Workshop Report on Land Problems in Botswana Particularly in Peri-Urban Areas (Mogoditshane)

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At

President Hotel Gaborone

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Introduction

In November 2000 the Government issued a directive to demolish houses in Mogoditshane and surrounding villages. This action incited the Botswana Council of Non Governmental Organisations (BOCONGO) and the Botswana Christian Council (BCC) to commission a study¹, to look into the nature of the evictions from the psychological - social implication as well as a legal point of view.

BOCONGO and BCC contracted Ms Prisca Mohlahlane, to conduct a study to get a clear understanding of the events that led up to the evictions. The research was carried out in the areas of Mogoditshane and surrounding villages of Nkoyaphiri, Tsolamosese, Khudiring, Morope and Mmopane.

The study looked at the social and economic implications of the demolitions (i.e. poverty, overcrowding, health hazard, street children, etc), The findings of the study pointed to the fact that all the people affected were living in poverty, there are definite problems within the land administration i.e. the Land Board (as also indicated in previous studies e.g. the Kgabo Commission) and the misunderstandings and perceptions of guidelines and rights of land ownership the Land Board officials as well as by ordinary Batswana who seem to form majority of people affected by the evictions.

The study concluded that there was considerable misunderstanding and inconsistency of what criteria was used to evict and demolish.

To exacerbate the problem "Land Boards do not have easily accessible information showing what piece of land has been allocated to whom and for what purpose. They do not know how much of their land has been allocated and how much is still available for allocation. Of the allocated land, they do not know how much of their land is being utilized and how much is idling. As a result of all this, both the custodian of land and government cannot get an overview of the land situation for planning purposes'.

The study outlined the emotional and sociological impact of the demolitions. However, good quality primary data was needed as a tool for effective advocacy and lobbying and targeted intervention. Primary data was needed on concrete statistics; how many single headed households and how many elderly people were affected, has there been an increase in problems such as homelessness, school dropouts, orphans street children and terminally ill patients suffering a breakdown in their care This will assist in future projects targeting the urban poor and homeless.

The symposium was made possible through the financial assistance of the Intergraded Development Group of the Human Sciences Research Council (HSRC), FONSAG through the auspices of BOCONGO coordinated a Symposium to bring together the stakeholders to analyse and prepare a strategic action plan of the existing problem and to try to prevent future misunderstandings of the law by the enforcers as well as the people affected.

Symposium: Demolitions in Gaborone's Peri-Urban Areas

¹ Mogoditshane Land Issues – BOCONGO 2001

A symposium was held on Monday May 6 and Tuesday May 7 at the President Hotel, Gaborone to begin a dialogue between civil society with key stakeholders, including the Department of Lands, affected schools, clinics and the people affected.

Mr. Lucas Letlhogile of the Botswana Christian Council acted as moderator. The first order of business was to outline the objectives of the symposium.

Objectives:

- To accurately and numerically assess the true extent of the problem;
- To develop a practical, implementable plan of action;
- To assign future roles and responsibilities to civil society players;
- To develop a non conflictual platform for lobbying and advocacy;
- To positively influence the forthcoming Land Policy under development by the Department of Lands.

Land Board Perspective by Sarah George, Principal Land Officer, Department of Lands

Botswana has three land tenure systems namely state land, tribal land and free hold land. State and tribal land are used for residential purposes. Free hold farmland is used for whatever use the owner wants to put the land to, here people have the rights to do whatever they wish. The land boards do not have any control over the use of such land.

The Land Boards have the responsibility to administer all the land in the tribal land areas while the Department of land is responsible for Land in the state land area.

For the purposes of the workshop, priority is on the Mogoditshane area and they fall under the Kweneng district and is primarily administered by the Mogoditshane Sub Land Board. The problem in Mogoditshane is as a result of the expansion of Gaborone. All areas surrounding major towns have problems with land. As people move to these cities in search of work or visits, the cities become overcrowded.

The problem of waiting endlessly for the allocation of plots is very frustrating. The problem is not that of the land board alone it emanates from the slow acquiring of fields from the field owners. The law in Botswana does not allow for the land board the seize fields they have to be given up by the field owners. As a result people have sometimes settled on these fields illegally, built illegal structures leading to squatting.

