

HIGHLEVEL 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

GAUTENG PUBLIC HEARINGS, 24-25 November 2016

1. INTRODUCTION

The Gauteng hearings were held over two days at the Johannesburg City Hall. The following summarises land reform inputs made during these hearings, both from the prepared stakeholder inputs and spontaneous contributions from members of the public.

2. OVERVIEW OF ISSUES RAISED

- The land of the Vaal, covering the area from Marikana to the Union Buildings, belongs to the WECO Royal Kingdom. According to the speaker, the land commonly known as Wildebeest has been theirs since 1950. He lodged a land claim on behalf of the people of Wildebeest which has not been finalised despite many attempts to reach the Commission. Requests HLP to follow up on the matter to ensure that the Commission takes claims seriously. Also, they (the chiefs of the area) have had freehold title to the land since 1975. They would like to return to the land. *(Mazibuko from WECO Royal Kingdom)*.
- Some of the laws passed are: ESTA, ULTRA, IPILRA etc. In the process of law-making, it is vitally important that there be inclusive public participation of the people of South Africa. He expressed concerns that the departments (mainly DRDLR) do not conduct thorough public participation. They only work with government Department's researchers and not the people that are affected by these laws. It would assist Government to also have curators with relevant knowledge on the prevailing circumstances when developing legislation. *(Mpho Khalo)*
- Communities must play a central role in the process of law-making. They also need to ensure that, apart from the chiefs, people on the ground should be included during consultation processes, and that their views are taken into consideration. Land question is sensitive issue for South Africa but all people must be involved. There should be no isolation of stakeholders. *(Mpho Khalo)*
- Farming communities must be given priority attention. In many of the rural areas, especially the 'plots' (i.e. peri-urban agricultural land), one find kids growing with very little development opportunities, no ECD's, churches etc. Government should look at opportunities for prioritising churches for land for land allocation, as it is common knowledge that church can play a critical role in development of communities. The church buildings can be used for other community events such as hosting funeral services, etc. HLP to recommend that government must speed up land redistribution. *(Rev Thabo Kampitsa)*
- There is a need to focus on skills development for the youth. This is a critical intervention in the fight against poverty. People need skills development and education, especially about land tenure, farming, rural development programmes, buying and selling of land. Parliament should assist in this regard with public education. *(Mahlatsi Tladi)*

- The laws are being made and various programmes are in place to ensure that people are developed but they are poorly implemented. (*Mahlatsi Tladi*)
 - Many South Africans do not know who owns the land (in urban areas, one finds land that is unused and it is unclear who owns the land and this creates confusion. Such land should be released; a comprehensive audit of all land in South Africa should be done. (*Mahlatsi Tladi*)
 - Programmes of land reform are good ways of addressing the history of dispossession of African people. There must be political education around these issues; there is a need to improve the education curriculum to address the history and politics of land in South Africa. (*Mahlatsi Tladi*).
 - The majority of South Africans would like to be part of the discussion about the future of this country, especially land reform. Land transactions must be transparent so that we know who owns what land. (*Mahlatsi Tladi*)
 - The settlers invaded the land belonging to South Africans. They are the trespassers. No black South African has ownership of land and mines in western countries but in South Africa, many whites (who trespassed on the land of Africans own land and mines. The land question is a complicated matter. For instance, one may own the stand but what happens underneath the stand is the business of the state Ownership is limited to the surface, mineral resources are owned by the state. (*Aggrey Kgaphola from KwaThema*)
 - Township planning, for instance Soweto, was decided by the whites. An African would have commute from there to work in Johannesburg for the whites. And so was Alexander for blacks to work for Whites in Pretoria. Since 1994, when the ANC took over government, there was huge expectation that this spatial arrangements and plans would be transformed. However, there has been no transformation in spatial planning. Instead, what has become a common phenomenon is that public representatives move to live in white suburbs. They do not live in townships with their constituents. (*Aggrey Kgaphola from KwaThema*)
 - Question to the HLP: "How is it possible that there is someone with 20 farms, yet there are people living in shack on land that they do not own?" (*Aggrey Kgaphola from KwaThema*)
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- A critical area is that of women's independent ownership of land and accessing property rights in most of communal areas in South Africa. From their work, the Commission on Gender Equality (CGE) found that there is no uniform way in which land access for women is approached. In response to this, the CGE proposed a "One Hectare - One Woman" project to Parliament. (*Ms Thoko Mpumlwana, Commission on Gender Equality*)
 - The HLP should look at the Traditional Leadership Bill, which is one piece of legislation that threatens the rights, including land rights, of women. The HLP must ensure that the Bill provides for equal treatment of man and women. (*Ms Thoko Mpumlwana, CGE*)
 - Parliament must review the CGE's mandate to give it more teeth - Chapter 9 institutions need the clout to do their job properly. (*Ms Thoko Mpumlwana, CGE*)
 - Government is not taking the land question seriously. The HLP is requested to listen to traditional people who have no dignity left and who are not recognised, although they are the owners of the land. Traditional leaders are treated like confused people without direction. Whilst they have submitted a claim for restitution of the land, they have had no success to date.
 - Government should recognise kings and queens in Gauteng; many base their claims on KZN ancestry and other historical lineages from outside Gauteng.
 - The HLP to make intervention in the issue of Walmansdal. In 2007, when Ms Xingwana was minister, land was handed to people officially. But the regional office of the Land Claims

