

HIGH LEVEL PANEL REPORT

ROUNDTABLE REPORT: KWAZULU-NATAL: 19 October 2016

Working Group (WG) 3 on Social Cohesion and Nation Building

Roundtable for all working groups: KwaZulu-Natal: 19 October 2016

1. BACKGROUND

The roundtable convened in Durban, KwaZulu-Natal was convened for all three working groups on **19 October 2016**. Chaired by Mr. Kgalema **Motlanthe**, the High Level Panel members who attended were:

- Dr. Yvonne **Muthien** (Working Group 3);
- Dr. Aninka **Claassens** (Working Group 2);
- Prof. Relebohile **Moletsane** Working Group 3;
- Rev. Malcolm **Damon** (Working Group 2);
- Prof. Olive **Shisana** (Working Group 1); and
- Dr. Terrence **Nombembe** (Working Group 2).

Introductory Remarks: Mr. Kgalema Motlanthe

The mandate of the High Level Panel on the Assessment of Key Legislation and the Acceleration of Fundamental Change is derived from the Legacy Report of the 5th democratic Parliament of the Republic of South Africa (2009 – 2014). Stakeholders responsible for the mandate of the High Level Panel are the South African Speakers' Forum, composed of the speakers of the legislatures of the nine provincial governments, and the Parliament of the Republic of South Africa. The work of the High Level Panel seeks to assess the extent of the impact of laws, legislation and policies on the lives of ordinary South Africans in the following three areas: (i) Poverty, inequality and unemployment (Working Group 1); (2) land reform, restitution and redistribution (Working Group 2); and (iii) Social cohesion and nation building (Working Group 3). In that way, the work of the High Level Panel strives to evaluate, measure and monitor the triple challenges of poverty, unemployment and inequality.

The methodology with which the High Level Panel seeks to assess the impact of laws, legislation and policies on these three areas are:

- Call for submissions from the public;
- Public hearings conducted throughout the nine provinces of South Africa;
- Round table / stakeholders' presentations and discussions;
- Commissioned research;
- Desktop research on primary and secondary materials; and
- Government departmental presentations (these form part of the roundtables / stakeholders' fora).

2. OVERVIEW OF ISSUES RAISED

- Racially-biased tender procurement and access to other business opportunities.
- Development of SMMEs.
- Impact of unequal education.
- Spatial inequality.
- Rural poverty and rural-urban divide.
- No creed for South Africa.
- Lack and inadequate implementation of legislation.
- High illiteracy rate.
- High unemployment rate.
- Lack of beneficiation from commercial development on rural land.
- Lack of knowledge of the role and functioning of the Ingonyama Trust.
- Development aims and functioning of the Ingonyama Trust.
- Challenge to social cohesion and nation building when ethnicity is linked to access to resources.
- Threat to social cohesion and nation building in KwaZulu-Natal stems from Zulu ethno-nationalism.
- Maladministration of land reform legislation.
- Lack of consultation between residents on land governed the Ingonyama Trust and the Zulu king.
- Discrimination of rural-based women on land inheritance.

3. THEMATIC AREAS

STAKEHOLDER PRESENTATIONS

PRESENTATION 1: REPORT ON THE SPECIAL COMMITTEE ON SOCIAL COHESION IN KWAZULU-NATAL: Prof. Paulus Zulu: Maurice Webb Institute, University of KwaZulu-Natal, Durban

Prof. Zulu provided the Panel with a brief contextualisation and appraisal of findings by Special Task team on Social cohesion in KZN, completed in December 2015. The mandate of the Task team was to investigate socio-economic inequalities as a threat to Social cohesion in the province. Perceived threats to social cohesion manifested, particularly, in the perceived advantages of Indian-owned business over African-owned enterprises on the procurement of state tenders. Complaints therefore related to unequal access to business opportunities as threat to social cohesion. Data was derived from focus groups that included stakeholders from different sectors, including education, youth, cultural and other interest groups.

Findings:

- **Tender procurement and other business opportunities:** The legacy of apartheid and the inequity to access state business was compounded by incongruences in legislation (particularly as it relates to legislation around procurement –main complaint area). The structure of the South African economy was seen to be abetted by existing legislation, predicated social inequalities.
- **SMMEs:** Organisations had various capacities to perform/enact legislation to enhance their participation in the formal economy (e.g the 80/20 formula made it difficult for small organisations, while larger organisations could subsidise their undertakings). The structure of the procurement process treated smaller businesses as subordinate with no access to decision making. Also, the structure and location of small businesses limited their opportunities. Most small businesses were in close proximity to townships, removed from main centres of business.
- Stipulations put in place regarding the use of certain materials from specific service providers were seen to skew opportunities (large conglomerates located in the townships).
- **Impact of unequal education:** Unequal access to education facilitates translates, in the long term, to biased and unequal economic participation, as those with unequal access to education facilities have inferior skills. This presents a threat to social cohesion,

deepening already existing cleavages, particularly among the advantaged and disadvantaged racial groups. To that effect, efficient policies addressing equal participation are needed.