The Land Board has the mandate to administer that the land is used in the right manner and as a result in Mogoditshane the Land Board has acted according to its mandate. It has removed those that settled on tribal land illegally. They have been removed from this piece of land because they have occupied that piece of land without the proper authority to do so. We are all aware that many people have been affected by these demolitions. Fora such as this will look at how incidents like this will be avoided in the future.

Civil Society Perspective by Ntsabane Keabonye (Womens NGO Coalition) and Peter Tshukudu (Emang Basadi)

The Women's NGO Coalition and other NGOs were brought into the picture as a result of the concern they had for the plight of the people of Mogoditshane. At Mogoditshane the situation is very gloomy, (see pictures).

Some of the people affected by the demolitions are the very impoverished and the demolitions have placed them in very difficult and precarious situations. It was at this point that the people concerned approached the NGOs for help.

The Women's NGO coalition, Emang Basadi and other concerned CSOs have visited the area to get information which could assist NGOs determine the impact of the demolitions on the lives of the people of the area. Those affected by the demolitions are the homeless, orphans, sick and elderly people. The intention of the visit to the area was to ascertain what help the civil society and other stakeholders could provide.

These demolitions are contrary to the ideals of vision 2016, which states, "By the year 2016 Batswana will be able to obtain access to good quality basic shelter either in the urban or in the rural areas. The national housing policy will not discriminate against any social group women or disabled".

To our knowledge the whole process of demolitions was not properly channelled, basic services where not provided for those who were to be affected by the demolitions. And finally, has the government put necessary structures in place that would impede the occurrence of these problems in the future? This problem has been reoccurring since 1993.

Overview of the Study of the Evictions in Mogoditshane and Surrounding Villages – by Prisca Mohlahlane

The report presents the findings of the study commissioned by The Botswana Council of Non Governmental Organisations (BOCONGO) and The Botswana Christian Council (BCC), to look into the nature of land problems in Mogoditshane and surrounding villages,

The study was commissioned to research the people affected by the demolitions who were asking for the NGOs for help with a variety of problems who felt that the Mogoditshane Sub Land Board was inconsistent when carrying out the evictions.

Some of the problems of the evictions were homelessness; children who leave school because their home is no longer there; lack of understanding of what the evictions are based on, the Land Board did not consider facts of their cases. Another complaint was the sense of fear and insecurity caused by the presence of the Special Support Group (SSG) this was made worse by the fact that some people from the community of Tsolamoses, had been shot by the SSG (with rubber bullets).

The Ministry of Lands Housing and Environment mandated the Kweneng Land Board to carry out demolitions of houses in Mogoitshane and surrounding villages. They were also under pressure to complete the work by the end of June 2001. The demolitions form part of a project called "Mogoditshane Project". Government allocated P11 million for this project. The reason for the demolitions according to the Ministry of Lands, Housing and Environment, is that people are in the way of development due to illegal occupation of land in the mentioned areas. In an interview with the Minister of Lands Housing & Environment, he noted that in 1989 there were 15000 'squatters' in the areas of Mogoditshane and its surrounding villages. The Minister went on to say that in the year 2000 there were 2400 so called 'squatters' occupying land, which, is meant to accommodate 5000 people.

It should be noted however that the problems of squatters/illegal development in these areas go back many years and as a result are complex. The complexity emanates partly from inaction by government, action that could have arrested or reduced the situation of self-allocation of land (see Kgabo Commission on Land Problems in Mogoditshane and other Peri-Urban areas). The Commission was held in 1991, Government came up with a White Paper in 1992, which was based on the same Commission. No action was taken by Government to implement the white paper until November 2000, almost ten years later. Hasty short term solutions to deal with the different problems in these areas are likely to give birth to more problems which have to be dealt with later.

The Ministry of Local Government Lands and housing, made a decision in April 1999 after seeking advice from the Attorney General, to compensate people who have been allocated land by field owners in Mogoditshane, (so called 'squatters'). Those people who were compensated were categorized as;

- Those who acquired the land from field owners before 8 July 1994.
- Those who acquired the land illegally but have been in occupation of the land for thirty consecutive years without disturbance.
- Those who regularised their tenure by payment of a fine of P5000.
- Those who acquired plots lawfully.