Commission failed to transfer the land back to the people, who were evicted when they tried to occupy it.

- Indigenous churches and their congregations are discriminated against when compared to mainstream churches.. They receive neither land nor funding.
- ESTA and PIE: These pieces of legislation do not work and they do not protect people. Instead, they facilitate evictions from the land
- The Mining Charter in mining areas excludes communities from matters that they signed for in the LCT 20 years ago. Agreements in respect of hospitals and schools, are not honoured. The things that happen within mining areas require urgent attention. The hospitals and other facilities are being outsourced. White people who get money from these mines take it out of the country. People do not benefit from these mines - even the subcontracting does not benefit the local communities.
- The land reform process requires some examination to align it with climate change challenges. Do people who receive land know about climate change, let alone having the resources to deal with it? Land without access to water is not land. There is a need to ensure that there is access to water when giving people land.
- Land must be allocated to people in the townships, especially those living in the informal settlements. (Many of those should be formalised).
- Chapter 9 institutions, like the Public Protector must also look at small cases at local level, especially the municipalities and district level government.
- The willing-buyer willing-seller policy must be scrapped completely.
- Programmes of skills development which do not give people skills must be scrapped too. Ekurhuleni has serious challenges around these issues of EPWP – these can be applied to the NARYSEC programme too.
- In 2010, in the Alberton land claim, the Commission paid out compensation money and people had organised themselves. The people of Heidelberg, asked for land and not money. (They think it will be a good investment). To date, their land claim has not been resolved.
- People have been evicted in Mohlakeng in Randfontein, Westrand, because of the sale of the land to a private company.
- Allocate land for the people of Midvaal. There are so many construction companies, but only one company gets awarded the tender.
- **Case Study:** Claim P0189 was registered by Zebidele Simon Kekana in 1995 and re-submitted in 1998. The registrar of the claim has passed on and the claim remains unsettled. The claim was referred to land tenure, but referred back to land restitution, prolonging the process even more. Claimants were never informed of the planned development of the land, and a game reserve has now been established on the land without consultation with claimants. Land claims lodged later than 1995 have already been settled, so it is unclear why this claim has not been settled. The matter has been referred to the Commission, which is dragging its feet.. The game reserve is established, and the community respect the process. But it puts them in a difficult position, should they opt for land restoration because their chances of returning to the land are slim. The land in question is the Ndebele land. Amandebele a Moletlane land. They have documentary evidence about this issue. **Question to the Panel:** If the apartheid establishment – with terrible effect on us – managed to register certain pieces of land, what is it that makes it difficult for the democratic government to fast track the process on the basis of information that is available?

- “Food security programmes do not reach us. We are struggling to access services, tractors etc. We are paying high bills for electricity. We taking care of properties, and we are farmers. We are not getting CASP. We are not given access to ownership of land. The 25% of the value of the property, i.e. RECAP, is only those who knows somebody in the Department of Rural Development and Land Reform. We applied for RECAP, we sought mentors and strategic partnerships. Rural Development sent us from pillar to post. Since 2008, I’ve been on the farm but have not gotten anywhere. Recap does not benefit us. My child does not want to be a farmer because of the struggles” (*Nomsa Selebalo*).
- Government has not responded adequately to the prejudice against women’s access to land i.e. the patriarchal expectation that the place of women should be at home doing “nothing” while their husbands go to “work”. (*Thandi Dlamini*)
- We acknowledge the programmes that government has put in place but communities find it difficult to access those programmes. These programmes are there but communities are not aware of those programmes, and government must follow up on these issues and ensure that programmes are accessible. (*Thandi Dlamini*)
- Nepotism is a major problem, even when someone is capable and qualified for positions or any other form of support, deserving people do not get support because they do not know those in positions of power. (*Thandi Dlamini*)
- The points in this section are tabled by **Buti Chakache of the Rural Legal Trust (Johannesburg)**: Since 2016, the organisation has resolved about 2000 cases that come from farms and rural areas. The HLP can log in to access RLT’s central case management to see for itself the kind of work done by the RLT.
- This work affects 2.7 million citizens of South Africa, a number equivalent to the population of Free State or Lesotho. These people are farmworkers, labour tenants, contract workers, women and youth. They are part of farm communities and they face abject poverty. These are the people that face abuse and other violations without any protection. Some of the issues that they have to deal with are:
 - Unfair labour practice,
 - evictions and threats
 - differential and inferior wages for women
 - various forms of human rights violations
 - bad treatment of farm employees with no unions to support them
 - Women and youth who form the largest category of the unemployed.
- There is wide acknowledgement that there are a significant number of farm owners that are doing their best to improve the lives of people working and living on their farms; and
- Section 25 and 27, coupled with the good intentions of ESTA, and the Green Paper of 2011, and development policy 50/50’, are all well and these efforts took into consideration the need of the people. However, evictions take place more often under the radar. And they go undetected. Many of the victims do not have the means to acquire alternative homes.
- Often, people on farms are informed about the Toll-free numbers of the Department. But at the time of their and dire and desperate situation, those numbers are not handy.
- Some of the hotspots for evictions are known. For example, farms along the R24 and R28, just outside Krugersdorp, one finds many informal settlements, and because they fall outside the Gauteng informal development framework, they do not get any services. Questions should be asked about where these people come from. They are the victims of evictions. They settle along

