

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

FREE STATE PUBLIC HEARINGS

(Bloemfontein, 5 October 2016)

1. INTRODUCTION

Prepared presentations were made by: INYANDA; Youth in Agriculture and Rural Development (YARD); Sdumo (Gariep); Motse (BUM); Thabang Mofokeng (HOT/Rural Workers Movement); Jacobus Stroebe (AGRI-Free State); Jake Kgothulo (AFASA/NERPO); Ntate Mosegigi (Dithlabeng Municipality); Khotso Bakoseng; Manto Molutse (Bothaville); Abraham Motaung; Dikeledi Motsumi (Nkomonde Family Trust). In addition, the Panel heard from organisations and individuals who addressed WG3 on matters which had some relevance for the land question: Commission on Gender Equality; Thabiso Nyane (Thabanchu); Disabled People South Africa; Traditional Leaders. As usual, the Panel was also addressed by members of the public, speaking from the floor

2. OVERVIEW OF ISSUES RAISED

- According to **Youth in Agriculture and Rural Development (YARD)**, overvaluation of land is an impediment to land reform and the unavailability of land maintains the skewed historical patterns of land ownership inherited from apartheid.
- Agriculture graduates should be empowered to assist land reform beneficiaries, who possess the knowledge to work the land, but need training on farm management. Such assistance will enhance the sustainability of operations on the land in question.
- The programme of mentorship: This programme has been introduced but has the inherent weakness that the mentor has a limited time on the farm. They do not give enough time for black (or emerging) farmers. Adequate time is needed to ensure that land reform farms are productive.
- Agriculture can play a critical role in tackling hunger and unemployment. Programmes such as CASP and MAFISA are used to help to empower the farmers. These programmes need to be revamped and monitored in order to ensure that they address the challenges confronting farm owners.
- In the view of **INYANDA**, the proposals in legislation such as the TKLB are problematic because they re-tribalise South Africa in perpetuation of the structures of governance inherited from colonialism and apartheid. By imposing chiefly rule in the former

Bantustans and extending significant powers to these traditional leaders, this Act is at odds with the Constitution and with evolving customary law.

- Transferring land to the municipalities may be a good idea but since many municipal officials are corrupt, an independent structure that includes members of the community should be created to manage this land.
- **Sdumo (from Gariep)** observes that officials and politicians 'bottleneck' the land reform process through nepotism. The presenter related his personal story of how he came to access 500-hectare land in Bethuli. A sympathetic official of the DLA told him about another official who secured two farms for a friend. The presenter exposed the nepotism that happened and acquired the 500-hectare land. The programmes are good, but the bottlenecks are constraining progress.
- With respect to programmes like CASP and Ilima: Department officials decide on programmes, without any input from the community. New structures are established, which do not serve any purpose and are neglected, except when it becomes expedient for the Department to revive structures, which are again subsequently abandoned
- The presenter alleged that the local mayor interfered in his farming operations, and accused him of falsely acquiring sheep on his farm, which were subsequently stolen by officials. The presenter also recounted that he is, under existing regulations, not allowed to establish a dwelling on the land he was awarded.
- The impact of the land reform programme is minimal because land beneficiaries make very little, and the competition from more established, especially white farmers, very tough. The market is dominated by the rich, especially white farmers. The laws promulgated to benefit the historically disadvantaged farmers, are in fact benefitting the white farmers, who have both the skills and knowledge to access resources, such as the SETAs.
- The Recap funding programme was set up so that it would benefit the farmers. But it has for the most part not been implemented, and favours only a few, especially those close to the government officials.
- In the view of **Motse (of BUM)** communal areas need to be democratised in order to enhance and improve the lives of the poor. Meaningful consultation requires that the emergence of social movements for purposes of engagement be encouraged.
- The provisions of the Labour Tenant Act and Extension of Security of Tenure Act are not being implemented. People have attended the sessions and their inputs are never taken seriously.
- The willing buyer–willing seller principle is not working.
- In other communities, Trusts are established, which inherently mirrors Apartheid tendencies since it is based upon Bantustan boundaries. The existence of these Trusts gives control of the land to kings and chiefs, who do not have the best interest of

communities at heart. The Trusts divides people, as the chief appoints members to the council, and only those he is favour of.

