

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

KWAZULU-NATAL, 20 October 2016

1. INTRODUCTION

On the land issue, the Panel heard from Dominic Collett, Pastor Sibiyi, Rev Mbhekiseni Mavuso, Thokozani Ndawo, Edward Mpeko, Bongani Zikhali, Danie du Plessis, Glenn Farred (AFRA), Dr Monique Salomon, Inkosi Phathisizwe Luthuli, Mr J Mchunu, and Nwabisa Mondli. These contributions were preceded by the standard briefing by the Chair of WG2, Dr Aninka Claassens, on the mandate of the group and the questions to which it sought answers.

2. OVERVIEW OF ISSUES RAISED

- The land reform and restitution process is in a chaotic state, due to a lack of funding and capacity in the Department.
- The decision to open land claims in 2014 had a disastrous outcome, further delaying the process, due to competing claims, with claims being lodged where someone already received the land. The land claims process will not be finalised within deadline. It is questionable whether the country's economy can accommodate this. Government should review the decision to re-open claims, as it is not certain if competing claims are legal.
- There is a need to change the Restitution Act to simplify the verification of claims process to ensure claims are resolved faster.
- Poverty will not be alleviated if the economy is not developed, i.e. land not used through sustainable agricultural practices. Farm dwellers who are given limited hectares will not be able to farm properly.
- AFRA believes that the laws that are implemented are largely unknown to people in rural areas.
- Laws are also often not well resourced (Labour tenants Act of 1996).
- Legislation is not effectively implemented or reviewed on a regular basis. There is a gap between the intended objectives of Acts and what the Acts achieve.
- The Department of Rural Development and Land Reform disregards the rights of people. This is a systemic and chronic failure, as they constantly make policy and legislation that goes against the Constitution. Parliament needs to be empowered to intervene by regularly reviewing the policies and laws of the Department.
- There is a need to prioritise small scale sustainable agriculture for food security. We must decolonise the mind-set that large scale sustainable agriculture, as promoted by Government, is the way. Decolonise agriculture, forestry and fisheries.
- Prevent the Ingonyama Trust from removing land belonging to people. The Ingonyama Trust must not usurp the powers of chiefs.
- People have no resources and are told that water belongs to Government when trying to access it. The people have nothing. Minerals belong to the Government, people live under difficult circumstances, they are told that the land belongs to the Ingonyama Trust, when they do not even know who the IT is. If people want to build houses in the area, they are told that the land belongs to the traditional leader. People are not consulted on decisions regarding land, only traditional leaders are consulted.
- People do not understand the essence of the land reform legislation and how it operates, even amongst traditional leaders.
- The Ingonyama Trust Act of 1994 allows the Ingonyama Trust Board to oppress and abuse small businesses operating under the areas of chiefs. How can such small businesses be assisted? For example, the Mnini Camp, a favourite

holiday destination for churches, schools and clubs, famous throughout South Africa, was destroyed through the effects of the Ingonyama Trust Act.

