



**Policy making and the demand from below**  
**Positions and participation towards the development of**  
**the Communal Land Rights Act in South Africa**

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Hyderabad, 13th IASC conference “Sustaining Commons: Sustaining our Future”,  
10-14 January





*“Developing and transition countries have witnessed a global democratic re-awakening [...] which has led national governments and donor agencies to promote programmes of democratisation and ‘good governance’, but there is little consensus on relevant key concepts and how to put them into operation”*

(ISS, 2008)



- 1) Agreement of the need to renovate public policy, to address the many challenges that rural (South) African peoples face: tenure insecurity; boundary conflicts; rural poverty; etc.;
- 2) Renewal of policy development framework (decentralisation, participation, democratisation, more transparent decision-making processes)

Policies are not a given anymore but constructed entities  
Raises several related questions about the contents of (land) policies and their development processes.

⇒ A larger reflection on the renovation of public (land) policy in a context characterised by the democratisation of public life, administrative decentralisation and the promotion of new forms of governance.



## CLARA – securing land rights through titling Excellent case study

- Hailed by its drafters as one of the most participatory pieces of legislation ever drafted within the Department of Land Affairs (DLA, 2004)
- Irregularities lead 4 communities (supported by NGOs/academic institutions) to challenge CLARA for unconstitutionality

Reflection on :

What is inclusive policy making? What are the policy development processes? How was local level integrated?

How implementing democratic policy making processes?

What impact do these renewed processes have on land policy content?



### **3 parts:**

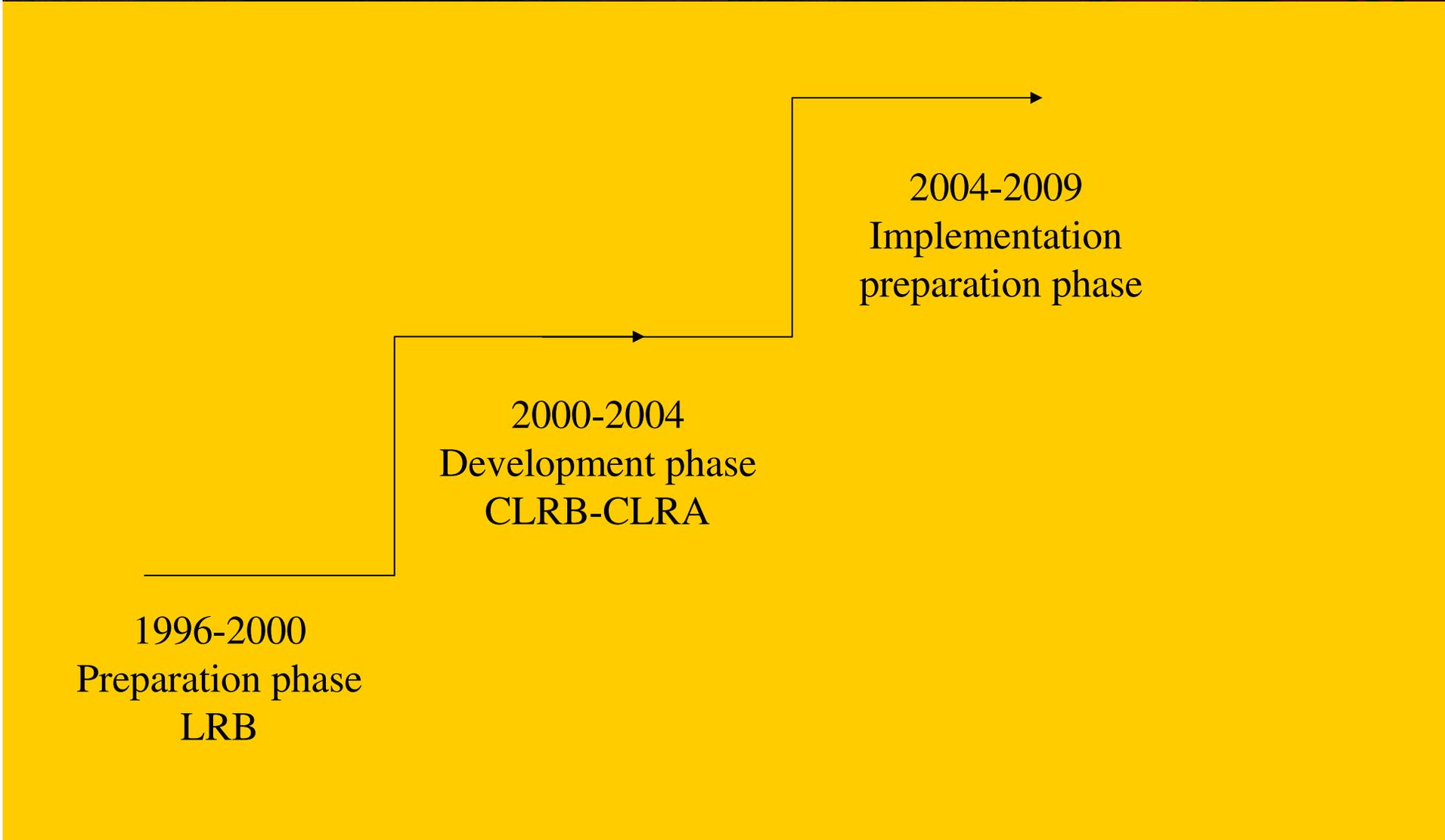
- CLaRA's policy development process – national level
- Local level positions
- Concluding thoughts