The compensations were carried out and over two hundred people were compensated. In September 2000 the Ministry of Lands Housing and Environment gave the Kweneng Land Board a directive to demolish the houses of people who were said to be 'squatters' (this included those people who have been allocated land by field owners) in the areas of Mogoditshane and the surrounding areas. The directive overrides the decision to compensate people.

Government has set a precedent, which raised legitimate expectations on the part of the people/'squatters' who were not compensated. When the question was raised with the Minister in charge, the answer was that, the decision to compensate 'squatters' was made by technical officers. The Minister went on to say that these technical officers should not have taken the decision. In the Minister's words, "A mistake was done and government cannot afford to correct one mistake by another mistake". The Minister also emphasized that demolitions have to be carried out in order to deal with illegal occupation otherwise, the Ministry will be failing to carry out its mandate of delivering land.

The general feeling in the Ministry is that the problems in the areas of Mogoditshane and surrounding villages are legal as opposed to being a result of social conditions that forced people move to these areas. The emphasis is therefore that the problems should be dealt with through legal means.

The Kgabo Commission has shown that the so-called 'squatters' in these areas were forced by social conditions to occupy land illegally. Government on the other hand has demonstrated its determination to deal with the problem through legal means by ensuring that there are no loopholes in the Land Act and other related legal documents.

By introducing amendments to these policy documents. The latest such amendment is that of the Customary Land Act which was done in November 2000. This Amendment clarified the jurisdiction of chiefs on land cases. The opinion of some legal practitioners is that this case

further strengthened the amendment as well as the position of Government, i.e. to opt for evictions.

The report focuses on specific issues (as spelt out in the terms of reference), which can be a basis for discussions between the civil society and the authorities concerned. As already mentioned the problems of land are complex, the report is therefore not conclusive. There is need for a broader study on land and the problems thereof.

The occupants were low-income earners and they were the ones who built the dwelling i.e. they were not tenants. Majority of these people moved to urban areas to look for employment and could not afford to pay high rentals in Gaborone not even the SHHA plots. Generally the informants had a vague idea of the function of the Land Board. They seem to think that land administration was a function of the Land Boards and chiefs assisted by ward heads. There was lack of understanding of the land tenure system and the existence of the different leases, which govern land use.

There was general confusion among the occupants on the evictions even though 'kgotla' meetings were held by the Ministry of Lands, Housing & Environment to inform people about the evictions. This was partly a result of being reassured by some politicians in the run up to the 1999 elections that Government would not demolish their houses.

The office of Directorate of Corruption & Economic Crime (D.C.E.C) acknowledged that a number of complaints have been reported to their office about the operation of Land Boards, although the D.C.E.C did not disclose the nature of complaints/allegations.

The issue most commonly raised was that of inconsistency of the Mogoditshane Sub-Land Boards. The occupants claim that the Land Boards office told some people that they were in the way of developments and others who lived in the same area were left alone. Other occupants claimed that some people have been allocated land even when allocations were put on halt. They went on to say that there were people who had applied for land at the same time some were allocated and others were not but the Land Boards gave no explanation for the different treatment.

The present evictions could also affect economic and social development in the sense that those occupants who were involved in informal trade such as fixing cars, selling food are displaced and children were taken out of schools when their house is demolished.

Open Forum - Comments and Discussions

- The same situation happened in Francistown the Gerald Estate incident. Government has probably realised that is made a mistake. This is because it disadvantaged several people who were on the waiting list. This workshop should come up with viable solutions that would rectify the problem from re-occurring.
- The slow rate of allocating land in the Kweneng District has resulted to the squatters taking the law into there own hands.

- The route problem in Mogoditshane is that people settled on fields owned by other people. We have to find out if the field owners gave these fields to the settlers or did the settlers grab these fields.
- One thing that should be made clear is that field owners do not own these lands it is communal property.
- How is it that land occupation is occurring only in Mogoditshane and not so much in other peri-urban areas around Gaborone? The reason maybe allocation of land is stricter in Tlokeweng and other peri urban areas.
- If there is a problem with the Land Board and those problems are not highlighted or not known it would not help the situation.
- It would be very important to know if the traditional rulers had a role or had the Land Board disempowered them.
- There is that feeling that the chiefs and traditional leaders have been betrayed and undermined.
- In the past the chiefs and land overseers worked together, so there should be a relationship between the Land Board and the traditional law. If you wished to purchase land you would approach the land overseer whom would demand money then go to the Land Board.
- People get confused about who really allocates land whether it's the land board or the land overseer.
- It is well known that land is power the chief's felt disgruntled when the authority to allocate land was removed from them. At the moment the chiefs are resisting the lack of power and that resistance should not be taken lightly.
- Why did the government take such a long time after the conclusion of the Kgabo Commission to commence their demolition exercise? Politicians responsible for land matters did not want to implement it if, they had implemented it immediately it would have been less painful.
- We all agree that things could have been done better, but the squatters broke the law.