- The Act was passed just before the first democratic election to ensure that land does not fall into the hands of the new ANC-led government in 1994. The Act has some good parts and some bad ones. Even if the objective was to protect the land under the homeland administration in particular, the Act needs to be reviewed. It needs to be amended to accommodate current conditions on the ground.
- The powers given to chiefs must be reviewed, as they are corrupt and arrogant and do not understand socio-economic conditions. This legislation putting land in their hands is thus dangerous.
- The chairperson of the Ingonyama Trust Board, Judge Ngwenya, allegedly runs the Board as his personal fiefdom and takes decisions, with his word being final. The members of the board are allegedly handpicked by the Chairperson.
- The Ingonyama Trust is busy campaigning to make people pay leases on land for which their grandparents paid, thereby taking people back to the Apartheid era.
- The Ingonyama Trust keeps money from Chiefs, which comes from their communities. IT claims not to have money in the fund. People need to know what work the Trust does and how money is applied. Communities living under traditional leadership must receive annual reports
- In 2012, people were called to Thusong with their identity documents to join the Ingonyama Trust. People signed without anything having been explained to them, but they trusted the leadership. People were discouraged from asking questions and were told that they are inciting violence by asking questions. Now people are told that they owe the Trust money. The Ingonyama Trust has been requested to come to the community to explain, but to date that has not been done.
- Concern was raised about the Ingonyama Trust, and a request submitted to the chairperson of the panel to engage the Trust on behalf of the community (especially on the issue of child-headed households) to address this matter.
- Lease agreements are for 40 years, but on the death of the parent children may be evicted. The rental increases by 10%, which is worse for people with more than one site. If people fail to pay, they are evicted.
- The panel should visit rural areas and not only urban areas, as people are suffering in the rural areas and have to travel far to attend public hearings.
- A point was made by a traditional leader that forums such as these panel public hearings were not appropriate platforms for criticising amakhosi. Traditional leaders need to be consulted directly as a legitimate constituency in their own right.
- Land Administration Act, No. 2 of 1995 - The land issue should be centralised, instead of leaving land in control of a minority where people have to pay for land from someone who never bought it.
- The Ingonyama Trust should be dissolved, because it is not functioning, got nothing to do with the community, does not assist the community and is wasting service delivery resources. The IT has a huge impact on development in rural areas. It becomes difficult to do business, as people end up paying high fees in villages under Ingonyama control.
- People need to be educated on policy formulation and the legislative process to enable them to actively participate in the legislative process to ensure that relevant laws are reviewed, including the Constitution, if needed.
- Need to revisit the Constitution with a view to re-writing it.

3. LAND ISSUES RAISED DURING PRESENTATIONS TO WG3

- By Government's own admission, the willing buyer-willing-seller model is not working, as people without money cannot access land. The process is also corrupt, with delegates fighting over land.
- Claimants are not informed when their cases will go to court and are only told afterward that their cases were not successful.
- The National Water Act 36 of 1998 is impeding development, especially in the Wetlands. The processes are too slow. The Department of Water and Sanitation is short-staffed. The extensive WULA requirements for water uses, required for every project in KZN, is causing tremendous delays in project implementation. The process has a lengthy 300 days' timeframe on receiving approval, irrespective of the type of authorisation.

- All Water Use Licences must get specialist input i.e. Reserve determination, ENR comments and engineering comments from the DWS national head office, causing further bottlenecks and delays, crippling infrastructure development and general development in KZN.
- Duplication of processes in the NWA and NEMA Acts. The doubling up on processes is costly and time consuming. Only national office may issue water licences, which can take up to three months. Delaying water licences is slowing down development programmes.

4. LEGISLATION REFERRED TO IN SUBMISSIONS

National Water Act; NEMA; WULA; ITA 1994; Labour Tenants Act; Land and Agricultural Bank Act; Land Reform Act; CLARA; IPILRA; MPRA; L:and Act 1913; TLGFA; TCB

5. RECOMMENDATIONS

- **Sub-divide farms and change legislation to facilitate this, and redistribute 50% of land to women.**
- **Declare a moratorium on the conversion of land for business and mining and extractives.**
- **Regulate large water users and punish violators, not small scale users.**
- **Recognise customary rights of fishing communities.**
- **Finalise and implement the Agro Ecology Policy of the Department of Agriculture Forestry and Fisheries.**
- **WULA process should be reviewed to give consideration to: (i) reducing the role of the Department of Water and Sanitation to that of oversight only; (ii) reviewing NEMA and the WULA process to avoid duplication, especially the timing of public consultations; (iii) constituting a Professional Body of Water Specialists (along the same lines as the way Engineers are organised as a profession)**
- **Revise TLGFA provisions on the constitution of Traditional Councils to compel empanelling of women councillors**
- **Strengthen IPILRA**
- **Widen the consultations on the current TCB which up to now has only been negotiated with TLs**