### **Based on:**

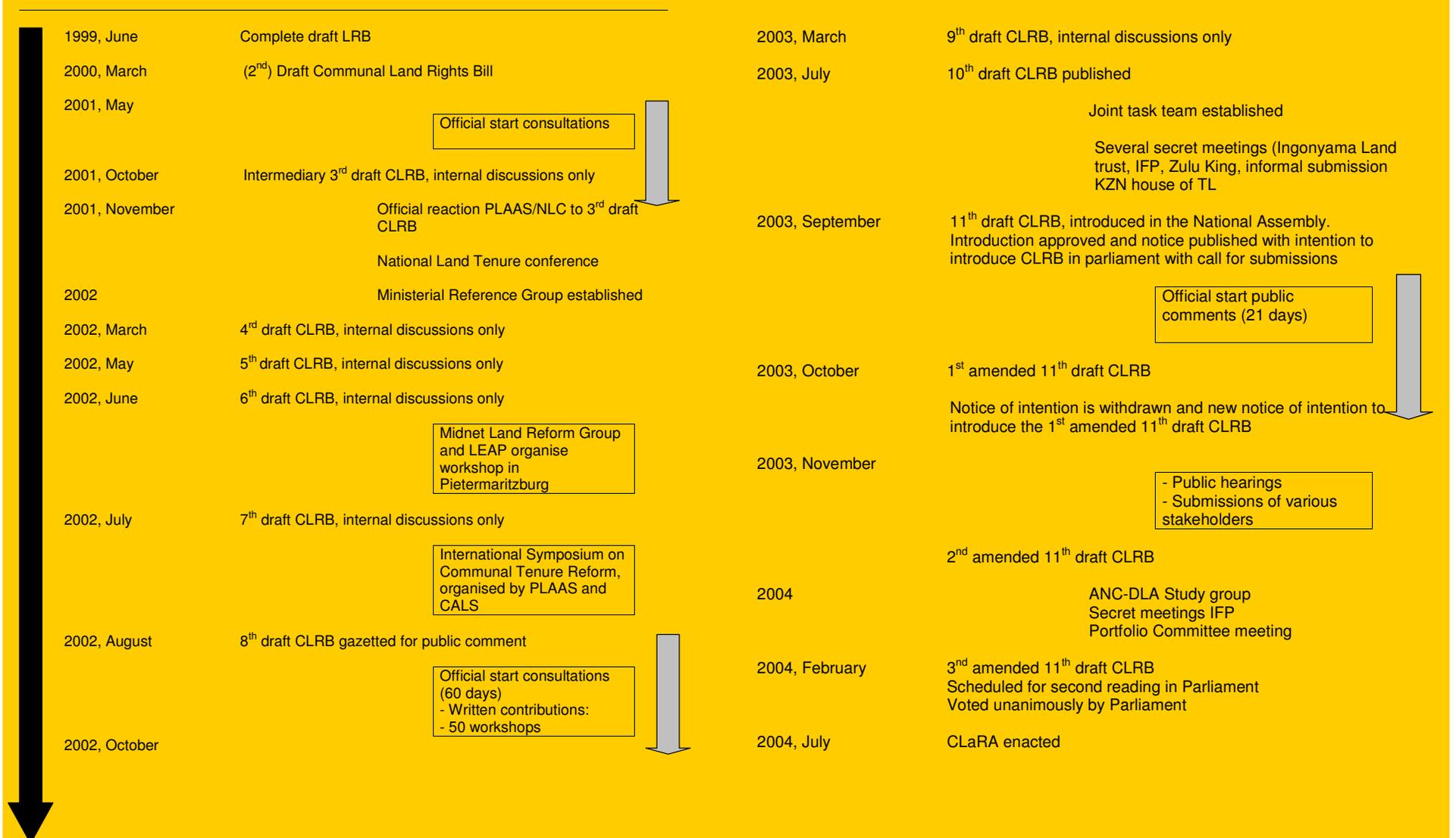
- Policy processes at national level
- 2 case-studies Selepe and Makapanstad (90 respondents)