Consultant's Primary Data Report presented by Diana Mompoloki – FONSAG

To enhance the study, statistics were needed on the effect of the evictions such as number of school leavers, crime rate increase (or decrease), clinic programme dropouts such as Prevention of Mother to Child Transmission, using secondary data from the police, schools, clinics etc.

In carrying out the study we had serious problems in accessing information, especially in Kweneng District Council.

Some of the vital data that was carried out were:

• To trace where the people whose houses had been demolished have gone,

- To document how many houses are still to be demolished in the Mogoditshane, Nkoyaphiri, Tsolamosese, Khudiring and Gabane area,
- To obtain actual dates regarding how many of those evicted will be reallocated and how many plots are available for allocation,
- To collect secondary data from schools, clinics, police, and
- To document the effect on those living with HIV/AIDS, especially whether it is counter productive to the Prevention of Mother to Child Transmission and the new antiretroviral programme, targeted for the Greater Gaborone area.

Limitations of the study

- Occurred over a short period of time,
- Problems accessing information in some areas, culture of secrecy, and
- Some government officials were very helpful.

Houses and shelters to be demolished

There are a total of 5000 plots to be demolished in Mogoditshane, Nkoyaphiri, Khudiring, Gabane and Tsalamosese. Of these approximately 2500 have already been demolished. Although this area is the first to suffer these demolitions, others will follow in other villages and towns with a squatter problem. Selebi Phikwe has already been affected.

What effects has the evictions had on the various day-to-day activities?

Customary Court

The court officials have indicated that they have 95 cases outstanding due to the demolitions. They are unable to find the claimants as their cases have been demolished and they have not left any forwarding addresses with the court. The outstanding amount in these cases is about P 10, 000.00. These cases are both civil and criminal.

Mogoditshane Police

- People are returning or moving to Mogoditshane again due to the standpipes in Gaborone being closed.
- An increase in homeless people sleeping in the streets and especially at bars and liquor stores.
- Man power and other resources such as vehicles used during the clearances left a gap in policing and could have led to the increase in crime figures in the area, by approximately 30%.
- The partly demolished houses make a good hiding place for thieves.
- Many people are seeing these areas for very unsanitary temporary hosing.

Block 9 Clinic

About 60% of the attending patients are from Kweneng from the areas of Mogoditshane, Nkoyaphiri and Tsolamosese. Block 9 clinic has about 244 patients from these areas that are TB patients, as they have no proper homes they are therefore not registered. As a result the clinic is unable to practice patient outreach and follow ups.

The patients are obviously at greater risk of dying from the disease and are more likely in unsanitary conditions to spread the disease to others. There is also the risk of spreading or creating the drug resistant TB **f** they do not regularly attend the clinic and take their medication regularly. Obviously this has serious health implications for the country as a whole.

Block 9, Primary School

Many of the children from Tsolamosese went to school in Block 9. In 2001 there were 137 dropouts and transfers and only 61 incoming students. This is repeated all over the area, it was also noticed that schools did not keep records of where the children are going or why they left but it is very likely that the cause is the clearances.

The school authorities also complained that the children found it hard to keep clean, as there is very limited access to water in Tsolamoses and had to be carried for long distances.

Group Presentations and Recommendations

The participants were divided into 3 groups. They were given instructions to first do a SWOT analysis of their topic. There were some very positive areas to look at and it was urged that focus should not only be on the negative ones. For instance, there is an infrastructure in place. Also the government and community have come to this symposium to talk in a non-conflictual manner.

After the analysis, the groups were then asked to come up with a plan on what should (or could) the NGOs, Government, Community and the Private sector do.

