

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

MPUMALANGA PUBLIC HEARINGS, 18-19 January 2016

1. INTRODUCTION

The Mpumalanga hearings were held over two days at the premises of Church Unlimited, Nelspruit. The following summarises land reform inputs made during these hearings, both from the prepared stakeholder inputs and spontaneous contributions from members of the public.

Over the two days, on the issue of land, the Panel heard from: Bennie van Zyl (TLU-SA), Samuel Mathebula, Speaker Mahlake (MoreiPuso), Mangwedi Mared (Bakone ba Phehla), Constance Mogale (ARD), Thulani (MEGA), Andries Sihlangu (ARD), Sakina Mohamed (GRIP), Ephraim Twala (Seitemele Land Organisation), Tshepo Fokane (LRC), Beauty Mkhize, Solomon Mabuza, Robert Davel (Mpumalanga Agriculture), David Mthombeni (AFASA), Themba Mokoena, JB Dibakwane (Casteel Land Claim), Johannes Mathumbu (New Forest), Sillion Mashiloane, Abednego Mkhathshwa.

From the floor, inputs were made by: Nontokozo Themba, Thomas Sibiyi, Colin Sedibe (EFF), Miriam Mahlangu, John Matsebula, Mumsy Tibane, Collette Sithole, Mam Phiri, Nomngqibelo Nkosi, Busisiwe Mnisi, Sonnyboy Gcowa, Sibusiso Magagula, Nomthandazo Goqela, Enos Chiloane, Andries Sihlangu, Zama Khumalo, Sindile Kodwa, Jabulelwa (Manyeleti), Peter Nkuna, Mr BB Mhlongo (Land Commission), Omara, Sindi Mabhena, Bernard Mashego, EJ Ndlovu (Sizilwane Land Claim), Makhosazana (Witbank), Pinky Langa (Witbank), Petros Khoza, Kgosi Mokoena (HTL), Dumisani (Mbhabha Farm), Thulani Ngobeni, Desmond Sibiyi, Michael Mandimane, Mazibuko (Kabhokweni).

2. ISSUES RAISED

- Restitution and land reform processes have virtually ground to a halt; they have become so irrelevant that it is futile to even try to apportion blame. After the promise of the Constitution, these programmes are letting people down (*Bennie van Zyl*)
- Land reform programmes are riven with inequality: women and youth are marginalised while only the rich have land, not the poor (*Samuel Mathebula*)

- CPAs and Trusts could work especially to facilitate access to funding, especially recapitalisation funding, but government support is lacking. These vehicles have also been overrun by violence and by lawyers who see them as lucrative business compared to criminal practice. Lawyers foment conflict (*Samuel Mathebula*)
- Food security does not exist – there is not enough land. Where there is agricultural activity, food is contaminated by chemicals and people get sick. Government should intervene to promote a return to indigenous farming habits.
- Beneficiaries who do not wish to farm should receive cash payments (*Samuel Mathebula*)
- *Mangwedi Maredi (Bakone ba Phehla CPA)*: land claim finalised in 2004. No land has been delivered yet. Obstacles include provincial DRDLR sending claimants from pillar to post, not responding to letter. There was a verification exercise in June 2016 (CPA, Trust, all claimants); report promised for end of 2016. Not forthcoming. The land has buildings, orchards, but is no longer productive. It has surfaced that a mining company called Everest has paid money for the land. Officials are unhelpful, they do not come to meetings. The annual report has been sent to National Dept. because Provincial cannot be trusted. Danger signals: the community are angry and have issued an ultimatum – if there is no response from officialdom, **they will invade the land by force at the end of March, beginning of April.**
- LAMOSA and the LRC are to be commended for blocking the attempt to extend lodgement of restitution claims. Existing claims should be dealt with first.
- Hearings such as these should be attended by genuine stakeholders (pensioners, caregivers, land claimants, volunteers etc.) but these are often frustrated by bureaucratic stalling and logistical obstacles. This mirrors the Mpumalanga dynamic, which is dominated by commercial interests, where such opportunities for genuine public participation are rendered merely a tick-box exercise. (*Constance Mogale, ARD*)
- There are water problems in Mpumalanga. There are water “gatekeepers” who are aided by legislation such as the amendments to the **Water Management Act** which are meant to exclude black people from access to water in the same way that the **MPRDA** excludes communities from the benefits of mining. (*Constance Mogale*)
- Malls are mushrooming in rural areas, taking away communal land. Smallholder farms are taken away from RDP housing. Customary law tenure rights are routinely violated. (*Constance Mogale*)
- Youth cannot get land, because Mpumalanga Economic Growth Agency (MEGA) owns all the land and, though they claim to provide funding, they do not.
- Youth should be afforded opportunities to understand the Constitution and social issues (crime, vigilantism, CPFs) through training workshops
- The Terms of Reference of the Panel should cover apartheid legislation such as the **Riotous Assemblies Act**, under which the EFF leadership is being prosecuted for supporting the return of land to black people. Other apartheid-era laws to be investigated are the **Insolvency Act** which enforces sequestration against the powerless, and the