- The government should adopt alternative laws, which are inclusive and which can undo the structure of government on communal land – which currently is reminiscent of the Apartheid tribal structures.
- Chiefly rule provided for in the traditional leaders through the Traditional Leadership and Governance Frameworks Act, as well as the Traditional Courts Bill reintroduces the Apartheid mechanisms, and is at odd with the Constitution.
- **Thabang Mofokeng (HOT/RWM)** suggested that the hierarchical ownership of land in terms of Trusts and chiefs has never yielded good results. There are various instances where chiefs make decisions that are not in the best interest of communities. They sell land to business, without consultation of the members of communities. In a recent case in the Eastern Cape, the chief sold mining rights to a private company, without consulting the community. This resulted in the killing of people that object to these developments. This illustrates the point that land cannot be controlled by trusts nor by any individual, but by the communities themselves.
- The stumbling blocks to redressing the 1913 Land Act and the land reform programme 1994, appear to be attempts to continue operating and functioning within the 1913 framework (87% vs 13%).
- Commodification of land must come under scrutiny, as it is illegal to commodify land. Section 25(5) does not specify that in order to gain access to land on an equitable basis, it must be used productively.
- The laws protect the elites. These laws endorse denial of land for residential purposes, because when people occupy land for housing the law turns them into criminals, and they are harassed. The result is congestion and overcrowding.
- The laws are good but they lack implementation – for example, section 25 (5) (6) and (7) of Constitution, if implemented properly, will yield very good consequences as far as the land issue is concerned.
- The state should scrap the willing-buyer-willing-seller principle, as it does not contribute towards land reform.
- Municipalities must acquire land for the needs of communities. The statement that there is no available land is untrue.
- According to **Jacobus Stroebel (Agri-SA, Free State)** land reform is already well regulated in South Africa, but what is missing is legislation on communal land rights and tenure. The legislation (**PIE, ESTA, IPLRA, LTA, CPA Act etc.**) is adequate but what is lacking is implementation of these laws. A missing piece of the puzzle is a law on communal land rights and tenure

- Challenges hampering land reform include: poor stakeholder consultation, corruption, poor post-settlement support, poor budgeting etc. For example, only 1% of the national budget is allocated to land reform.
- Concern expressed over the continuously changing policy environment as it is not possible to fix existing implementation problems with more policy. For example, the focus is currently on Agri-parks, a programme which lacks sound policy or legislation – ultimately causing a lot of uncertainty.
- Overall responsibility for land reform rests with government, recognition should be given to the private sector initiatives tabled to date, which seek to support land reform. Farmers are willing to assist farmworkers through the land assistance process. We support finding on land restitution by the SAHRC: we desperately need alternative settlement models. Current settlement models are not implemented correctly. Post settlement support is hampered by corruption and nepotism.
- With respect to redistribution, it should be noted that without 'ownership' of land to serve as security in order to access finances, one will not be in position to empower oneself economically. Thus land ownership is an important concept, be it with respect to a dwelling, farming land, etc.
- In the view of **Jake Kgothulo (AFASA/NERPO)** land reform programmes (including SLAG and PLAS/LRAD) have failed. To date they have not produced a single commercial farmer in the Lejweleputswa. Group-based projects have failed due to internal disputes.
- The PLAS programme looks good, with various incentives, but is still faced with the problem of government interference. The ministers introduced the new District Land Reform Committees (DLRC), which would recommend recipients for farm allocations, but the government officials oppose this process, which ultimately delays the programme. The DLRC, is a bottom-up approach that responds to the needs of the local communities and should be strengthened.
- There are currently about 500 applicants for land at Lejeleputswa, but it is unclear how land can be allocated to everybody – there should be some way to identify who gets land. The problem is that government officials want to prioritise beneficiaries that they have preference for. This constitutes a conflict of interest, at best, and nepotism or corruption at worst.
- Government should provide 10% collateral to the purchase of a farm, and fund the recapitalisation of the farms – e.g. for a farm valued at R6 million, R2 million should be funded for recapitalisation (i.e. a third of the farm value)). Under such conditions, the emerging farmers, will be able to produce.
- **Traditional leaders** raised the issue of the implementation of laws. Their view is that majority of pieces of legislation passed by Parliament were progressive laws.
- Some of the communities have been applying for the recognition of their traditional leadership status. They are not happy about lack of progress in this matter.