# 1) CLaRA's development process

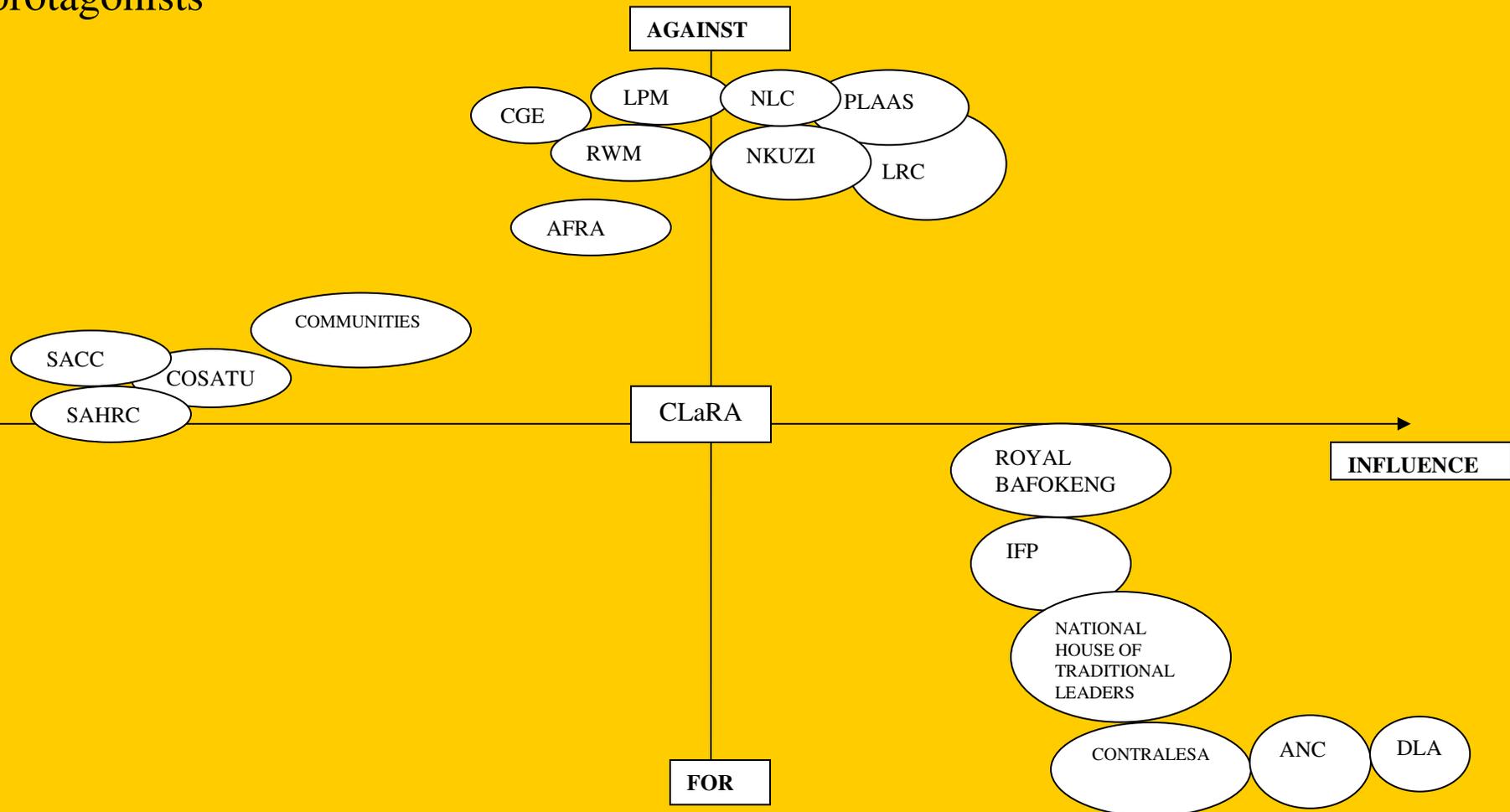


# 1) CLaRA's development process



## 2) Biased policy development processes at national level

CLaRA: mainly developed by Government, in interaction with some, selected, protagonists





## 1) CLaRA's development process

- Biased participation process
  - Only partial consultation
  - local communities were not present, not influential
  - Last minute changes, while Bill was being past through National Assembly (just before Presidential elections 2004)



