



DSPACE

<https://dspace.org/>

Implications of Spatial Planning and Land Use Management Act (16 of 2013) (SPLUMA) on land allocation in areas under traditional authorities

Maluleke, Meshack Ntshuxeko

2017

<http://hdl.handle.net/10539/22969>

Maluleke, Meshack Ntshuxeko (2017) Implications of spatial planning and land use management Act (16 of 2013) (SPLUMA) on land allocation in areas under traditional authorities, University of the Witwatersrand, Johannesburg, <<http://hdl.handle.net/10539/22969>>

IMPLICATIONS OF SPATIAL PLANNING AND LAND USE MANAGEMENT ACT (16 OF 2013) (SPLUMA) ON LAND ALLOCATION IN AREAS UNDER TRADITIONAL AUTHORITIES

by

Meshack Ntshuxeko Maluleke

The research report is hereby submitted to the School of Architecture and Planning, Faculty of Engineering and Built Environment, at the University of the Witwatersrand, Johannesburg, in the fulfillment of the requirements for the degree of Master of Science in Development Planning.

January 2017

ABSTRACT:

The main aim of the study is to investigate the significance of the Spatial Planning and Land Use Management Act (16 OF 2013) (SPLUMA) and its possible implications on land allocation in areas under traditional authority. In order to achieve this, the Act was reviewed as a data collection mechanism. This was done in order to gain an in-depth understanding of the act and its objectives before attempting to formulate the implications of this Act on land allocation in areas under traditional authority. This study explored how this new planning legislation (i.e. SPLUMA) will affect the roles and functions of traditional leaders in rural development and overall service provision, focusing mainly on land allocation.

The research study discovered that SPLUMA was a significant Spatial and Land Use Management legislation in South Africa which is central in addressing issues of land rights and rural development. The findings were that there has been tension between traditional leaders and elected local government officials as they found contesting for power and authority in rural areas. This was because of the ambiguity and vagueness of the Constitution and the Traditional Leadership and Governance Act on issues of power and functions of the two institutions especially on matters of land allocation and administration. Another finding was regarding the socio-economic implication which showed that SPLUMA was a planning law which has potential to redress the socio-economic imbalances left by the colonial and apartheid regimes, but it requires the collaboration of traditional leaders as custodians of tribal land and customary law. Conclusions and key recommendations were that local government officials and traditional leaders need to cooperate on issues of land allocation and administration. However, clarification of roles and functions in SPLUMA regulations should be done to avoid tension and frustrations. Furthermore, there is also a need for national land allocation guidelines which traditional leaders should consider when allocating land. Lastly, capacitation of traditional leaders on spatial planning, land management and rural governance was indispensable in promoting land rights and rural development in areas under their jurisdiction.

DEDICATION:

To my late mother, Ms Jacobeth Magagula, my greatest inspiration to succeed in life. I wish you were here to see me graduate, again! However, I am consoled to believe that your spirit is always in my presence.

DECLARATION:

I Meshack Ntshuxeko Maluleke, declare that this research report is my own original and unaided work. I state that I have provided full acknowledgement to the sources I have used in this study. I am responsible for any piece of text, conclusions and recommendations of this study. This research report has not been submitted previously for any degree or examination at any other university. The research report is hereby submitted to the School of Architecture and Planning, Faculty of Engineering and Built Environment, at the University of the Witwatersrand, Johannesburg, in the fulfillment of the requirements for the degree of Master of Science in Development Planning.

.....
Meshack Ntshuxeko Maluleke

..... day of.....2017

ACKNOWLEDGEMENTS:

I am indebted to many people whose contributions made this research report possible.

Firstly, I would like to thank God for making this possible.

Secondly, my heartfelt and sincere gratitude to my supervisor, Prof Aly Karam for his professional guidance, motivation, support and mostly believing in me.

Thirdly, to my family, my dearest wife Katekani and children Risima, Ntlhontlho and Mixo, my sincere gratitude for your unconditional love, understanding, support and scarifies during the writing of this thesis.

Lastly, the late Nelson Mandela who inspired me by saying “***the greatest weapon against poverty is education***”.

TABLE OF CONTENTS

CHAPTER 1: INTRODUCTION AND BACKGROUND.....	1
1.1 Introduction	1
1.2 SPLUMA and Traditional Authority.....	2
1.3 Research Justification.....	5
1.4. Purpose of the study.....	5
1.5. Key Objectives of the study.....	6
1.6. Research Questions.....	6
1.7. Research Methodology and Approach.....	7
1.8. Structure of the report.....	10
CHAPTER 2: LITERATURE REVIEW.....	11
2.1 Significance of Literature Review.....	12
2.2. Spatial Planning –The International Context.....	13
2.3 Case Study:Botswana and Ghana: land allocation and administration.	14
2.3.1. THE CASE OF BOTSWANA: LAND ADMINISTRATION.....	15
i) Overview.....	16
ii) Botswana's Tribal Land Act, 1968.....	16
iii) iii) Tribal Land Tenure.....	18
iv) Land Dispute Resolutions: Land Tribunals.....	19

2.3.2. CASE OF GHANA: LAND ALLOCATION AND ADMINISTRATION.....21

i) Historical Overview.....	21
ii) Ghana Land Tenure System: Land acquisition and ownership.....	24
iii) Current Types of tenure system at Ghana.....	26
iv) Analysis of Ghana's land tenure.....	27
v) Land allocation: Roles and Powers of Chiefs in Ghana.....	28
vi) Government Administration of Customary Lands.....	30
vii) Land Disputes Dispute Resolutions.....	32