- **The case of Abraham Motaung (Kwakwatsi Koppies).** In 1997 group of people in the presenter's community purchased a farm called Sibongile Trust from grants. The farm was bought with the cattle on it, as well as the tractors. The municipality has now claimed the farm, alleging that the farm was funded by Landbank. The presenter has three title deeds, but he does not understand how this matter has developed. The presenter states that the municipality claims it has the right to take the land, because of a will. R560 million in mining rights is involved. The Lejweleputswa Municipality and the Ngwathe Municipality have appropriated the farm, with no consultation. The community do not understand what is happening and request the intervention from the HLP.
- According to Motaung, "The farm was bought using our grant money. At a time when government was building RDP housing we said that we are not interested in RDP houses and instead we asked for that money that was meant for the grant to come to us so that we can acquire these farms and the livestock and it ended there. We were then given the grants, we acquired the farm and also acquired the livestock and now I am at a loss..... Money was taken from us at FNB, and then money was also taken away from us at NCD Hillbrow, they took money from us at SUNVEST where we were storing our harvest in Granseil. So this money and this harvest they don't want us to access it even a little bit"
- When called to meetings, government officials claim that the farm was bought with financial assistance from the Land Bank. But there are 166 people involved with the project, who pooled the R15 000 grant received by each person into an amount that was able to purchase 1100 hectares. It is astonishing that officials now claim that this was a bank loan.
- Abraham Motaung continues: "Our leaders who are representing us at Ngwathe and Lejweleputswa, ladies and gentlemen we are suffering, we don't have houses, we live in huts. Where we had plans to use this money in order to do for ourselves and to create a bright future. We called Mme Mantobela, we have totally given up on hope, Mme says - when we reach her telephonically - that our farm is a farm of black people so the municipality has the authority to give it away. How and why, because the mine that is going to overhaul it is going to be carried by the municipality - they have already provided a quotation for those who work with minerals. That mine that is now going to carry operation on the farm was provided with a price tag of R560 million and told us that we were unfit to own such a farm. We then asked what kind of information was contained in the title deed.they have erected a lion stream (?) and put it on the farm without our permission..... We have been bustling and opening up cases and going to police stations, even the police give up on us, they say that we have loaned the farm yet when we go to banks there is no debt that is reflected, that there is no such thing. They are hiding the fact that they have been taking money from us and that's why they say that we have abandoned the farm. We are just asking for help Ntate, I will end here".
- **Ntate Mosegigi (Dithlabaneng Municipality).** Evictions in Thabo Mofutsanyane District are excessive. Despite policies like ELRAD, PLA and now the 50% policy no farm dweller has benefitted. In fact, the government is becoming too lenient to farmers, allowing them to breed dangerous animals like lions and hyenas and letting them roam where people live.

- ESTA has not been helpful. After several summits calling for a moratorium on evictions (2005, 2006) later in 2010 there was the Land Tenure Security Bill, which now appears to have been discarded. NEDLAC, queried the bill. What about the radical change that was promised?
- Plots of government land are not being used, yet the claim is made that there is no available land for redistribution. Skills development, and identification of farmers should be based on agreed upon criteria, determined locally. Available criteria will also work against nepotism and corruption.
- Criteria for land redistribution is needed – taking into account the ability to use the land productively. In this regard, people without experience, older persons and youth, are not able to use the land productively.
- The **Extension of Security of Tenure Act, No. 62 of 1997** is not protecting farm dwellers, especially women on farms who are very vulnerable. People are evicted when their employment is terminated and they have to relocate to a township. Farm dwellers are often denied access to electricity, etc.: These issues need to be addressed, as well as the need for proper schools in farming areas. In addition, learner transport should be provided to support schools on farms.
- **Manto Molutse (Bothaville)** believes that NAMPO is one of the largest agricultural shows in the Southern Hemisphere, drawing over 70000 visitors from all over the world and it is in Bothaville in the Free State. It can play a role in alleviating poverty in the area - they must debate and discuss critical issues like land reform and labour relations. The government should intervene by bringing it back to Nala, the maize capital of South Africa.
- **Two case studies (unidentified speaker):** I want to discuss this issue because there is a man who stays in the area where I live. He lived on a farm in Bellfontein, the white farmer bought him a house, which was registered in his name. In the end he and the white farmer had a fall-out and he was evicted from the farm and the white farmer then sold this house to somebody else. When this man arrived back in Bellfontein, he struggled to acquire government housing because at the Deeds Office his name still indicated that he owns a house even though evidence exists showing that this is no longer the case. This house has been sold to somebody else and still government is failing to grant this person housing.
- Case Number Two: still on the topic of RDP houses. I think that the subsidy that government used to rely on in respect of allocating RDP houses needs to be reviewed. Because if you are earning a salary of R 3510, the rules say that the only people who qualify are those earning R 3500 or less. Meaning if you exceed this amount by just R10 on your salary, you don't qualify but at the same time it disadvantages our people because after deductions the money is no longer R 3510. So I'm asking government to have a second look at this with a careful eye, to review it or to increase it and see to it that our people are assisted in some way.
- **Dikeledi Motsumi (Nkomonde Family Trust, Kroonstad)** Land reform was introduced in South Africa to alleviate property, inequality and unemployment yet the above mentioned are still on the rise due to some policies that are not fully implemented to help our people especially those on the farms. Here amongst us there are people who have been sitting, I don't know for how many years

