

HIGH LEVEL PANEL ON THE ASSESSMENT OF KEY LEGISLATION AND THE ACCELERATION OF FUNDAMENTAL CHANGE

REPORT OF WORKING GROUP 2 ON LAND REFORM, REDISTRIBUTION, RESTITUTION AND SECURITY OF TENURE.

Eastern Cape Public Hearings, 16 August 2016

1. INTRODUCTION

- The MC, Panel member Mr T Tshefuta, explained the mandate of the working group and set out the scope of the Group's work, including the relevant legislation involved. The scope covers: the social, economic and political significance of the Land Question; land distribution (e.g. **Provision of Land and Assistance Act**, the **Communal Property Associations Act 1994**, etc.); land tenure reform on farms and in communal areas and the links between land tenure legislation and other laws (e.g. the **Traditional Leadership and Governance Framework Act 2003** and mining laws such as the **Mineral and Petroleum Resources Development Act 2002**); land restitution (e.g. **Restitution of Land Rights Act 1994**); agrarian reform and rural development, and; the legacy of spatial inequality (e.g. **Spatial Planning and Land Use Management Act 2014**, etc.). He re-iterated the questions that participants should have in mind when making their contributions. These included the following: *In what ways has the implementation of various post-1994 laws assisted or inhibited land distribution and restitution of land rights? Have these laws decreased poverty and inequality? Have tenure security laws stopped evictions or provided people with legally enforceable rights to land? Have laws, policies and programmes enabled black farmers to use land productively to improve livelihoods and benefit communities? What are the strengths and gaps in current laws and policies and how should Parliament address these gaps?*

- **Prepared presentations** were made by the following organisations: Ntinga Ntabakandoda Rural Movement; AFESI-CORPLAN; Phuhlisani/Umhlaba Land and Rural Development Group; Border Rural Community. **Individuals from the floor** who addressed the Panel (whether in their private capacities or representing community organisations) included the following: Zoleka Sigasana (Duncan Village); Thethinene Jordan (Ward 2, Duncan Village); Nomabhelu Luwe (Ward 2, Duncan Village); Simphiwe Sandlana (Port Elizabeth); Busisiwe Peter; Mr Fama (from Cwengcwe); Siphon Katane (representing Kwelegang Communal Property Association); Ntsika Dapho (Peddie); Khuthala Simelane; Ndzondelelo Frans; Pastor Jabani Phumelele (used sign language); Noxolo Bunono (Malahleni District); Mrs Funda (Ward 42, Mdantsane). **Written submissions handed in at the venue** by members of the audience (all in isiXhosa) came from: Sibongiseni Zetelele (SANCO, Tshatshu Village near Qonce); Mbuyiseli Venene (Nkonkobe Farmers Association); Nonzondelelo Matakancane (Balasi Location); Tony Bizana (Masimantyan Co-op, eNgcobo); D. Pikoli (Mdantsane); George Vuyisile Gxowa (Vulamasango Singene, Cacadu Village, Lady Frere).

2. POINTS THAT EMERGED

2.1 Land is of deep significance to African people: key to identity and cultural expression. (*Ntinga Ntabakandoda*).

2.2 Tribal authorities should have been abolished in 1994. Instead they have been strengthened via the back door by the **Traditional Leadership and Governance Framework Act (TLGFA), No 41 of 2003**. (*Ntinga Ntabakandoda*).

2.3 Problems raised in respect of communal land and rural governance include insecure tenure, collapse of land administration in former homelands, land hunger (residential land encroaching on grazing land, and the latter in turn eating into cultivation sites), lack of legal clarity on communal land despite the **Communal Land Rights Act** having been declared unconstitutional as far back as 2010. Evictions of families by chiefs and some traditional councils continue. The victims of these evictions are mostly women. (*Ntinga Ntabakandoda*)

2.4 Provincial departments and municipalities insist that communal land belongs to traditional leaders. (*Ntinga Ntabakandoda*)

2.5 Two sections in the **TLGFA** are particularly problematic (*Ntinga Ntabakandoda*):

- **Section 20** – responsibilities of traditional leaders include land administration, agriculture, administration of justice, etc. These responsibilities are substantial enough to approximate a fourth sphere of government, which is not provided for in the Constitution.
- **Section 28** - reinforces and perpetuates Bantustan boundaries and some of the discredited traditional leaders associated with the Bantustans.