Labour laws under which ill-treatment of black employees continues, such as the sacking of 300 workers at Mbhala Lodge for unionising. (*Colin Sedibe, EFF*)

- Expropriation is the only way to redress the imbalances of colonialism and apartheid; land was stolen, how can policy be based on compensating the thieves? (*Colin Sedibe, EFF*)
- The living conditions of farm dwellers must be improved (*Colin Sedibe, EFF*)
- Mpumalanga's geographical location between Swaziland and Mozambique brings with it a unique set of problems including a preference for Mozambicans and Swazis on the part of employers
- Blind old man forcibly removed 14 October 1965. Pained by the fact that he is about to die and nothing has happened in respect of their claim. The fact that this neglect happens under a black government is a source of great pain. Claim spans Mpumalanga and Limpopo, and was lodged in 1995. (Enos Chiloane, Moletele CPA)
- Manyeleti is a nature reserve for blacks who could not go to Kruger. Forced removal. Deed of grant in 1961. Claim lodged for Manyeleti (TLs claim it was rejected). Proposal accepted that TL sign on behalf of owners. Gazetted, registered. Hijacked by Tribal Authority Owners heard about this from reading *Noseweek* when the matter got to court. Trust Deed application was a forgery. Owners raised the issue and Land Commissioner came to address them. Decision taken for: (i) re-verification and, (ii) AGM to elect reps. A forensic investigation vindicates owners' complaints. The new "beneficiaries" (who had been paid for Manyeleti) went to court. Up to today nothing has been heard. (Webber Wentzel, LRC, have been involved in trying to untangle the matter). 100 ha have been added, without consultation. HLP please help. (*Andries Sihlangu, Manyeleti CPA*)
- The TCB and the TKLB should be scrapped, there is no need for this legislation. There is already abuse of power by traditional leaders in rural areas. They allocate land to outsiders for commercial gain, now the TKLB says they can enter into these "partnerships" without consulting their communities. In traditional courts nepotism and human rights violations are rife. Mining has introduced more abuse of powers by TLs: rivers and streams are now paid for, river sand is over-harvested, wetlands are exploited for gain – the proceeds are never seen by the communities. What more if these Bills are passed? (*Andries Sihlangu, ARD and Manyeleti*)
- Rural people should rise up and overthrow traditional leaders, who are an obstacle: they are unelected, unrepresentative and corrupt. Their existence undermines democratic institutions, rendering rural communities subjects while their urban counterparts are the only true citizens in South Africa. The TCB and the TKLB are the culprits, they are the measures through which the government shows support for this undemocratic institution. (In Khethukuthula 12 859 villagers have been robbed by a road construction deal the chief has given 5 ha to a church, and 7 ha to the construction company; in Buffelspruit officials openly defy the law by ignoring court orders with impunity). Such corruption is embraced by the government – no action is taken despite numerous complaints.

- In rural areas under chiefs, communities are subject to double-taxation, illegitimate levies, paying for burial sites. Some of the chiefs who are involved in these practices are not even South African, they are Swazi. “Makhosetive (Mswati III) is our Constitution!”
- Something has gone terribly wrong in Mpumalanga. A provincial workshop on morals is needed.
- *Mr BB Mhlongo (Land Commission)*, responding to land restitution issues raised:
 - problems acknowledged, but there is a context
 - some progress has been made: out of 6000 claims, over 3000 have been settled
 - Bennie van Zyl and Sam Mathebula have a point: Commission is trying to consolidate support programmes, so they do not operate in silos
 - Large claim (Nkomazi) worth R100s of millions processed, but now held up in LCC – this is beyond Commission’s control
 - Commission will correct the non-response allegations and follow up on all complaints raised

