

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.

Northern Cape Public Hearings, 21 September 2016

1. INTRODUCTION

Rev Malcolm Damon 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: Mr Peter Toto (Secretary, Provincial House of Traditional Leaders); Mr Paul Neethling (Wildlife Ranching South Africa – Northern Cape); Mr Henning Myburgh (Agri Noord-Kaap); Mr Clifton van Heerden (Komaggas); Mr Leon Oliphant (Pixley ka Seme). Several individuals addressed the Panel from the floor.

2. OVERVIEW OF ISSUES RAISED

- There are various pieces of vacant land available, which are not used for any development. This raises the question of why section 25 of the Constitution cannot be invoked to expropriate the land for public interest so that it may advance the lives of local communities, including for recreational purposes.
- The **National Environment Management Act (NEMA)** (No. 31 of 2004) and the **Mineral and Petroleum Development Act** (No. 28 of 2002) contradict each other in terms of ensuring black people access to land and resources.
- The problems of poverty and inequality cannot be separated from the land issue in South Africa. People care less about laws that are passed than they do about land dispossession. Loss of land is equated with loss of dignity.
- The role assigned to municipalities in **Chapter 7 of the Constitution** should have been assigned to traditional councils, which should be forming a separate sphere of government;
- Traditional leaders (TLs) were not adequately consulted during the drafting on the **Spatial Planning and Land Use Management Act (SPLUMA)** (No. 16 of 2013), which disempowers traditional leaders by not giving them powers of administration over land.
- Section 81 of the Local Government **Municipal Structures Act** (No. 117 of 1998), which provides for participation of traditional leaders, is not being fully implemented. As ex officio members of the council, traditional leaders have no real input to make, and thus serve as mere spectators.
- With respect to the **Local Government Municipal Systems Act** (No. 32 of 2000), TLs are not meaningfully consulted on Integrated Development Plans (IDPs), their role continues to be questioned and they have no real relationship with Councillors.

- The **Intergovernmental Relations Framework Act** (No. 13 of 2005) does not make provision for TLs to be represented on intergovernmental relations (IGR) forums.
- TLs should be empowered to submit land claims on behalf of individuals, and should ultimately be the title holders of land.
- Requirements for mining and prospecting rights in terms of the **Mineral and Petroleum Development Act** must be relaxed to ensure that local communities benefit from the country's mineral wealth. – TLs are calling for: (1) a summit on beneficiation and other initiatives, (2) youth training, (3) monitoring of mining companies by government so that they don't retrench workers whenever they are in difficulty.
- TLs recommend that each mining area should adopt a Traditional Council in order to spread the wealth.
- TLs are opposed to the **Expropriation Bill [B4 – 2015]** as it makes reference to communal land. The frequent postponement of planned public hearings on the **Traditional Khoisan Leadership Bill, 2005** (TKLB) creates uneasiness amongst Khoisan Leaders, who will for the very first time achieve formal recognition if the Bill is enacted. The Bill must be enacted without delay.
- Wildlife Ranching SA (WRSA) questions current land reform policy – is its primary objective to regulate or promote rural development? What is the collective vision? That vision should be to inspire, educate, and empower black South Africans to be landowners and farmers.
- SA has unique assets, including commercial farmers who are succeeding against odds. These assets include agricultural colleges and schools in rural areas with good staff. Commercial farmers should partner with these institutions and invite banks to partner.
- Current uncertainty over land rights is a deterrent for future growth and investment.
- Wildlife SA has great potential as exporter of game, venison in particular, and is way ahead of New Zealand, for instance. This potential is inhibited by the **Meat Safety Act (No. 40 of 2000)**, which cheats RSA of a potential R1.7 injection into the economy.

- Agri Noord-Kaap represents commercial farmers and sees it as an asset that RSA's population is young – they should be introduced to agriculture. Agricultural schools and colleges should be accessible to rural communities.
- It is a myth that blacks do not farm, the numbers of cattle, sheep and goats kept in the township makes them, by definition, farmers. These skills should be used as a starting point
- Labour tenancy is a valuable springboard to commercial farming because the skills are already there. In the event of a labour tenancy dispute, the person is issued with a small piece of land as labour tenant, not a land owner or title holder. The shortcoming is that the Act removes the possibility for labour tenants to become commercial farmers. Amend the Act to find other pockets of land to resettle labour tenants.
- District Land Reform Committees are potentially useful, but have no teeth because they have no legal status. There is generally a shortage of legislation in this area. (In Northern Cape they do good work, but elsewhere they are inhibited from participating by lack of legal status and the consequent fear of incurring personal liability)
- Land restitution is generally a very traumatic process for all involved, including existing land owners The **Restitution Amendment Act** (No. 15 of 2014) is a recipe for chaos and conflict, as it was only instituted for purposes of political expediency. While the Constitutional Court declared the Amendment Act as invalid on procedural grounds, the reality is that land reform lacks sufficient time, capacity and funding to settle more land claims.
- Section 2 of the **Transformation of Certain Rural Areas Act** (TRANCA) (No. 94 of 1989) specifies that all trust land situated in a township must be transferred the municipality of the area where such land is situated. This law was specifically aimed at historically “coloured” rural communities prior to the onset of democracy (1993/1994 period), where land is kept in trust on behalf of communities and none of the residents hold individual title deeds to their residential plots.
- In Steinkopf community no development has taken place to date. There is disparity between, for example, the number of stock that may be kept by a land owner – for whites there are no restrictions, while blacks are limited to 200 cattle

per person. White people are benefitting from the laws, while blacks are penalised for contravening laws.