2.6 The combined effect of these provisions is that people are prevented from opting out of the jurisdiction of a traditional leader, whose strong powers also make it difficult for the community to practise customary law from below, as should be the case. Moreover, only 40% of traditional councils are to be elected. (*Ntinga Ntabakandoda*)

2.7 On 28 July 2016, the Constitutional Court declared the **Restitution of Land Rights Amendment Act No 15 of 2014** to be invalid. No further new land claims can thus be entertained. Parliament must ensure that the Land Claims Commission fulfils the direction given by the Constitutional Court. (*Ntinga Ntabakandoda*).

2.8 Parliament should review the 1913 cut-off date for land claims .The Minister should have discretion to deal with pre-1923 claims (*Ntinga Ntabakandoda*). Consideration should be given to claims dating as far back as the 1800s (*Sipho Katane of Kwelegang Communal Property Association*)

2.9 The Land Claims Commission's budget should be increased so that it can fulfil its mandate (*Ntinga Ntabakandoda; Thethinene Jordan*)

2.10 The **Interim Protection of Informal Land Rights Act No 31 of 1996 (IPILRA)** does not contain any provision for recording people's rights or interest in communal land. As a result, there is ongoing disagreement about the possible solution to the communal land challenge, which creates tension. The Act should be amended and the regulations developed to establish a land records system that will operate parallel to the existing land registration system for title deeds, etc. in the short term. Over the longer term, continued consultation is required for a negotiated settlement on possible solutions (AFESI-CORPLAN)

2.11 At the current rate of delivery, it is estimated that it will take the state 20 years to wipe out the existing housing backlog. Government should release a policy statement recognising incremental or managed land settlement as a legitimate form of housing delivery and proactively identify land and provide basic infrastructure before the need arises, and allow people to settle over a period of time (AFESI-CORPLAN)

2.12 Redistribution is not only confined to agricultural land, but should include housing allocated for residential purposes. The High Level Panel should actively participate in the consultation process on the development of the new Human Settlement Act (AFESI-CORPLAN)

2.13 Government should make best use of existing laws instead of enacting new legislation unnecessarily. An example is given of the **Property Valuation Act No 17 of 2014** which introduces the novel (and possibly costly) concept of the Land Valuer General, over and above the existing Expropriation Act which can be used, should the need arise to expropriate land without compensation (*Phuhlisani/Umhlaba*)

2.14 Also cited as another example of bad practice is the **Draft Communal Land Tenure Bill of 2016** which is allegedly inspired by failed legislation from Kenya, where apparently, an elaborate upgrading of occupational rights into formal title deeds fell apart when people reverted *en masse* to customary law practices (*Phuhlisani/Umhlaba*)

2.15 The Restitution of Land Rights Act (No 22 of 1994) should go back to Parliament to rectify the provision which gives the Minister discretionary powers to decide whether a claim is genuine; such discretion should reside with the courts (*Phuhlisani/Umhlaba*)

2.16 Restitution should be accompanied by recapitalisation funds; without this recipients cannot do much to improve the land (*Border Rural Community*)

2.17 Resources are taken out of community land without the people being consulted. Quarries are established and stones trucked out daily while communities do not know who owns the businesses and what happens to the proceeds. (*Border Rural Community*)

2.18 Land claim beneficiaries should be assisted with access to finance and mentoring (*Simphiwe Sandlana*)

2.19 Redistribution policy is currently skewed in favour of already successful farmers who do not necessarily go into food production, preferring lucrative commercial ventures such as game farming instead. Most of these beneficiaries are white farmers. (*Simphiwe Sandlana; Busisiwe Peter*)

2.20 Through the **TLGFA** the government has given traditional leaders even more powers than municipalities, at the same time forcing these leaders upon rural communities, even in places like Ciskei where historically the institution of hereditary leadership had been done away with. The result is that in the cities South Africans are governed by rights while in the rural areas they are governed by tradition and custom. (quote from Ashley Westaway 2012). (*Ntsika Dapho; Westaway quote also cited by Ntinga Ntabakandoda*).

2.21 Duncan Village issues: missing Residential Fund monies, old houses. No one to raise the issues with. Leadership unresponsive. (*Zoleka Sigasana; Thethinene Jordan*)

2.22 Consideration should be given to the notion of food sovereignty, in addition to food security, with attention being paid to infrastructure development including rainwater harvesting and renewable energy, which in turn will lead to employment. With regard to renewable energy in particular, the bio-gas possibilities of cow droppings (ubulongwe) need to be explored. Government should support research institutions which work in areas of climate change, rain and indigenous seeds – for instance the Universities of Fort Hare, Rhodes, Nelson Mandela Metropolitan, Walter Sisulu and the Water Research Council (Busisiwe Peter).