DAY TWO

- In violation of the requirements of the TLGFA, there have been no elections held in Mpumalanga to constitute Traditional Councils. The TLGFA and TCB are themselves problematic, confining rural communities within enforced boundaries without the right to opt out. Traditional courts are riddled with nepotism. Chiefs sell mining rights without consulting with their communities – there is neither transparency nor accountability. (*Tshepo Fokane, LRC*).
- Customary law is recognised in the Constitution, it should be restored and respected. Wide consultation will ensure that true living customary law will surface (*Tshepo Fokane, LRC*)
- Lack consultation by chiefs over mining is wrong. The people are owners of the land, some having collected money to purchase it under the guidance and encouragement of Pixley ka Seme. The 309-strong Driefontein community are owners, they have no chief, they do not want one. What say can he have over their property? Driefontein owners took in tenants, now more land is needed so that people can own livestock and be self-sufficient (*Beauty Mkhize*).
- Abolish polygamy (*Beauty Mkhize*)
- There is no respect for the Bill of Rights and the lawbreakers include government. Rural people are still oppressed by old laws (**BAA 1951**); traditional leaders are imposed on people, tribalism is back. As well as racism. Land ownership is denied, people still live under PTOs (**Proc R88 of 1969**). **ESTA** is not enforced. Land is claimed, but land does

not reach claimants - restitution benefits only senior politicians and government officials. Mentors rip off beneficiaries and turn them into farm labourers(*Solomon Mabuza*)

- Traditional leaders sell our land in broad daylight, even to foreigners. Municipal officials look on; they do not want to help. Aggrieved members of the community are told to keep quiet and obey traditional leaders. Nkomazi is trapped between Swaziland and Mozambique. The government should teach TLs what their job is: custodians not owners. In Buffelspruit under Matsamo Tribal Authority everything has a price tag. Land is sold openly by a chief from Swaziland – the area is governed like Swaziland HLP should tell parliament to come and visit, to hear people’s grievances (*Solomon Mabuza*).
- *Robert Davel (Mpumalanga Agriculture)* made the following points:
 - land reform cannot take place beyond life’s realities, and it is unfair to blame white commercial farmers for glitches in the land reform programme – blame corruption and bad practices
 - on the positive side, district land reform committees are contributing to improvements in how government spends budget, and many are chaired by black commercial farmers
 - many beneficiaries do not want to farm but they take recap funds year after year without showing results. Compensate them with cash and give land only to those willing to farm (or to learn)
 - commercial farmers are frustrated by bogus land claims
 - **ESTA** occupiers do not obey the rules, e.g. over the number of cattle allowed
 - private sector is happy to join public-private partnerships
- *David Mthombeni (AFASA)*: land restitution and land distribution are too slow, lands once fertile now lie fallow; government should work out a plan to do things better –
 - Too little land in some instances: 250 ha for 800 families is not workable, legislature should reconsider
 - Tenure security problems, on both employer and employee sides. Compliance with legislation not monitored, too few officials on the ground. Workers are harassed (e.g. Belfast, police not bothered to do their job). On the other hand, workers have responsibilities too: when you get the land you must work the land.
 - Whites are willing to sell land but absenteeism of officials is an obstacle – HOD in Nelspruit office has been absent for 3 weeks – unacceptable
 - Politics and politicians are responsible for bottlenecks, frequent reshuffles mean processes have to start afresh every time
 - Nelspruit does not want to talk to AFASA, yet we are stakeholders who make our living from the soil like other agricultural stakeholders. The MEC is a particular obstacle in this regard, despite a long paper trail of emails to officials.
 - Corruption is rife; it is better to deal with district level officialdom than province.
 - We support the PLAS programme but separate us from smallholders; talk to us as commercial farmers – the objective is to graduate to title deed.

