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RE: SUBMISSION ON THE UPGRADING OF LAND TENURE RIGHTS AMENDMEND BILL {ULTRA} BILL {B6-2020}

We welcome the opportunity to make our written submission for consideration by the portfolio committee on agriculture, land reform and rural development, regarding comments on the proposed bill.

1. **BACKGROUND:**

**Chapter 2 of the constitution of the Republic of South Africa, bill of rights (section 7-39) but I will specifically put my emphasis on section 25 which deals with property.**

**Section 25(1) stipulates that no one may be deprived of property except in terms of law of general application, and no law may permit arbitrary deprivation of property.**

**Then section 25(6) of the constitution of the Republic of South Africa states that-**

**‘Á person or community whose tenure of land is illegally insecure as a result of past racial discriminatory laws or practices is entitled, to extend provided by the act of parliament, either to tenure which is legally secure or to comparable redress.**

**WHAT ARE PAST DISCRMINATORY LAWS:**

1. **The bantu authorities act**
2. **The natives trust and land act**
3. **The native labor act**
4. **The native black urban areas act**
5. **The native administrative act**
6. **The native service contract act**
7. **The promotion of bantu-self-governing act**
8. **The bantu homelands citizen act**
9. **The bantu homelands constitution act.**

**FACTORS TO BE CONSIDERED UNDER MY SUBMISSION:**

**= All those acts were promulgated to prohibit blacks from owning land, specifically women, who were subjected to crucial conditions under the rule of traditional leaders.**

**= Such led to women and girls deprived of their birth right to land ownership, even inheritance in case of the passing on of their respective Parents.**

**= Some were forced to succumb to the policies which they were never part of drafting, so this is what the government needs to consider when promulgating this bill.**

**= It must be also noted that our government after the democratic dispensation, have promulgated lots of legislations, which some are still perpetuating the APARTHEID and the TBVC forms of operations.**

**= The example is the recently enacted TKLA, specifically section 25 which seeks to take the powers from communities and hand them over to one person, being the Chief.**

**= Every citizen irrespective of their gender, must be treated equally.**

**= The current title deeds which are held in trusts by the ministers in succession are a problem as they are currently referred to as grants, even though these communities contributed towards the purchase of such farms, they are not treated equally by the traditional councils.**

**= The minister in trust still takes decisions on behalf of communities without applying FPIC (FREE PRIOR AND INFORMED CONSENT) when it comes to the development of their land**

**= The expensive sale of land in urban areas also is one of the methodology to keep out the marginalized from acquiring land in urban places, still perpetuates the past treatments.**

**= Mining companies who recently came during the APARTHEID and the TBVC have been accorded the opportunity to purchase land from the then government due to the single role of trusteeship.**

**= DMRE is currently extending lease agreements without following due processes and they don’t monitor the rehabilitation process which should ultimately lead to rehabilitated land hand over for land sustainability once mines are over and closed.**

**= The current modus operandi by the Ingonyama Trust that people must apply for PTO’S and that they must also pay annual leases which in return benefits certain individuals, these must be scrapped ASAP.**

**= The Ingonyama Trust act, which in return violates rights of community members and which such rights are discriminatory to the community and specifically women, if not dealt with or repealed will be still problematic to implement this bill**

**= Only one legislation need to be promulgated to ensure monitoring and implementation, but if there are many pieces of legislations like we had during the dawn of democracy, such will result in failure like many other pieces of passed legislations.**

**= The farmers must also be considered as most of the time their rights are violated,when their Parents pass on, they are mistreated by the owners.**

**=’ Reverend Tiyo Soga once said that at different times and places in South Africa, there were conflicting ideas of what to do about African’s ability to have private property or individuals rights to land.**

**= Assimilationist, modernizing perspective: have to allow Africans to advance up the ladder of civilization.**

**= Individual tenure: freehold or quitrent’**

**= In the Transvaal there was a prohibition against Africans buying land in the Transvaal…so African communities asked missionaries to buy land on their behalf.**

**= In 1877 when Transvaal was annexed by the British, Theophilus Shepstone allowed African land purchase through the Secretary of the Native Affairs, who would be the trustee, such is continuing today**

