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BLACK AUTHORITIES ACT REPEAL BILL: SANCO EASTERN CAPE SUBMISSION

The Chairperson

Let us first and foremost thank you for affording us an opportunity of venting to this notorious Act called Black Authorities Act (Act 68 OF 1951). The Act that managed to segregate and discriminate our people. The Act that managed to handpick and dictate who will be our chiefs. The act that continue to perpetuate the legacy of apartheid. The act that brings back the evils of the past. The act that intensify and strengthens the acts that was promulgated before in was enacted, e.g. Act No. 23 of 1920 and Act No. 12 of 1936. The latter destroying the image of black people. The Tribal Authorities is what makes our people in Rural Communities suffer the most. This make our people second citizens in their country of birth. We have cruel and unscrupulous laws or pieces of legislation that emanates from you (BAA) formulated by our government in our new democratic dispensation.

We as SANCO Eastern Cape don't know why our progressive government is doing this. The pieces of legislation we are talking about are the following:-

- a) The Traditional Leadership and Governance Framework Act 41 of 2003.
- b) Provincial Traditional Leadership Act No 4 of 2005 (EC)
- c) THE Communal Land Rights Act 11 of 2004
- d) The Traditional Courts Bill B15-2008

As SANCO Eastern Cape we don't regard the above pieces of legislation as authentic as all of them are based on the old defunct and notorious apartheid laws. Also become so mesmerized why our progressive cadres/parliamentarians used the old apartheid legislations to formulate our new laws, what informs them to do such a thing? That is the question from SANCO Eastern Cape. The communities are suffering because of that. Therefore as SANCO Eastern Cape we agreed that this Act must be abolished not later than today also the pieces of legislations that emanates from BAA we must do away with.

Background

As civic organisations, under the UDF, we launched an anti-Ciskei campaign against the headmen system. And we 100% succeeded in doing that. Now our government, the government of National Unity led by the ANC failed to consolidate and defend such gains of our beautiful revolution. They promulgated laws like TLGFA, CLARA and Traditional Courts Bill that are tantamount to killing our rural people. These pieces of legislation are very reactionary as if they were not done by our comrades. Communities were never consulted we don't know whether they started by being a bill or a white paper we really don't know. Xa kunje komanzi kobeka phi kowomileyo (the layman in the street) the way our government is doing in making the laws is very clandestine as if they are hiding something. If our government is claiming to be progressive enough they must reverse these pieces of legislation formulated based on the Black Authorities Act the old apartheid Act. Away with TLHFA and Clara away!!

Impact of these Laws To Our Communities

Ever since the legislation of laws embedded to BAA like the Traditional Leadership and Governance Framework Act (Framework Act/TLGFA) our rural communities, Inkosi and Izibonda called Inkosana they don't see eye to eye with our people. They are about to kill each other. They both the people and Inkosi/nkosana cannot properly articulate what is contained by this legislation. Even most officials from the department they are not well equipped about the contents of this legislation. Some of them cannot interpret the meaning of 40% and 60% who are suppose to fall under 60%. Our chiefs instead of waiting for the provincial version to be finished they kept on

using the TLGFA having structures on top of the other. The meaning of the Act, that of transforming our Tribal Authorities is lost. In certain Tribal Authorities you will find out that a clique of notorious and unpopular people are running the day to day activities of the office without the consent of the Tribe (e.g. aMandlambe as a clique of 10 people) taking decisions for the whole tribe without the consultation of the tribe. Only committee meetings there are no mass meetings for the tribe as the Act stipulates. All these committees are trigger happy because they never know what is the meaning of a democratic process. They were not elected by the people.

Case studies

Qawukeni (King Sabata Dalindyebo Municipality, O.R. Tambo District)

At Qawukeni the people were never consulted or educated about all these laws in particular the one that reinstates the tribal authorities and talks about the election of traditional councils. They only heard about these laws when they were called to a meeting that was to elect 40% of the traditional council and they decided to attend the meeting. Whilst they were there, they were expelled by the wife of the king saying SANCO has no place in these nominations. This was in front of the MEC, Mr. Sicelo Gqobana. After SANCO was chased away, this 40% was elected from the king's 60%. There was also tampering with the voter's roll and voter registration was done by the king's representatives. Also the IEC was biased towards the chiefs. The IEC did nothing when SANCO was chased away. The IEC continued as if the conditions for the elections were fair. As SANCO we took the matter to our lawyers in Grahamstown, the Legal Resource Centre. In the same meeting, MEC Gqobana declared that there will be no vote in that tribal authority. On the 6th of March indeed there was no vote in that area but we are afraid that notorious and unscrupulous names may emerge because in our experience the chiefs undertake fraudulent activities.