Subsequently, no consensus on content

## 2) CLaRA and the local level

-82% of respondents had never heard of CLaRA

-Not about security

	Makapanstad	Selepe	Total
<b>Do you consider that your land rights are secure?</b>			
yes	39	34	73
no	2	11	13
Don't know/did not answer	4	0	4

	Makapanstad	Selepe	Total
<b>Does a title deed bring something more than a receipt</b>			
yes	23	17	40
no	13	18	31
no answer	9	10	19
Total	45	45	90
<b>Rationales put forward (multiple answers allowed)</b>			
<b><i>Title deed &gt; receipt</i></b>			
Title deed brings more rights (generally speaking)	20	10	34
Title deed brings more abusus rights (specifically : to sell, to mortgage)	12	2	14
Title deed means more security	3	8	11
Title deed means less power for the chief	5	0	5
<b><i>Title deed = receipt</i></b>			
There is no need for title deed	11	17	28
<b><i>Title deeds are incompatible with communal system</i></b>			
	2	1	3

## 2) CLaRA and the local level

Land tenure: Combination of land rights, governance, service delivery

**Table 1: Perceptions on what is blocking service delivery**

	<b>Makapanstad</b>	<b>Selepe</b>	<b>Total</b>
The chief, he does not want to lose power	22	1	23
The Chief because he's from a different political party than municipality	3	1	4
The Municipality/Ward councillors, they just promise	10	34	44
Corruption/ Non transparency	5	0	5
Did not answer	5	9	14
<b>Total</b>	45	45	90

	<b>Title deed yes</b>			<b>Title deed no</b>			<b>Total</b>
	<b>Makapanstad</b>	<b>Selepe</b>	<b>Total</b>	<b>Makapanstad</b>	<b>Selepe</b>	<b>Total</b>	
<b>Chief yes</b>	10	17	27	11	17	28	55
<b>Chief no</b>	10	1	11	0	0	0	11
<b>Total</b>	20	18	38	11	17	28	66



## 2) CLaRA and the local level

- Local discourses mostly emphasize transparency and effectiveness - less grounded on principles and more on outcomes
  - A certain demand for individual titling of land
  - Strengthening of efficient local governance processes and service delivery
    - Both linked to the property right regime since the chiefs derive their power from the control they exercise over the community territory.
  - Spillovers in the way CLaRA is perceived and will be used
  - CLaRA is too limited in scope
- ↓
- Conditions at local level not met - were not in a position to propose
    - did not have the capacity
    - were not representative
- at local level, or even less to influence national processes, subsequently content of policy



## 4) Concluding thoughts

### **\*Public policy's as constructed entities**

Several not independent factors that shape Public Policy

- Political economy (national, global)
- State building (new elites – urban) and governance structures/practices
- Political 'games' and multi-stakeholder interaction at different levels

Implications for (land) policies:

Complexity of renewed (land) policy development



For public policies to be sustainable,  
have to be based on institutional compromises



## 4) Concluding thoughts

### \* Policy processes matter!

As much as policy content (as processes will influence content)

CLARA -

- Last minute changes, while Bill was being past through National Assembly (just before Presidential elections 2004)
- Biased participation (not consultation) process (local communities were not present, not influential)



Although consultative, it was not participatory, not inclusive  
Act not based on an institutional compromise



**Consultation process = only pseudo-legitimization of policies**



## 4) Concluding thoughts

### \* Democratization of the public sphere?

More complex policy processes: New interlocutors, new type of contributions

- Multiple actors: Different stakeholders, different interlocutors (NGOs, RECs, civil society, traditional leaders, international donors, ...)
- multi-level policy processes



- does not make it more democratic
- fragmentation of influence spheres



## Some concluding thoughts

### \* **Renewed governance framework that has to be 'acquired/owned/shaped'**

- Last minute changes – biased consultations

Government's right in a Parliamentary democracy,

- Government as an actor

« Government does not have to listen »

Renewed stakeholders have to enforce renewed policy processes to restructure power relations

- Institutional environment not ready yet
  - no democratic institutions at different levels
  - no representation, especially at local level



## 4) Concluding thoughts

- \* **New roles, new questions and approaches**
- \* **Changing role of the State**
  - Post-Washington consensus – impacts on content and processes
- \* **Changing role of national policy**
- \* **Different questions, different approaches, different expectations**
  - Less normative/content oriented but more support to accompany policy processes
  - Strengthen consultative processes, making policy more inclusive
    - Support for processes
    - Stakeholder capacity building



**Thank you**

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