**= The problem with the system of asking missionaries to purchase land on behalf of communities was that not everyone who contributes is recognized, and there was confusion over trusteeship.**

**= Beneficiaries could not decide what is in their own interest, and only the trustee can decide what is in the interest of the beneficiary.**

**= In 1901 Register of deeds refused to register land in the name of Black people or Chiefdoms.**

**= 4 APRIL 1905, there was judgement on Tsewu versus the Register of deeds, such upheld the right of an African to transfer land into his own name, such led to rapid land expansion of land purchasers by Africans whom between 1905 and 399 farms were registered to Africans.**

**= The fact of reality is that Africans were forced off their land in order for them to work in the mines, and where land was reserved for Africans, the state was the custodian, assuming the nroles which was played by our chiefs, the current system is exactly repetition of the past which must curbed with immediate effect.**

**= the ZAR did not reserve land for the Africans, but the British when they took control again in 1881, a condition was imposed for reservation of land to Africans as we were called.**

**= The pervasive notion is that rights to land flowed downward and were derived from the political authority and political allegiance as it is currently happening with the current government. Recognition of private property of settlers under Dutch law was common practice, whilst indigenous people land rights was ignored by 1953 Volkraad Resolution.**

**= Conquering chiefdoms and kingdoms was the order of the day followed by cessation annexation f dishonest treaties**

**CONCLUSSION:**

**Our government must boldly and proudly deal with imbalances of the past, when perusing this legislation in order to address the racial imbalances.**

**It must also ensure that there is only limited legislations, if not one, to address the issue of land, specifically to the marginalized black communities.**

**The gap of land ownership which was created by colonization, and Apartheid must be closed, the land act of 1913 saw only 7% of land being owned by black communities, and only 6% was added by the 1936 natives trust and land act, which ultimately came to 13%. Such a gap was supposed to be closed by the government of today which made more confusion by promulgating numerous legislations which are conflicting with each other, and ended up dismally failing in its Endeavour to redress the past.**

**But also the promulgation of the Ingonyama Trust act, which was enacted in the middle of the CODESA negotiations, opened up a another gap and brought further divisions within the chiefdom arena, and after the appointment of the NHLAPHO COMMISSION which its purpose was to rectify the mistakes of the past, saw lack of government’s intervention as there is vast disparity in terms allocation of funds within kings, and such perpetuates what was done by the previous government.**

**We are not yet at 50% the least to close the gap, but our government has been in power for almost 25 years, and this time we cannot blame Apartheid or colonialism because we have voted the current government to power, it’s about time they must implement.**

**Currently we are seeing non South African citizens given an opportunity to own land including companies, whilst the bonafide citizens are neglected.**

**Lastly, very soon we will be without minerals due to mining, we need to start now to ensure that these mining companies, which mostly are not locally owned, must begin to rehabilitate land, hand it over, and commit them to empower the mining affected communities to begin to do subsistence farming on their own, young and old, black and white so that they begin to sustain themselves and not depend on government grants to survive.**

**I finish my submission by including the following different quotations from various leaders:**

1. **GOVAN MBEKI**

**‘Gone was the old give-and- take of tribal consultation, and in its place there was now the autocratic power bestowed on the more ambitious Chiefs, who became arrogant in the knowledge that government might was behind them’**

**Govan Mbeki, The Peasants’ Revolt, 1964**

1. **MANDELA**

**‘…In South Africa, we all know full well that no Chief can retain his post unless he submits to Verwoerd…the proposed Bantu Authorities will not be, in any sense of the term, representative or democratic.**

**Nelson Mandela, Verwoerd’s Grim Plot, 1959**

1. **LUTHULI**

**‘The modes of government proposed are a caricature. They are neither democratic nor African. The Act makes our chiefs, quiet strait-forwardly and simply, into minor puppets and agents of the Big Dictator’**

**Albert Luthuli on Bantu Authorities Act,**

**Let my People Go, 1962**

MR DAVID RAMOHANOE

NORTH WEST PROVINCIAL COORDINTOR

ALLIANCE FOR RURAL DEMOCRACY {ARD}

8/17/2020