



**REPORT OF THE DIALOGUE SESSION ON THE LAND REDISTRIBUTION AND
COMMUNAL LAND TENURE BILLS**

HELD ON 22 MARCH 2023

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FROM 11H00-14H00

Platform: Microsoft teams (Virtual)

1. BACKGROUND AND INTRODUCTION

- 1.1. South Africa's history is characterised by land disposessions which resulted in unequal access to land and precarious land tenure for the majority of South Africans. Consequently, Africans mostly remain landless. In instances where they have access to land, their rights are generally insecure as they do not own it. The democratic government adopted the Constitution of South Africa, which among others, seeks to address these fundamental imbalances and places an obligation on the government to ensure the security of land tenure, as well as access to land on an equitable basis.
- 1.2. The Department of Agriculture, Land Reform and Rural Development (DALRRD) has the mandate to ensure equitable access to land, integrated rural development, sustainable agriculture, and food security for all.
- 1.3. This dialogue session was convened by the Nedlac Development Chamber social partners to obtain an update from the department on progress made in finalising the Land Redistribution and Communal Land Tenure Bills, as well as to receive insights shared by experts at the Seminar on the Land Redistribution and Communal Land Tenure Bills, which was convened by the Department on 23 February 2023. It was further envisaged that the dialogue session would provide an opportunity for the department to provide a synopsis of the Bills and for social partners to be informed and provide recommendations on key elements to be considered in developing these Bills. The dialogue session was therefore not for extensive engagements on the Bills, but was for information-sharing purpose.

2. PRESENTATION FROM DALRRD ON THE LAND REDISTRIBUTION AND COMMUNAL LAND TENURE BILLS

2.1. Advocate Sello Ramasala representing DALRRD provided the following update in relation to the progress made on the Land Redistribution and Communal Land Tenure Bills:

2.1.1. The Bills were still being developed and the DALRRD will facilitate a process of attaining cabinet approval to publish them for public comments.

2.1.2. It was envisaged that these Bills will then be tabled at Nedlac for engagement by social partners, prior to tabling them in Parliament.

2.1.3. The process for developing the Communal Land Tenure Bill has been ongoing for a long time and it was tabled to Nedlac for engagements around the year 2017. Nedlac engaged on the Bill and the Minister at the time decided not to refer it to Parliament due to highly contentious political issues which needed to be resolved.

2.1.4. The Communal Land Rights Act was previously set aside by the courts and the state remains with an obligation to develop a Communal Land Tenure Bill.

2.1.5. The department convened the seminar on the two Bills, whereby various experts and key stakeholders deliberated on the provisions of the Bill, but not the actual Bill in its entirety. The aim of the seminar was to seek guidance and legal advice from the relevant experts to enhance the Bill. The department received progressive and constructive inputs from the seminar and there were no strong objections on the provisions of the Bills.

2.2. The following proposals contained in the Communal Land Tenure Bill:

2.2.1. Communal land should be transferred to communities, as it was currently owned by the trust and administered by traditional leaders. The transfer of communal land to communities was one of the contentious provisions of the Bill. Communal land constituted 13% of land in the country and was mainly in the former homelands. This land was set-a-side for Africans during the apartheid regime, but they do not legally own it. Instead, they have a Permission to Occupy (PTO). Government remained committed to transfer that land to communities for ownership, in line with section 25(6) of the Constitution of the Republic of South Africa, which strongly

provides for the communal land tenure to be legally secured.

- 2.2.2. Communal land should be transferred directly to communities to own it as juristic persons, contrary to the proposals from traditional leaders which state that government should transfer the land to traditional leaders through Trust ownership. The court ruled that traditional leaders do not have inherent rights to administer the land. Therefore,
- 2.2.3. The registration of the land tenure should be filed at the deeds office, thus, the Permission to Occupy (PTO) land should be converted to ownership. The holders of the PTO's are not currently registered at the deeds office and this was a challenge.
- 2.2.4. The community must democratically develop community rules and regulations to guide how they utilise the land.
- 2.2.5. There should be democratically elected land administrator committees, who would be accountable to communities, contrary to the current practice where traditional leaders administer communal land.
- 2.2.6. In a communal setting which includes residential plots and land for ploughing purposes owned jointly by community members, land must be transferred to the community as a juristic person.
- 2.2.7. In instances of the subdivided portions for residential or business purposes, it is proposed that this land must be registered in the names of those who are currently occupying these portions.
- 2.2.8. The Ingonyama Trust land was one of the critical issues that led to the Bill not proceeding to Parliament in 2017, as there was resistance to the proposed transfer of land.
- 2.2.9. The Communal Land Tenure Bill has therefore now provided mechanisms for addressing the concerns relating to the Ingonyama Trust.