The third part of the group's assignment was to come up with a plan. The plan must contain what can be done by whom and when. The groups were divided into two to look at the strengths, weaknesses, opportunities and threats of the way land is allocated, how to deal with existing problems and the long term solutions.

Land allocation

1. Strengths

- It is a decentralised system.
- Tribal land is accessible and free.
- Simplified application process.
- Administered by an independent body and one can acquire land anywhere in the country.
- Non-discriminatory land allocation system.
- One can own more than one piece of land.

2. Weaknesses

- The rich have unfair advantage.
- People do not have access to information-allocation procedures.
- Conflicting/confusing roles between traditional leaders and land board.
- Lack of data on available and allocated land.
- Does not deal well with land scarcity.
- Lack of adequate skills on the part of land board and land overseers.

3. Opportunities

- Regularise the squatters.
- Law governing land should be followed.
- Continuous updates applicants.
- Land boards should buy land at market prices.
- Good information systems to be put in place.
- Train land board allocating authorities.
- Boards to be politically neutral and members should have the necessary skills.
- There should be dialogue between the land board and tribal authorities.
- Government to engage civil society in educating people.

• Policy based human rights.

4. Threats

- Corruption.
- Land might finally end up in the hands of a few rich individuals.
- Lack of implementation.
- Land grabbing.
- Conflicts tension and war.
- Lack of cooperation between land boards and chiefs.
- Social and political conflicts.

How to deal with existing problems

Solution for vulnerable groups

- There should be a negotiated settlement and amnesty; there should be no more demolition of houses in the affected areas.
- Accelerated land delivery.
- Site and service approach.
- Labour intensive works.
- Market related compensation to land holders.

Good governance and institutional reform

- This should include local government
- Public information and education.
- For CBOs, NGOs and CSOs.

Planning

• This should be both short and long term strategic planning.

The long-term solutions

Government

- Establish national; coordinating committees for implementation of the United Nations HABITAT agenda, which was signed/ratified.
- Establish multi sectoral demolition committee to psychologically and materially prepare "squatters".
- Include peri-urban areas in a Greater Gaborone" area.
- Reduction of plot size.
- Impose property taxes for those with more than one plot (money to be used for housing initiatives).
- Computerised land allocation system to avoid land grabbing.
- Public education on land acquisition and use.

NGOs

• Work with multi–sectoral demolition committee.

- Public education.
- Do more research and share with government.
- Explore possibility of housing associations.

Private Sector

- Provide funds for housing associations.
- Develop low cost housing.
- Re-locate outside Gaborone (provide employment in other areas).

Communities

- Act lawfully
- Build communal housing
- Actively engage government to take advantage of programmes available.

Comments and suggestions

- Government should not concentrate development in Gaborone it should think of expanding its programmes to other surrounding areas, such as Rasesa ETC.
- It was suggested that NGOs should be more involved in research so as to assist government in the future.
- About the housing associations, it is will be very important to get clarity on how they will operate.
- Most property agencies provide housing for the rich and do not cater for the lowincome earners. There should be poor rights policy scheme in place to assist the poor.
- NGOs should organise a scheme like Habitat for Humanity, but this will only be possible if the land is available. The problem there is that the rich will always grab available land.
- NGOs should empower the people to know their rights.
- There should be a commission of enquiry to clarify how the Land Board operates.
- It would be very difficult to stop squatters and demolitions, but we should try and avoid the situation occurring in the future.
- The government should instruct the Land Board to speed up the allocation of land because they have the power to do so.
- It may be wise for the government to treat the problem in Mogoditshane on merit because there is a problem on hand.
- Some sort of control should be placed on acquiring more than one plot per individual.
- People should be sensitised on the importance and value of land.

Assigning Roles and the Way Forward

- Habitat for Humanity could help in providing houses for these displaced people. In responding Habitat noted the problem is the availability of land and payment for the materials.
- The Women's NGO Coalition, BCC and BOCONGO should get clarifications from the authorities on immediate remedies.
- A multi sectoral committee should be set up.
- A time frame should be in place this should be facilitated by FONSAG and BOCONGO.