- *Themba Mokoena (with Ngobeni, Ngwenyama and Shongwe)*: land reform programme is in a shambles despite our great Constitution. At Mkhuhlu/Calcutta we were overjoyed at news of a forthcoming Traffic College. Hopes dashed when the land and graves of our forefathers were desecrated by bulldozers in violation of **National Heritage Act 25 of 1999**. "Shame on you!" We need help through Access to Information Act to find out who is building over our ancestors' graves when we were told the old airport project was withdrawn. Smacks of corruption.
- *JB Dibakwane (Casteel Land Claim)*: land was claimed in 1998, nothing has happened despite assurance by MEC on 12 June 2016 that it would be expedited
- *Johannes Mathumbu (New Forest)*: we are beneficiaries of 20 000 ha, for which we are thankful. We are neighbours to Jampesi Citrus Project. Now Champagne has diverted our water to their own farms. Govt does nothing, their officials are shareholders in the illegal scheme.
- *Sillion Mashiloane (Dingledale)*: Dingledale Irrigation Scheme was set up by apartheid government and thriving in Lebowa and Gazankulu. Bushbuckridge was under Lebowa. Dingledale was under MEC Aaron Motsoaledi in Limpopo, now we are Mpumalanga and no MEC has ever visited. HLP please ask government to come and hear our issues, and to tell councillors to keep out of our affairs.
- *Abednego Mkhathshwa (Mawulu CPA, Riverlands)* it took 10 years to claim our land; certificate issued in 2007, still no land. Original CPA problematic, run by 2 people. The farm is very rich, now vandalised. Some parts sold to white people for R150 000, vandalised further, turbines stolen. DLA cannot help us, their officials are involved in the scandal Signatures on Standard Bank account, none from Mawulu. We need the certificate, our land is being sold off as plots.
- *Issues raised from the floor included:*
 - expropriate farms 'stolen' from the people
 - our land is being given to foreigners
 - claimed successfully in 2005, still have not received land (*Sindi Mabhena, Mkhuze*)
 - MECs are redundant; bypass and go straight to National
 - state land (Komati) was invaded, no action by officials. Andries Gamedze was excellent, he listened and acted; now he has been moved and we have been given Vusi Shongwe who is useless.
 - we were victims of forced removal from Mbombela old location, where we had plenty of land for our herds; we submitted claim. We left our livestock behind. Now they want to give us R37 000 each. Some have been compensated, but not others.
 - also at Ngodwana farm, people offered R16 000 for shareholding over land now redirected to whites who are offering bribes of R5000 to people to leave the farms.

- 1994-1998 Samuel Mawele encouraged us to lodge a claim, we got a certificate from Lulu Xingwana. Terms were that we would be supported and mentored and MEC offered to participate personally but has never been seen since. Mawele also turned against us; he died in 2012 with 5 cars. Please ask Public Protector to investigate (*Mjejane Trust, Tenbosch*)
- successful land claim gazetted, has even been through LCC in 2013. 4 claims consolidated into one. Still no title, already 2 of the claimants are deceased. Government suggests we form a group, now suddenly they are saying we are constantly fighting, and they want to engage with some whites over our land. Mr Gamedze was helping us; just as a resolution was in sight, he was replaced by Mr Shongwe who has no clue about what his job entails. The department's overtures to white buyers are stirring up racial tensions, with the youth prepared to invade the land violently. Officials are now denying even that it was a group claim, saying it was individual (*EJ Ndlovu, Sizilwane Land Claim*).
- Traditional leaders are oppressing us in Nkomazi. Inkosi Mokoena is here but we will not protect him. He is killing us with corruption at Mawewe. Government wants to develop us, but he divides us. He draws a salary, but we have to pay for everything, from seeking to apply for a social grant for your child to being allocated land; you have to pay a bribe to get an RTO. Construction of a private hospital is afoot. Police have been beating up dissenters to the project. There is no proper process, you have to bribe for everything.
- University of Mpumalanga should be visible in the province, especially in Witbank. It must elbow out TUT satellite campuses.
- Witbank is a mining hub. Most polluted area. Ask DMR to stop issuing mining licences. Consult with communities about mining, it is no use talking to chiefs alone.
- In Mawewe Inkosi Mokoena rules with an iron hand and is feared like God. He only appoints women that he sleeps with. **[Interjection by Provincial Legislature Speaker: "we cannot use this platform to insult each other. People must speak out, but within the confines of the law"]**
- problem at Mbabha, sexual harassment of farm workers. We have approached CCMA, Dept of Labour, SAHRC, Parliament, all to no avail. The employer flouts the laws of South Africa, claims he paid President R6 million to cover for him. We have a list of names we can produce. (*Dumisani, Umbhabha Farm*)
- a problem was created when the Constitution merged provinces. We now live under traditional leaders and municipalities, which is not sustainable in the long term. They cannot work together, they are at war. We want service delivery but this is torpedoed by TLs. Government should stand up and monitor. These institutions are using taxpayers' money, how they spend it must be monitored.