2.4. Roots of South African Urban Planning Legislation.....33

2.4.1. Planning policies under apartheid.....	35
2.4.2. Spatial Planning post-1994.....	36
2.4.3. Implications of Spatial Planning on a National and Provincial Level.....	37
2.4.4. Local Government and Integrated Development Plans (IDP).....	39
2.4.5. The value and significance of Planners and Spatial Planning in South Africa.....	40

v)

2.5. SPATIAL PLANNING AND LAND USE MANAGEMENT ACT (16 OF 2013) (SPLUMA).....41

2.5.1. SPLUMA: Historical Background.....	41
2.5.2. The challenges of the 1990.....	43
2.5.3. A decade of indecisiveness (2000-2010).....	46
2.5.4. Constitutional Powers and Functions.....	47

vi)

2.5.5. <i>SPLUMA and Property Rights Protection</i>	49
2.5.6. <i>The development of SPLUMA</i>	50
2.5.7. <i>The Courts step in 2010-2014</i>	51
2.5.8. <i>Current Constitutional Questions</i>	52
2.6. SPLUMA AS FRAMEWORK LEGISLATION	53
2.6.1. Introduction.....	53
2.6.2 Decision-making on land use development application in SPLUMA.....	55
2.7 Traditional Authority Leadership and Land Reform in South Africa	61
2.7.1 Introduction.....	61
2.7.2 Traditional Leadership in Historical Perspective in South Africa.....	63
2.7.3 Current Statutory Powers and Functions of Traditional Leaders.....	65
2.7.4 The Constitution of South Africa, 1996.....	65
2.7.5 Communal Land Rights Act 11 of 2004.....	66
2.7.6 The Role of Traditional Leaders in Land use Planning and Development under traditional authority.....	67
2.7.7 Functions Municipal Officials in the 1996 Constitution.....	69
2.8 Land Management Legislation in South Africa	70
2.8.1 Introduction.....	70

2.8.2 Customary Land Tenure.....	71
2.8.3 LAND DISTRIBUTION 1910-62.....	73
2.8.4 The NATIVE LAND ACT of 1913.....	74
2.8.5 Effects of the 1913 Natives Land Act.....	76
2.8.6 Native (Urban Areas) Act of 1923.....	78
2.8.7Bantu Trust and Land Act of 1936.....	78
2.8.8 Group Areas Act of 1950.....	79
2.9 CURRENT LAND POLICY in South Africa: The 1994 and beyond.....	80
2.10 Land Reform in South Africa: The need for land reform.....	82
CHAPTER 3: THEORETICAL AND CONCEPTUAL FRAMEWORK.....	84
3.1 Introduction.....	84
3.2 SPLUMA and Traditional Authorities.....	85
3.3 Land Allocation	86
3.4 Traditional Leadership in Democratic South Africa.....	89
3.5 Traditional authority and the Constitution.....	90
3.6 Rural Local Development.....	91
3.7 The role of traditional leaders in rural governance.....	92
3.8 SPLUMA and Rural Development.....	94
3.9 Customary Law System and Democratic System.....	95
3.10 Legitimacy and authority in Local Governance.....	96
3.11 Accountability.....	97
3.12 Gender Equity, Democracy and Customary Law.....	98
3.13 From Land Dispossession to Land Restitution in South Africa.....	100
3.14 Participation, Good Governance and Democracy	101
3.15 Land tenure and land reform.....	101

CHAPTER 4: DATA FINDINGS.....104

4.1 Introduction.....	104
4.2 Significance of SPLUMA and its Regulations	104
4.3 Legitimacy and authority.....	105
4.4 Consultation versus participation.....	106
4.5 Powers and authority: What do SPLUMA regulations say?.....	107
4.6 Legitimacy of the Traditional Council.....	109
4.7 Customary Law and land Management.....	110
4.8 Traditional leadership, Powers and Accountability.....	111

CHAPTER 5: ANALYSIS AND CONCLUSION.....113

5.1 Introduction.....	113
5.2 Economic implication: Tribal Levies and Customary Law.....	113
5.3 SPLUMA undermines Customary Land Rights.....	115
5.4 Accountability and Transparency.....	117
5.5 The role of traditional authorities in land administration.....	117

5.6 Conclusions and Future Considerations	120
5.6.1 Conclusions.....	120
a) Central argument: Customary Law versus Statutory Law.....	120
b) Property Rights Protection Versus land Reform and Restitution	121
c) Inadequate consultation with Traditional leaders.....	121
d) Ambiguity on Power and Authority.....	122
e) The role of Land allocation.....	123
f) Land Dispute Resolution (Customary Land Tribunal).....	124
g) On land invasion.....	124
h) On issues of resource implications	125
i) Challenges associated with land allocation processes.....	125
5.6.2 Future Considerations.....	126-129
REFERENCE LIST.....	132-136

LIST OF ABBREVIATIONS

CONTRALESA	Congress of Traditional Leadership of South Africa
CLaRA	Communal Land Rights Act
DFA	Development Facilitation Act
DRDLR	Rural Development and Land Reform
HTL	House of Traditional Leaders
IDP	Integrated Development Plan
IPILRA	INTERIM Protection of Land Rights Act
MPT	Joint Planning Tribunals
MSA	Municipal System Act
NDP	National Development Plan
NSDP	National Spatial Development Perspective
ODPM	Office of Deputy Planning Minister
RDP	Reconstruction and Development Programme
SPLUMA	Spatial Planning and Land Use Management Act
TA	Traditional authority
TC	Traditional Council
TL	Traditional Leaders
TLGFA	Traditional leadership and Governance Framework Act