2.3. DALRRD highlighted the following points on the Land Redistribution Bill:

- 2.3.1. No controversial issues were identified relating to the Land Redistribution Bill from the seminar.
- 2.3.2. The key elements contained in the Bill related to the following:
 - (a) Land ownership by foreigners.
 - (b) The powers for the Minister to acquire the land and re-distribute it.
 - (c) Land acquired must be allocated to beneficiaries to utilise it, therefore criteria for identifying beneficiaries needed to be developed.
 - (d) Disclosure of land ownership should be undertaken as this would

enable government to effectively plan land acquisition and redistribution.

- (e) Determination needed to be made on the ceiling to be set to limit land ownership.

3. DISCUSSIONS BY SOCIAL PARTNERS

3.1. Social partners provided the following inputs:

- 3.1.1. Presentation from Government was appreciated.
- 3.1.2. It was proposed that the process of addressing the two Bills should be separated as some of the elements may be overlooked if dealt with simultaneously. It was therefore important that Government should expedite the finalisation of these Bills and not compromise on quality.
- 3.1.3. The land audit should be revisited as the current audit information is outdated.
- 3.1.4. Further deliberations on the Bills were necessary for social partners to have detailed engagements at Nedlac.
- 3.1.5. It was recommended that the department should consider conducting a research on foreign land ownership and provide a full presentation to social partners thereafter.
- 3.1.6. Clarity was sought on the deadlines relating to the submission of the Bills to Parliament taking into consideration previous delays.
- 3.1.7. Clarity was sought on the status of the Regulations of Land Holding Bill.
- 3.1.8. It was noted that the Preservations and Development of Agricultural Land was being considered by Parliament.
- 3.1.9. The issue of the foreign land ownership needed to be considered cautiously, as if not addressed properly the indigenous people would suffer the most.
- 3.1.10. Government should consider capacitating the land administration committees and the community members who will be developing the community rules. This would assist to ensure good administration and governance.

3.2. The DALRRD responded as follows:

- 3.2.1. Inputs from social partners were acknowledged.
- 3.2.2. The Bill are treated separately and they were combined in the

presentation for convenience of social partners.

- 3.2.3. The Minister has prioritized the Bills to be presented to Parliament in the current year. The department envisaged they will be published for public comment by May 2023 and then tabled at Nedlac between July and August 2023. The Bills were currently being considered by the State Law Advisors for certification of compliance before publishing for comments.
- 3.2.4. Government acknowledged that the communal land tenure issues are controversial and it was guided by the Constitution and the court orders in dealing with these issues.
- 3.2.5. The Regulation of Land Holding Bill was discontinued and this decision was taken by the executive.
- 3.2.6. The Bill proposes that the State support all the structures, including the land administration committees, must be equipped with skills development initiatives and organizational capacity be developed.

4. WAY FORWARD

- 4.1. It was agreed that Government will table the Land Redistribution and Communal Land Tenure Bills for detailed engagements at Nedlac.
- 4.2. It was noted that the revised Nedlac Protocol for Tabling and Considering Issues at Nedlac allowed for the department not to incorporate public comments into the Bill before tabling it at Nedlac. Instead, the department can provide a summary of public comments when tabling the Bill. This would assist in expediting the process for the finalisation of the Bill to be tabled in Parliament timeously.

ANNEXURE A

**ATTENDANCE REGISTER FOR THE DIALOGUE SESSION ON THE
COMMUNAL LAND TENURE AND LAND REDISTRIBUTION BILLS HELD ON
THE 22nd OF MARCH 2023**

Business Annelize Crosby Andile Kuzwayo Fani Xaba Tyson Sibanda	Community Lucas Qakaza Laura Kganyago Puleng Tsebe Lawrence Bale
Labour Sipho Ndhlovu Boitumelo Molete	Government (DALRRD) Adv. Sello Ramasala Terries Ndove
Nedlac Secretariat Nobuntu Sibisi Priscilla Mashabane Mojalefa Radebe Bongani Mahlalela	