- we have been without water for 6 years – we get water maybe 3 times a week. Must we turn violent before someone hears us ((*Michael Mandimane*))
- worked in mines for 27 years. Our children will never accept chiefs because of people like Mokoena who demands levies for everything. Government needs to solve this problem.
- no law in this country. Lebombo border post, Hoedspruit, Lion's Den. Corrupt border officials facilitate car smuggling out of the country
- Mokoena is corrupt. He will evict you even if you pay your levies – now he wants to build a tavern next to a church.
- we appeal to chiefs not to view their job as a business. Now we view them as the enemy, but that is not necessary. They must consult their communities and meet them halfway in respect of their needs.
- Inkosi Mokoena (National House of Traditional Leaders) responding to earlier remarks:
 - in the name of the chiefs in Mpumalanga, I must state categorically that we must accept some of these things. I need however to clarify the work we do as chiefs
 - on the issue of succession and appointment of traditional leaders, the Premier, the MEC, the House of Traditional Leaders – they do not, and cannot, take sides in family disputes. They take the word of the royal family; if the family does not endorse you, we cannot support you.
 - LRC is wrong to claim that there were no elections for TCs in Mpumalanga. Under the watch of MEC Mashego elections were held in all areas where boundaries were not in dispute and the 60-40 requirements were met. We were the first province to conduct elections for councillors.
 - Panel must investigate why Chapter 12 of the Constitution is only one page.
 - Thank you Mabuza for saying you are happy with the justice system, traditional courts are part of it. Do not look down on traditional leadership or try to influence the many people who are happy with traditional courts and happy to be under the leadership of chiefs. Let people have their choice; magistrate's court should not be compulsory.
 - People are attacking polygamy. My dilemma is that as royals we undergo sacred rituals and are fortified by strong muti. ("Sithsathsa timbita"). The corollary of that is polygamy.
 - I agree with a lot of what was said, some things are wrong, but please do not generalise.
 - I should also raise the question: what are my rights if I am publicly insulted and defamed in this meeting?

3. LEGISLATION REFERRED TO IN SUBMISSIONS

- **ESTA; TCB; TKLB; Land Act 1913; CPA Act; MPRDA; Expropriation Act; Expropriation Bill; Water Management Act; Insolvency Act; Riotous Assemblies Act; Labour Relations Act; BAA 1951; Proc R88 of 1969; Act 112 of 1951; Act22 of 1991; Act 32 of 2000; National Heritage Act 25 of 1999; Act 4 of 2012; Act55 of 1995; Act22 of 2007; Restitution of Land Act.**

4. CONCLUSIONS AND RECOMMENDATIONS

- **There should be a CODESA on land reform, which must include government as a party**
- **Failed projects should not be continually recapped**
- **Expropriation should be abandoned, it will slow down land reform**
- **Abandon TCB and TKLB**
- **Traditional leaders should be prevented from using public funds to sue, or defend suits by, their own communities when the latter are seeking to enforce transparency and accountability**
- **Compensate in cash those beneficiaries who cannot, or will not, engage in farming activities**
- **Beneficiaries should be trained on specific commodities suitable for the particular farm they have received, and this should be done before the land is delivered**
- **Emerging farmers must be issued with title deeds, they must be owners so that they can use land as collateral. A phased approach must be adopted.**
- **Increase land reform budget, and ensure responsible use of funds.**
- **Government should take measures to discourage dangerous populist talk, it raises false expectations that South Africa cannot afford**
- **Legislation should address the issue of land size in redistribution allocations, to avoid examples such as 250 ha for 800 families**

5. DIRECT PLEAS FOR HLP INTERVENTION

- **Please help to investigate Claim KRP 9/1996 (Speaker Mahlake, MoreiPuso)**
- **Please help investigate Everest mining company involvement in Bakone ba Phehla CPA issue (Mangwedi Maredi)**
- **Please investigate Mpumalanga anti-NGO, pro-commercial dynamic (Constance Mogale)**
- **Please cause a review of the financial operations of MEGA to be undertaken**
- **Please intervene, if you can, to stop TCB and TKLB or persuade Parliament to consult rural communities**
- **Please investigate mining at Mjindini (Jabulelwa)**
- **Please assist Drifontein owners' plea for land to be heard (Beauty Mkhize)**

- **Please raise the issue of corruption that leads to the scandal of Nkomazi communities being governed by non-South African (Swazi) traditional leaders**
- **Please visit AgriSA website to see positive funding models and other proposals**
- **Please remind government of its duty to create a safe environment for all for land reform**
- **Please note AFASA complaint about Nelspruit office of DRDLR**
- **Please visit Mkhuhlu or help investigate who is building over graves since information seems to be embargoed (Themba Mokoena)**
- **Please help unblock obstacles to issuance of Certificate to successful Mawulu claimants who have been waiting 10 years (Abednego Mkhathshwa)**
- **Please help Tenbosch community access the Public Protector to investigate Mnjejane Trust issue**
- **Please help raise the issue of sexual harassment at Umbhabha Farm (Dumisani)**
- **Please intervene in Moletele Claim (Enos Chiloane)**