2.23 Strong support for *Ntinga Ntabakandoda* presentation, especially on the issue of imposed traditional leadership. They always appear to be involved when irregular practices occur: land claims lists being manipulated to expunge the names of some claimants; selling of grazing land to commercial concerns (e.g. a brick factory) without consultation (*Nonzondelelo Matakancane*)

2.24 Victims of forced removals (from East Bank Location to Mdantsane) still have no recourse. Sent from pillar to post whenever they approach officials to find out why their land has been sold. Cash compensation should be paid: restitution is a pipe dream (*D. Pikoli*). Similar sentiment expressed by communities forcibly removed as a consequence of a Betterment Programme back in 1965. Officials are not helpful, stalling

them with promises of “registration” since 2014. Victims of forced removals should be compensated in cash without further delay (*George Vuyisile Gxowa*).

2.25 Land disputes are complicated by delays and lack of records. Many claimants die, leaving multiple generations of survivors who have no clue as to the status of the claims or the extent of their entitlements (*Sibongiseni Zetelele*).

3. CLOSING REMARKS

The Chairperson of the Panel then thanked the participants for sharing their insights with the Panel. He noted that such inputs were valuable in enabling the Panel to pass on the message to those that should hear it, that communities have many concerns. The Chairperson observed that leadership should not only be seen at election time, but should be visible regularly in communities because people not only have concerns but often have solutions as well.

4. SUMMARY

- **Legislation (past, current or prospective) referred to in submissions:**
Traditional Leadership and Governance Framework Act 41 of 2003; Communal Land Rights Act: Restitution of Land Rights Amendment Act 15 of 2014; Interim Protection of Informal Land Rights Act 31 of 1996; Human Settlement Act; Property Valuation Act 17 of 2014; Expropriation Act; Draft Communal Land Tenure Bill 2016; Restitution of Land Rights Act 22 of 1994;
- **Suggestions, proposals and recommendations made:**
 - a) *Parliament must ensure that the **Land Claims Commission** fulfils the direction given by the Constitutional Court. (Ntinga Ntabakandoda) para 2.7;*
 - b) *Parliament should review the 1913 cut-off date for land claims .The Minister should have discretion to deal with pre-1923 claims para 2.8 (Ntinga Ntabakandoda). Consideration should be given to claims dating as far back as the 1800s). (Sipho Katane of Kwelegang Communal Property Association) para 2.8;*
 - c) *All 1998 claims should have been finalised by end of 2017 (Ntinga Ntabakandoda) para 2.8;*

- d) The **Land Claims Commission's** budget should be increased (Ntinga Ntabakandoda; Thethinene Jordan) para 2.9;
- e) The Act should be amended and the regulations developed to establish a land records system that will operate parallel to the existing land registration system for title deeds (AFESI-CORPLAN) para 2.10;
- f) Government should release a policy statement recognising incremental or managed land settlement as a legitimate form of housing delivery and proactively identify land and provide basic infrastructure before the need arises, and allow people to settle over a period of time (AFESI-CORPLAN) para 2.11;
- g) The **High Level Panel** should actively participate in the consultation process on the development of the new **Human Settlement Act** (AFESI-CORPLAN) para 2.12;
- h) Government should make best use of existing laws instead of enacting new legislation unnecessarily – e.g. use of **Expropriation Act** in place of new **Property Valuation Act** (Phuhlisani/Umhlaba) para 2.13;
- i) Abandon the **Draft Communal Land Tenure Bill of 2016** which is allegedly inspired by failed legislation from Kenya (Phuhlisani/Umhlaba) para 2.14;
- j) The **Restitution of Land Rights Act (No 22 of 1994)** should go back to Parliament to rectify the provision which gives the Minister discretionary powers to decide whether a claim is genuine; such discretion should reside with the courts (Phuhlisani/Umhlaba) para 2.15;
- k) Restitution should be accompanied by recapitalisation funds; without this recipients cannot do much to improve the land. (Border Rural Community) para 2.16;
- l) Land claim beneficiaries should be assisted with access to finance and mentoring (Simpfiwe Sandlana) para 2.18;
- m) Consideration should be given to the notion of food sovereignty, with attention being given to infrastructure development including rainwater harvesting and renewable energy. Explore bio-gas possibilities of ubulongwe (Busisiwe Peter) para 2.22;

*n) Government should support research institutions which work in areas of climate change, rain and indigenous seeds – for instance the **Universities of Fort Hare, Rhodes, Nelson Mandela Metropolitan, Walter Sisulu and the Water Research Council** (Busisiwe Peter) para 2.22.*