on plots and those plots remain the property of the municipality, of the government. There is no direction because even if you were to approach the people and ask to be allocated a piece of land which I can then purchase from you then you are refused on grounds that it has been reserved for development.

- There are also people who live in the areas without title deeds. Can government can intervene and assist us in acquiring title deeds in our hands so that even when you dissolve into the ground you do so with the knowledge that your children are in possession of something in their hands.
- There are farms in the area of Kroonstad and Steinros, whose ownership is unclear. Government should assist us with field workers to go and identify which farms belong to whom. Some of those farms have been used by white people since the day they leased them for 99 years, and that time has long passed but they are still sitting on those farms. And they are still making people do hard labour on those farms that are simply not theirs, yet the farm workers are equal to them in status. When it comes to this fact, about farm workers, it is a greatly disheartening situation where a farm owner has been bequeathed a farm by his grandfather and the farm is thriving and all the workers do is to continue to toil on the land. That kind of poverty is endless. Unless that kind of poverty is addressed and eradicated inequality will always remain.
- We are asking our government to please return the Ambag (trade) schools of the olden days where we can gain qualification showing that we are able to fix tractors.
- When we approach the Land Bank, which is assisted by our government, we do not qualify. Even when you have a title deed to land you still don't qualify because you do not have a mother that is employed and a father that is employed, you just return as you are with your business plan because there is no one that is employed in your family. Let there be a law or a clause that binds the Land Bank to assist our people otherwise Glen might as well shut down.

- **LAND ISSUES RAISED DURING PRESENTATIONS TO WG3**

- **The Commission on Gender Equality** proposes a sustainable livelihoods analysis to identify social and economic exclusion. With a focus on ownership of productive resources, particularly land.
- Analysis of access to government programmes, especially land redistribution, and the benefits that accrue should ensure that power relations form part of the analytical tools so that marginal groups such as women and persons with disabilities are targeted for empowerment.
- Redress should be accompanied by empowerment programmes. For example, restoration of land rights under restitution must be followed by post-settlement support in the form of training.
- **Thabiso** Nyane of Barolong bo Selesha (Thabanchu), requests the High Level Panel to consider an inquiry into the chieftaincy of the Barolong. This community referred its dispute to the Office of the Premier in 2014, a commission was instituted to deal with this matter, but this enquiry has not

been concluded. The main issue is that there is a dispute between two opposing groups within the Barolong, and this dispute is about who is the rightful chief.

- This impasse at community level has serious ramifications for development. For example, the presenter reported that there are mineral deposits on the communal land they occupy, and processes to give authorisations or endorse prospecting and mining have stalled. As a result, opportunities for job creation through mining have also been closed; and the majority of the people continue to live in poverty.
- The High Level Panel should consider requesting for an inquiry into the chieftaincy of the Barolong. This community referred its dispute to the Office of the Premier in 2014, a commission was instituted to deal with this matter, but this enquiry has not been concluded. The Community consulted the Office of the Premier but no tangible response or answer were given.
- **Disabled Peoples South Africa** are concerned about access to land for housing and also about subsidies: Majority of persons with disabilities are not considered. Similarly, when land is allocated, accessibility of such land for persons with disabilities should be considered as a critical factor.
- **From the floor:** Communities should be consulted and involved in policy decisions. This is fundamental to democratic principle. Further, what is needed is inclusive engagement on land issues, involving communities, private sector, and government etc.
- Post-settlement support to farmers is needed so that they can also become commercially-oriented.
- Agricultural institutions should provide training to unemployed youth to provide them with agricultural skills – in the maize capital of South Africa.
- Change of land use, especially game farming with Big 5 – on farms where there are occupiers. Licences under these circumstances should be prohibited.
- Allocation of land on communal areas and evictions: Commonage and indigent farmers. The support is given to white farmers. While policies are good, they do not reach the poor, only those with means to access information. When government buys farms, the priority should be farm workers. They should be targeted as beneficiaries, or given shares in the farms.
- Members of a community were relocated from Marabastad to Constantia, without any compensation, while the RDP houses allocated to them are in poor condition. Instead, government should have considered to compensate them for the value of the houses. The community have submitted all documentation to the municipality, but to date this has not translated into any sort of compensation.