the roads in search for jobs. As a result, those people offer labour in return for exploitative wages. Similar examples can be found in the Free State in Bothaville, in the North-West in Botshabelo. These victims of evictions are collected by trucks to work on farms and dumped back to these areas in the night with no proper remuneration.

- Question to the HLP: Why was it so easy to evict all these people in the presence of government and the existence of ESTA and LTA as well as the competent courts? How do courts issue eviction orders when these people have nowhere to go? The problem with sections 8 and 10 of ESTA is that these provisions do not stop evictions, they simply regulate them.
- What is just and equitable – moral and fair? Is it morally right to cramp a household with livestock in informal settlements? In the current situations of vulnerability and insecure tenure for farm dwellers, people are encouraged to harvest corrugated irons to prepare in times of evictions, because one is never sure when these evictions will take place.
- Which structure is safer to dwell in – shack or mud house? A mud house is better. But do the courts of law satisfy themselves on questions of availability and suitability? All this happens amid scarcity of resources, and it happens in the presence of the LRMF and Legal Aid of South Africa. There is lack of monitoring of implementation of policies. And relevant government departments refuse to accept that they lack capacity.
- The following points were made by **Malapane of the African Farmers Association of South Africa (AFASA)**. Many people respond to the crisis of joblessness by migrating to the cities in search of job opportunities. AFASA met on 25/26 October 2016 to analyse the economy and the state of agriculture in South Africa. The debates highlighted that the legislation as it stands is satisfactory. However, a major concern was around implementation of the various statutes and policies.
- AFASA decided to march to Union buildings and there were a number of consultative meetings. One of the issues they asked to be addressed is the mounting of a comprehensive support programme to enable a black farmer to farm productively. Black farmers still operate in the periphery of mainstream agriculture.
- Every four years there are new programmes initiated but soon abandoned – SLAG, LRAD etc. the FSP are self-destructive at times and do not promote the independence of farmers. There are real farmers that want to farm but support has not been forthcoming. There are people who get support going from one institution to another: but not to farm – they use this as a means to accumulate funds (double-dipping). There is a need of a system to track who got what – so that people do not hop from one place to another, playing the system for gain.
- There are many committees that have been set up but the committees are not being consulted, and are not addressed on who will get the support. There is no transparency.
- Regulations of Agricultural Land Holdings Policy and Expropriation – this is what is needed to address these issues.
- Presentation by **Theresa Yates, Legal Resources Centre (LRC)**. Ms Yates addressed what she considered as working and what is not working, and making certain proposals on how to take these issues forward to resolve some of the challenges being experienced.
- *What is working*: as things stand, and as one looks at Section 25 of the Constitution, it is very difficult to say what is it that is working - for the following reasons: There are 1000s of unresolved claims. Where land is restored, there is no post settlement support. The state, instead of dealing with the backlog, decided to reopen the claims, which was successfully challenged. But the court success was on procedural grounds.