Recommendations, Issues of concern from the Study of the Evictions in Mogoditshane and Surrounding Villages – by Prisca Mohlahlane

Short term

- 1. An urgent intervention by sectors such as the NGO to come up with interventions to address the immediate crisis of homelessness in the area.
- 2. There is need for discussion between sectors such as the NGO and government through the Ministry of Lands, Housing and Environment on how Land Board deals with cases of evictions. This should include putting in place a system through which the Land Board could deal with these issues.
- 3. Urgent action is needed to look into the inconsistency occupants have raised about the Land Board operations. There, needs to be a strict code of guidelines to follow evicting people not on how the land board officer felt at the time.
- 4. The other inconsistency was the use of witnesses to testify that a particular person had been living in the area for a certain length of time (the witnesses could be chief representative, a ward head, a neighbour etc
- 5. There is need for the Ministry in charge to come up with an effective monitoring system, which would force some of the land board officials to be accountable, particularly in the way they deal with members of the public.
- 6. In the Kgabo Commission concern was raised about land board officials' poor public relations approach to the general public. Not only did it seem that this situation remained but it has been made worse by the pressure exerted on the land board to complete the eviction. The mechanisms used by the Land Board as a result of this pressure were such that they were punitive and at times disregarded any rights of the occupants. The emphasis was on demolishing the dwellings. Some land board officials have been heard to say that the people in those areas had no rights as they had broken the law.
- 7. Government of Botswana has shown commitment in addressing gender inequality through some policy such as National Gender Programme Framework (1998) and National Policy on Women in Development (1996). These rights should be addressed
- 8. The casual labourers employed to demolish should be properly informed and trained. These casual labourers should be put through basic public relation skills considering that they were involved in a very sensitive issue such as land.

Long term

- 9. There is general lack of information on the land tenure system. In the past not enough consulting and public information was done.
- 10. There was need for a consultation between the two sides rather than a top down approach on the land policy document.
- 11. Citizen Participation, to build a culture of human rights awareness and commitment, promoting an enabling economic environment has to come from the major groups in the society NGOs, media and business, local as well as national government, parliamentarians and other opinion leaders. All these can be achieved mainly through public education, which allows people to be critical about social issues and express their views.
- 12. NGOs particularly those that deal directly with Human Rights as an area of concern, could also work with government in ensuring that the present situation of evictions do not repeat itself in the future.
- 13. Government has shown openness and willingness to uphold human rights, by ratifying various international human rights instruments such as Convention on Elimination of Discrimination Against Women CEDAW, Convention on the Rights of the Child CRC, International Convention on the Elimination of All Forms of Racial Discrimination. NGOs should lobby Government to take this commitment further and sign/ratify the Convention on Social & Economic & Political Rights and also implement it.
- 14. Botswana constitution does not explicitly guarantee one the right to shelter or land NGOs, as initiators of alternative debates can engage government and other stakeholders to lobby for a change of the constitution and use models such as The South African constitution, see under The Bill of Rights.

Annex

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Kgomotso Motsoma	Village Development Committee			
Kesentseng Noulawa	Mogoditshane resident			
Gerscone Basimanyeng	Mogoditshane resident			
Oratile Mathenelele-	Mogoditshane resident			
Keetumetse Mbatawa	Mogoditshane resident			
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Programme

Monday, May 6, 2002	
8:30 - 8:45 8:45 - 9:15	Official Opening Objectives and rules of the Symposium Lucas Letlhogile - Botswana Christian Council
9:15 – 9:30	Land Board Perspective Sarah George, Principal Land Officer, Dept of Lands
9:30 – 9:45	Civil Society Perspective Ntsabane Keabonye Womens NGO Coalition
9:45 – 10:00	Questions and Answers
10:00 – 10:30	Coffee
10:30 – 11:00	Mogoditshane Presentation Prisca Mohlahlane, Consultant
11:00 – 11:30	Primary Data Diana Mompoloki - FONSAG
11:30 – 12:00	Video
12:00 - 12:30	Questions and Answers
12:30 – 2:00	Lunch
2:00 - 4:30	Groups Work
	What do we need to improve?
	What needs to remain?
	Implementation Plan with roles and responsibilities
Tuesday, May 7	
8: 30 – 10:30	Groups Presentations
10:30 – 11:00	Coffee
11:00 – 12:30	Groups Presentations
12:30 – 2:00	Lunch
2:00 - 3:00	Compilation of Groups and Assigning roles