- The Griqua people living in the Northern Cape are still regarded as “coloured” people instead of a distinct cultural group. As such, they are excluded from access to job opportunities, services, and land. Land ownership is precondition for becoming economically self-sufficient and financially independent.
- As a result of their landless status, they lack economic empowerment.
- When comparing land reform initiatives between Zimbabwe and South Africa, it is clear that while Zimbabweans wanted their land restored to them, South Africans preferred money in lieu of restitution.
- There is a problem with title deed holders who do not reside on their allotted sites for years until these are occupied by needy people. When these sites are developed, title deed holders return and evict occupiers, who lose the court cases because the judiciary is still untransformed.
- NGOs (e.g. Lawyers for Human Rights (LHR) and Women on Farms Project (WFP) supporting people facing evictions should be applauded for fighting on behalf of people on farms who are evicted by white farmers who then win the ensuing cases by going to white magistrates, exploiting old-boy networks.
- Participants reject the government’s “one household, one hectare” response, but support instead the “one woman, one hectare” initiative.
- Protection is needed for seasonal workers in the Upington area who are transported in trucks like cattle and subjected to the “dop” system of payment.
- The **Traditional Khoisan Leadership Bill, 2005** requires more consultation, because in its current form, it will once again prejudice women.
- The nuclear waste disposal facility located in the Northern Cape poses a risk to residents – it is alleged that nuclear storage drums leak waste which pollutes drinking water and increases cancer in the area.
- House of Traditional Leaders causes more problems than it solves – it is in fact the TLs who sell land to private companies, without consulting with local communities.

3. SUMMARY

3.1 Legislation (past, current and prospective) referred to in submissions

- ***National Environment Management Act (NEMA) No 31 of 2004; Mineral and Petroleum Development Act No. 28 of 2002; Chapter 7 of the Constitution; Spatial Planning and Land Use Management Act (SPLUMA) No. 16 of 2013, Municipal Structures Act No. 117 of 1998; Local Government Municipal Systems Act No. 32 of 2000; Intergovernmental Relations Framework Act No. 13 of 2005; Expropriation Bill [B4 – 2015] ; Traditional Khoisan Leadership Bill 2005 (TKLB); Meat Safety Act No. 40 of 2000; Land Reform (Labour Tenants) Act No. 3 of 1996; Restitution Amendment Act No. 15 of 2014; Transformation of Certain Rural Areas Act (TRANCA) No. 94 of 1989; Extension of Security of Tenure Act (ESTA) No. 62 of 1997.***

3.2 Recommendations

- To improve the relationship between TLs and councillors into one of mutual respect, there should be (1) one meeting per quarter between TLs and municipal Councillors, (2) the Mayor and TL should jointly address the community, (3) TLs should be presented on ward committees, (4) there must be proportional representation of women TLs, youth etc., (5) there must be capacity building – TLs must be trained together with councillors.
- The **TKLB** should be enacted as soon as possible in order to give formal recognition to Khoisan Leaders.
- Enact legislation to extend urban spaces for small scale farming by township farmers
- Amend the **Land Reform (Labour Tenants) Act No. 3 of 1996** to give security of tenure to labour tenants by finding other pockets of land on which to resettle them.
- . A policy response (including adequate communication) should be developed specifically aimed at allaying some of the anxiety associated with land restitution, for both the land owner and the claimant.
- TRANCA should be repealed as it is to the detriment to the relevant communities, who are denied title ownership
- **Specific recommendations on farm dwellers and on restitution:**
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- (1) review 'willing buyer, willing seller' principle,

- (2) investigate land claims delays,
 - (3) title deeds should be given to people born, and still living, on farms,
 - (4) farm dwellers of 20 years should receive title,
 - (5) use language of Freedom Charter not 'restitution' and 'compensation', which are colonial terms in the context of land stolen from the people,
 - (6) consider land restitution without compensation for expropriated land
 - (7) ancestral and heritage land should be returned.
- Review/amend the **Extension of Security of Tenure Act (ESTA) (No. 62 of 1997)** to enable people living on farms to apply for interdicts against evictions. In some communities, the title deeds of houses are still held by the municipalities, as such people never become title owners, but are renting indefinitely
 - Consideration must be given to transport legislation that can be used to protect workers on farms who are transported in trucks like cattle
 - The use of nuclear energy should be stopped because of the pollution it causes to land and water resources.

4. ISSUES TO REFER TO OTHER WORKING GROUPS

To WG3: CGE concern that TKLB still leaves women out in the cold; that policy should revert to "one woman, one hectare"; that a forum of NGO institutions be created; that attention should be paid to the plight of the LGBTI community and the elderly