- Food security: Allocate land for production to prisons, and ensure that prisoners work the land in order to produce more food.

3. LEGISLATION REFERRED TO IN SUBMISSIONS

- *Traditional Leadership and Governance Framework Act*
- *Traditional Courts Bill*
- *Traditional and Khoisan Leadership Bill*
- *Prevention of Illegal Eviction from and Unlawful Occupation of Land Act*
- *Interim Protection of Informal Land Rights Act*
- *Extension of Security of Tenure Act*
- *Community Property Associations Act*
- *KZN Ingonyama Trust Act*
- *Land Tenure Security Bill 2010*

4. CONCLUSIONS AND RECOMMENDATIONS

- Parliament must urgently undertake a formal enquiry on the violation of rights by the Tribal Leaders across the country and take action against such Tribal Leaders.
- Prohibition of unlawful evictions as well as repeal the Prevention of Illegal Squatting Act number 52 of 1951.
- Allow for genuine and substantive consultation of rural and urban dwellers over the desired system for the recognition and regulation of customary self-rule and governance, thereby enabling rural and urban dwellers to choose and develop their own democratic systems of customary self-rule, governance, laws and practices and also enabling rural dwellers to opt in or out of governance by Tribal Authorities.
- Fundamental revision of the proposed powers, roles and function of the Tribal Chiefs in line with the intentions of the Constitution.
- The undoing of Tribal Authority boundaries inherited from apartheid and scrap the TLGFA
- The suspension of recognition of Tribal Leaders whose status has been challenged in the Commission on Traditional Leadership Disputes and Claims.
- Local government must identify the land that is available and that land must be put into use and the government, the Parliament must create a budget that will be used to develop that land.
- Farmers wishing to assist their own farm workers through state assisted land transfers must be supported. In this regards land ownership should be audited to

account for all state land including State owned Enterprises, land owned by large companies and mines, and to track the movement of land through private sales and private sector land reform and indicate all land claims and pending mining applications. If such a land audit can be successfully and correctly done, a lot of vacant land that people think belongs to someone may then be exposed, to allocate to people who really need access to land

- The current models are not necessarily implemented correctly; there is a lot of corruption that hampers post settlement support. Various settlement models should be looked at which still give effect to restitution or alternative relief but simultaneously ensure that the business remains viable for the beneficiaries.
- Policymakers must stop drafting policy without widespread consultation. They must make it a point that the grassroots are included in the decision-making. They need to draft ideas, take them down to the grassroots and allow the grassroots to scrutinize them and contribute their inputs and then re-deposit them to the policymakers.
- The Department must identify farmers in communal areas who have showed potential for successful farming based on their track record; such farmers should be moved on to some of the state owned farms to enable them to expand their farming operations. The Comprehensive Rural Development program must focus on enabling rural people to take control of their lives because they are already having skills and experience and just need support from government. The program must effectively deal with rural poverty through the optimal use and management of natural resources such as in Bothaville for example where there is maize, peanuts, wheat, sunflower and water. Sedibeng Water is a large company that distributes water to other municipalities and must be encouraged to supply Bothaville.
- Youth in Bothaville must get training in various skills such as wastewater management, construction, electricity, agriculture and welding – there are two combined schools, Global and NAMPO.
- Licences should be withheld in cases of proposed change of land use to game farming on farms where there are occupiers.
- It is important that fieldworkers should be recruited to identify land under the municipality. Leases have ended, but white farmers continue to live on the farms. What is needed is a land audit.

5. DIRECT PLEAS FOR HLP INTERVENTION

- Abraham Motaung and the case of Kwakwatsi Koppies
- Two cases from Bellfontein over RDP housing
- Barolong chieftaincy (Thabiso Nyane from Thabanchu)