- Spatial inequality: South Africa's history has informed the location and density of residential areas and their related positioning to economic resources and opportunities. If left unattended to, these divides will replicate themselves and hinder social cohesion and nation building.

PRESENTATION 2: Mr. Benedict Dube: Xubera Institute

- Rural poverty and rural – urban divide: The Banustan system still prevails and remains intact, hence the persistence of poverty in the rural areas.
- The basic drive for everyday South Africans is a fight for material goods to secure the future of their children, i.e. struggle for scarce resources.
- No creed: South Africa does not have a creed on which to base its mandate. Rather, we have had a myriad of policies and legislation, such as the Reconstruction and Development Programme (RDP); Accelerated and Shared Growth Initiative for South Africa (ASGISA); and Growth, Employment and Redistribution (GEAR), that have not managed to foster a common cause, because South Africa does not have a decree. In Russia, for instance during and after the Russian Revolution, the country's decree was 'peace, bread, land', underpinning the themes of political stability, economic prosperity for all, and ownership by and access to land for all. Consequently, without a decree, the oppressed will remain fragmented.
- Legislation, acts and what they generate have not shifted from those promulgated during apartheid. To that effect, the question remains: has the South African state failed as a legislator, to apply what Thomas Kuhn has dubbed the "paradigm shift"?
- In KZN the "Indian question" – the dominance of the advantaged position of people of Asian descent in entrepreneurial spaces.
- Inequalities filter into social issues. While black Africans represent 86.8% of the population in KZN, there is hardly a black child present in the top 10 matric results. Within tertiary education there are a limited amount of black lecturers. Therefore, the majority of people in the KwaZulu-Natal province are not generators of knowledge.

- Since apartheid KZN has remained very rural, with a high illiteracy and unemployment rate. More than half of the land continues to be controlled by the Zulu king on behalf of Zulu-speaking people.
- Commercial developments on these lands is still controlled and directed by conglomerates such as Tongaat Hullets, displaying once again the leading role played by big business as opposed to government. To that effect, spatial development is still controlled by multinationals.
- The political system has produced mavericks, popcorn politicians, a comprador bourgeoisie, quasi-bantustan administrators who possess no responsibility to mobilise, and in fact benefit from the status quo.

PRESENTATION 3: Judge S.J. Ngwenya – Ingonyama Trust Board (Chairperson)

- There is ignorance concerning the mandate and the functioning of the Ingonyama Trust Board. The Ingonyama Trust Act was promulgated in response to violent conflicts in the 80s and 90s between various chiefs over land. The Act intended to warehouse land into a trust and transfer this land to various traditional councils.
- The King acts as the trustee to the act. The Ingonyama Trust is separate from the board. The latter is a legal entity created to administer the affairs of the trust.
- Other provinces have traditional land, but are deemed state land.
- The original act was rewritten as an amendment act. There was an agreement that the act should be drafted in line with the Constitution.
- There is a perception that title deeds were put in place to steal land and that formal documentation referred to it as a lease. The reason why the Trust introduced leases was to provide people with the opportunity to access funds in the absence of legislation on communal land. The board's role is to administer land, but it is widely perceived as a predator.

PRESENTATION 4: Dr F.B. Madlopha – Chief Executive Officer (CEO) – Ingonyama Trust Board

- The Trust is mandated to manage land in the interests, benefit, material welfare and social well-being of the members of rural communities residing on it. In terms of the act, it has been established to manage the land for communities as listed.
- Various National and Provincial Government legislation apply to Ingonyama Trust land: Section 2(2) of the *Ingonyama Trust Act* establishes the framework for the administration of the land for the benefit of the communities and Section 2(5) of the Ingonyama Trust Act establishes the framework in which land rights are to be granted and at the same time protecting trust land.
- In 1997 the Act was amended resulting in the establishment of the Ingonyama Trust Board to administer the affairs of the Trust and trust land.
- The board manages land through the (i) the development of land-related policies; (ii) the development of policies to ensure the benefit of communities; (iii) facilitating access of communities to economic opportunities; (iv) promotion of food security; (v) educational awards; and (vi) issue leases mainly to commercial though there are residential leases.
- The Trust reported that there is no negative impact on existing land rights on beneficiaries of the clans. The Ingonyama Trust Board does not administer Permission To Occupy (PTOs)s. The Act is administered together with *amakhosi* or traditional leaders, who are responsible for land allotment at a local level in line with the Act.
- Types on tenure on existing state land include freeholds; PTOs; leaseholds ; and servitudes.
- The trust aims to increase material benefits of communities by promoting economic development and reducing unemployment and inequality. The trust has therefore put in place measures to promote Broad-Based Black Economic Empowerment (BBBEE) though encouraging change in ownership; skills development; management and control; employment equity; preferential procurement; and enterprise and socio-economic development. Various models are used by the Trust to promote development.
- Financing of the Ingonyama Trust: The Ingonyama Trust Board was established by an Act of parliament as a Schedule 3A entity and receives funding from the Department of Rural Development and Land Reform. Funding from the Department has been declining since 2012. For Trust-related projects, the Trust uses its own funds.

