments that need to be involved to ensure support to small-scale and subsistence farmers (e.g.: the departments charged with rural development, water, agriculture, etc).

In short, an excellent opportunity to foster access to land on an equitable basis for the benefit of the poor has been and continues to be wasted by not implementing existing commonage policies.

12. What are our immediate demands?

The law provides for municipal commonages to be made available to poor people for agricultural purposes. The law also provides that the state can fund infrastructure on commonage land.

Small-scale and subsistence farmers and landless people must organise to protect commonages for their needs and make the following demands from their municipalities:

1) Insist on information and transparency on municipal commonage lands:

   - Where are the municipal commonages located?
   - Who is using the commonages and what is being paid?
   - What are the conditions attached to existing leases, when were these leases entered into and when do they come to an end?
   - There must be transparency in all dealings concerning the allocation of opportunities to use commonage, including public access to copies of agreements and payment records;

2) Access to municipal commonages:

   - Where there is a scarcity of commonage land, municipalities must extend 'existing' commonages, acquire 'new commonages' in terms of the Department's commonage grant programme; and if possible reclassify other municipal owned land as municipal commonages;
   - Where the infrastructure is insufficient, Municipalities must apply to the Department for a grant to develop the infrastructure on the commonages;
   - There must be clarity on municipal and departmental plans and budgets for acquisition and improvement of infrastructure for new and existing commonage;

3) When poor people have access to commonages:

   - "Group" contract of lease should be done away with and replaced by agreements between the municipality and individual users to ensure their security of tenure.

As noted above "group-"contracts of lease are exploitative - they are for a fixed period only and no provision is made for succession and protection of family rights. A person should be permitted to use the land as long as he or she sticks to the land use conditions, uses the land productively and meets obligations to pay for maintenance (or undertakes maintenance) and pays an administrative fee.

   - The rights of individual users must be clearly defined and fairly allocated (while affirming women and the poor), with systems in place to record and enforce these rights, to ensure that equity in access is maintained and that the agreements do not privilege some of the users at the expense of others;
   - There must be systems to monitor the use of the land to ensure compliance with stock numbers and veld management. Where small holdings of garden allotments are allocated, care needs to be taken that equity in access[1] is ensured *(so that one family does not end up with more allotments or one person does not consolidate them);*

4) Access to commonages must be accompanied by the provision and development of water and other infrastructure.

5) Municipal commonages must only be used for agricultural purposes - farmers may not settle and live on the commonage.

6) Public control over municipal commonages to ensure they remain a public utility. Notice boards should be placed on municipal commonages clearly indicating that they are municipal commonages.

1 Take note: equity in access does not mean equal access, but that there needs to be equity between the amounts of stock that people keep and the size of their allotments.

References

- Anderson, Megan and Pienaar, Kobus (2004). Municipal commonage - PLAAS Policy Brief no.6.
- Anderson, Megan (1996). Town Commonage in Land Reform and Local Economic Development: A Preliminary Study. Surplus People Project / Land & Agriculture Policy Centre: Research Paper.
- Andrews, Mercia, Phillan Zamchiya and Ruth Hall (2009). 'Piloting alternatives in the Breeder River Winelands', in: Ruth Hall (ed.), Another Countryside. Policy Options for Land and Agrarian Reform in South Africa. Cape Town: Institute for Poverty, Land and Agrarian Studies, School of Government, University of the Western Cape (pp 165-191).
- Department of Rural Development and Land Reform (DLRDLR - 2009). Municipal Commonage Implementation Manual for Provincial Land Reform Offices and Municipalities, Nov. 2009, version 2.
- Department of Land Affairs (2008). Grants, Funds and Services of the Version 8.1 of 18 August 2008
- White Paper on Land Policy (April 1997) - in particular see: Par: 3.16 (p 28) The use of municipal commonage; par: 4.12 (p. 50) Local Government Commonage; par: 4.24 (p. 73) Grant for the Acquisition of Land for Municipal Commonage; and, par; 5.11 (p. 89) Public Land Management: Local authority land.
- Williams, Charles (2009). *"Commonage must make for common sense*!". SPP input at the Joint Municipal Commonage Seminar, organised by the Legal Resources Centre, 10 November 2009, hosted by the Finnish Embassy, Cape Town.

(Footnotes)

1 See the White Paper at: Par: 3.16 (p 28) The use of municipal commonage; par: 4.12 (p. 50) Local Government Commonage; par: 4.24 (p. 73) Grant for the Acquisition of Land for Municipal Commonage; and, par; 5.11 (p. 89) Public Land Management: Local authority land.

Produced June 2010 by

TCOE (Trust for Community Outreach and Education)
36, Durban Road - Mowbray 7700
P.O. Box 323 - Athlone 7760
PH: 021- 685 3033
FAX: 021-685 3087;
www.tcoe.org.za

LRC (Legal Resources Centre)
3rd Floor, Greenmarket Place
54 Shortmarket Street, Cape Town 8001.
P.O.Box 5227 Cape Town 8000.
PH: 021-481 3000
FAX: 021- 423 0935
www.lrc.org.za