- With regard to tenure: No new law or policies have been presented to deal with tenure issues and land administration in communal areas. Majority of people depend on the goodwill of traditional leaders. With regard to tenure for farm dwellers, these people remain trapped on farms, with low wages and without any form of support
- From LRC's perspective, land reform with all its good intentions, was always going to be an impossible programme. It required commitment. Over the last 20 years, we have not seen the courage required to achieve real transformation.
- *How to move forward?:* The LRC believes that what is working is that South Africa is a country of laws and some of the laws are good, the challenge lying mainly with implementation.
- There are still many people within government and civil society who are committed to making sure that land reform works. There is a need for new ideas. For example, the migratory patterns where people are abandoning rural areas for the urban areas in search of better opportunities: what has been observed is that policies are not responsive to this trend.
- Land reform is not linked to housing and water. There are a number of issues that need to be aligned and integrated.
- South Africa created a very nice legal framework for organised land reform, yet the institutions were not transformed to make sure that the programme is working.
- ESTA creates rights, but institutions of policing and the magistrates are not transformed, which in the past has worked against protection of the poor and vulnerable.
- Access to land and security of tenure. It is important to recognise the agency of the people, in terms of what happens when they get the land.
- **Presentation by Ms Emily Tjale of LAMOSA**, who lamented the relationship between the government and LAMOSA, which had up to now cast the latter in the role of "stone thrower" since the organisation was always confronting the government or suing them in court. In the current stages of democracy, it is not necessary to be throwing stones at government. There is a need for new strategies to deal with the challenges. It was a concern for LAMOSA that government is not responsive hence, court challenges such as the restitution matter on the reopening of lodgement of land claims.
- There is a need for sustainable development and prosperity, however, since land reform, many of the rural communities are yet to achieve the benefits promised during the struggle against apartheid and landlessness. The processes to address dispossession have been slow and the beneficiaries are losing hope.
 - Information and knowledge are fading as many of the claimants are dying. In some cases, where settlement of land claims take place, resettlement of the people takes time or it never occurs. For example, the case of Boomplats; they were allocated the land in 2001. Up to now, they have not settled on the land. However, the Department of Water and Sanitation keeps sending bills to the CPA. They applied for water rights but they are not using the land. And nobody is staying on the farm
 - In the spirit of revitalisation of rural economies, shopping malls are going up in rural areas where people are poor, living on social security grants but the fields are not rehabilitated and government is not capacitating people to make effective use of the land. There are also serious questions about consultations regarding the building of malls and access to that land. The people should be involved and choose their own development and sustain their livelihoods.

- As to *Land restitution and redistribution*, the initial target was to transfer of 30% of agricultural land by 2014. To date, less than 10% has been transferred. Yet we see formation of committees, new Bills and laws. People that are involved in drafting these laws are not consulting communities
- Communities and rural women campaigned for “1 woman and 1 hectare”: it has been misinterpreted as “1 household: 1 hectare”.
- Communal Land Tenure Bill: The drafters of the policy did not understand what communal land is. During the consultation in September it was emphasised that the land belongs to the people: the chief is just one of the people, with the job of keeping order and managing the land. What will happen when CPAs and Traditional Authorities co-exist? This matter to be clearly spelt out urgently: in the process the ‘wagon wheel’ model needs to be reviewed.
- Restitution must be in the form of land, and not cash. If restitution is settled in cash, such money will be subdivided among the members, and each will get very little. Is this a fair and just compensation? If one gets land, one will remain with it for a long time. Many times claimants are asked what they will do with the land. But that question is irrelevant. The land is rightfully theirs.
- How do we build prosperous and united South Africa without land? It is a fact that productive land is in the hands of 35000 farmers. There is a need to broaden access and participation in the food value chain.

3.LEGISLATION REFERRED TO IN SUBMISSIONS

- **ESTA, ULTRA, IPILRA, TCB, TKLB, PIE, LAND ACT 1913, LTA, Communal Land Tenure Bill.**

4.RECOMMENDATIONS

- **It was recommended that the Panel minimises presentations by chairpersons of different working groups to allow more time for people to engage.**
- **Government should conduct consultative sessions on relevant policies and legislation before they are implemented.**
- **Accelerate the pace of land reform**
- **The DRDLR should undergo skills audit so that they speed up land reform and finalise land claims**
- **All claims require post settlement support**
- **The DRDLR must have strategies to protect tenure rights on communal land (using IPILRA)**
- **There is a need for an overarching law and policy as a framework for land and agrarian reform in South Africa**
- **Land in South Africa should only be owned by South Africans and not foreign nationals.**
- **Review ‘One ha- One household’ policy. People want ‘one woman-one-hectare policy’. Women and daughters in law should be included in ownership**

- **Expropriate land and redistribute it to the poor**
- **The High Level Panel should study the Traditional Courts Bill and the TKLB to ensure that they provide for equal treatment between men and women.**
- **The High Level Panel is requested to prioritise listening to traditional people and traditional leaders as these communities have recognition and dignity issues.**
- **The High Level Panel is requested to intervene in the Walmansdal issue**
- **Clarity is required on the issue of the overlap of roles between Traditional Authorities and CPAs in respect of communal land.**