PRESENTATION 5: Prof. Mary de Haas, University of KwaZulu-Natal (UKZN) – ‘Myths and Realities about Race, Culture and Ethnicity

- There is not specific legislation that deals with social cohesion. However, social cohesion is implicit in our Constitution.

- The Ingonyama Trust Act) is unconstitutional and presents a major obstacle to nation building, particularly in KwaZulu-Natal.
- Main focus is on the poor and the or non-existent or inadequate implementation of existing legislation, and how this impacts on social cohesion and nation building.
- The past continues to impact on the present, taking into consideration artificially created groups. Through geographical separation and social isolation, stereotypes have been promoted.
- To understand the pres; (ii) the relationship between artificially constructed racial and ethnic groups; (iii) how our supposed differences were used to ensure physical and social isolation; and (iv) how these remnants continue to impact on constructing a democratic South Africa.
- The promotion of myths and realities about race, culture and ethnicity and their relationship to scientific racism and power structures is a major hindrance to social cohesion and nation building.
- By reducing “Africanness” to race, we are adopting the perspective of the colonial oppressors. (Contrast the above with the ‘I am an African’ speech by Thabo Mbeki – generalisation of Africanness).
- Would decent education and skills development not be more empowering than what is often tokenism? Would “real black empowerment” not be preferable to being “junior partners” as Mbeki puts it, in supposed empowerment deals?
- Sanctioning racial rhetoric: Penny Sparrow learns a lesson but what about Makgoba’s comparison of “whinging white males” to a “troop of baboons”. Racial rhetoric should be dealt with by the equality courts. Additionally, the problem of selective sanctioning continues.
- Although “Indian versus African” racial tensions periodically rears its ugly head, the biggest threat to social cohesion and nation building in KwaZulu-Natal stems from Zulu ethno-nationalism, especially when linked to economic and political resources. When race, ethnicity and resources are linked, the situation becomes potentially flammable.
- Traditional leaders are a colonial construction- democracy of past societies- the chief has to be popular- chiefs are cogs in the bureaucratic machinery to control people.
- The maladministration of land reform legislation fuels divisions. Both land owners and claimants have suffered (possibly being victims of violence) due to gross maladministration, which has also impacted on relations between races.

- The Ingonyama Trust Act was passed secretly days before the April 1994 elections in a deal facilitated between De Klerk and Buthelezi. This act was also masterminded and engineered by Ambrosini.
- With the Zulu king in control of the land, the fuelling of Zulu nationalism had begun. Zulu identity developed with the Trust as a component (the resurgence of Zulu nationalism was now linked to land).
- Threats to indigenous land rights by leases on residential land.
- Legislation regarding informal land rights protects rural residents should remain and, if necessary, be strengthened.
- The Ingonyama Trust Act is unconstitutional, as it discriminates against those residing in KZN who are black (antithesis of customary law).

PRESENTATION 6: Ms. Siza Ngubane: Rural Women's Movement

- Many rural-based women are discriminated against on land inheritance on gender-basis.
- Traditional leaders use arbitrary powers on the administration of land rights, and they do not involve women in decision-making.
- Many rural-based women heading households do not have entrepreneurial rights and access to markets on their own as participants in small-scale agricultural productivity.
- Reference to the Traditional and Leadership Governance Framework Act.

4. POLICY AND LEGISLATIVE IMPLICATIONS

- Ingonyama Trust Act – requires review on its administration; on the powers accorded to the trustees; on lack of access for consultation with the Zulu king; on the exclusion of traditional leaders in commercial development ventures on land. Some of these legislative review recommendations were voiced in the KwaZulu-Natal public hearing.

- Traditional and Leadership Governance Framework Act – requires a review on the exclusion of women on land inheritance; on land administration and governance.
- Broad-Based Black Economic Empowerment Act (BBEE) – requires review on its inadequate quantitative reach of black beneficiaries, as it benefits a select group of black entrepreneurs.

6. DISCUSSION AND RECOMMENDATIONS (Roundtables)

Make legislation generally accessible.

7. ISSUES TO REFER TO OTHER WORKING GROUPS

- Land inheritance rights for rural-based women.
- Participation of women in land administration and governance.