Tsholomnqa (Buffalo City Municipality, Amathole District)

There is a chief by the name of Nongenile Pato. Her tribe is AmaGqunukhwebe composed of 23 villages. The problem was created after the promulgation of the Framework Act and its provincial by-law where Mr. Mthuzeli Makinana wanted to be the chief of this particular area. He wanted to

create his own tribe called AmaNdlambe. Small fights started amongst the community. Some wanted to support the Ndlambe side, others wanted to remain AmaGqunukhwebe. That is why as SANCO Eastern Cape we are strongly saying these laws are not good for our people. These laws divide people in the same village along ethnic lines. Therefore for the repeal of the BAA to give meaning to us it must not allow this division of the past to continue.

Mooiplaas and Kwelera (Great Kei Municipality, Amathole District)

Both these areas during the UDF era they fought under the Border Civic Congress (BORCO) to resist incorporation into the Ciskei. They fought to be citizens in a united and democratic South Africa. They fought bitter struggles challenging Chief Jongilanga and they won. To compensate Jongilanga, Sebe moved him and his supporters to another area called Ncera and this left the people of Mooiplaas and Kwelera free from tribal authorities. They were then under the old Cape Provincial Administration. Now there are people who want to smuggle chiefs in these areas and this is for their own benefit. For an example, at Mzwini village in Mooiplaas there is a particular Mkhusele Makinana who is staying there who wants to impose himself as a chief of the village. Statistics shows us that most people in Mooiplaas still maintain that they do not want chiefs.

Also in Kwelera there is a certain clique that wants to smuggle in a Ndlambe chief to Kwelera. They were claiming that during the olden days there was a bus stop named under Ndlambe that symbolises that they belong to the Ndlambe clan. But most people are against this.

Kolomane village (Nkonkobe Municipality, Amathole District)

A certain Mr. Hebe is imposing himself as an inkosana or headman in the Kolomane village. He is not a bona fide person of that village. He is from far away in Zweledinga village in the old Hewu district near Queenstown. The people of Kolomane were never under a chief even during Sebe's time. Their land where they stay belongs to the state. The people of that village want that land transferred to them and not that chief. This Mr. Hebe is even not of royal blood. Ever since Hebe arrived in this village the life is unbearable. There is not even a chief under which he is appointed as a headman. He claims that because he may have been a chief in Zweledinga therefore also in

Kolomane he must now be a traditional leader of some status. SANCO in that village have said that they do not want him in any position out of 400 households, there are only 10 households that support this man. During the March 6 elections, there were no more than 20 people who took part in the election in the village. People are fighting foot and nail saying they wont accept that particular person.

Gwatyu (Chris Hani District)

A township by nature a headman is being imported for them. Their case is with the Legal Resources Centre in Grahamstown.

Betterment schemes

During the era of Pyger between 1959 and 1960, communities were forced from where they lived peacefully to congested areas. Those areas were called villages and their sites were reduced to 50x50 and there was no compensation for the damage caused during that period. Some of the chiefs of the time helped the apartheid government to enforce these betterment schemes. They were doing this because the BAA gave them powers for development in black rural areas. We approached the Border Rural Committee to assist us on lodging the claims for the victims of betterment. In 1998, the government opened the doors for claims but unfortunately people who were victims were not granted that opportunity and the deadline of 31 December 1998 passed.

We engaged the relevant government departments but we got no response. In 2003, we decided to embark on a march of more than 10,000 people. But it seems that government's ears are so deaf that they still did not hear us. In 2004, we met Minister Thoko Didiza. She promised to take this matter to the cabinet but she was replaced by Minister Lulu Xingwana. We also met Minister Xingwana in 2005. And we were forced to start the negotiations from scratch as Minister Xingwana said she was not aware of what happened before. We did that. We met with her again in 2007 where we agreed to take this matter to court. But that process was delayed by the Director-General of the department, Mr. Thozi Gwanya. Unfortunately for him, there was a written letter by the Minister Xingwana that said that she is willing to hire lawyers on our behalf in order to fast-track the process.

After 2009 national elections, Minister Nkwinti replaced her and we had to start afresh again. When we met with him, there was disagreement and we were left without a choice but to take the matter to court. The case will now be held next week.

This is not the only problem. In some of the communities who were affected by betterment, the chiefs want to claim any possible restitution money. In the case of Chatha village, the community was able to ensure that a democratic Communal Property Association was able to drive development and not the chief who collaborated with apartheid betterment.

Service delivery

Now that these chiefs are promised by our government to receive lump sums of money, they do not want councilors in their areas of jurisdiction. In their workshop at Mpekweni Resort in February 2010, they resolved that they must tell government that they will lead rural development in their areas of operation. Last year's Department of Agriculture budget, we find out that monies for a programme called Comprehensive Agricultural Support Programme (CASP) was allocated to the chiefs for the buying of tractors and equipment for each Great Place. Why? Why back to the homelands? What about people-driven development? Are people in rural dwellers not supposed to drive development themselves? Why take them back to tribal authorities that they resisted and defeated? Even worse, these tractors and amakhuba are not properly managed because our chiefs do not want to work with the people. Government must monitor everything it is doing. The fact that they have new powers and that they are going to be represented in our municipalities makes them to think that they are now the government of the rural areas. Do we not have one government in this country? Do we now have government for rural people and then government for townships and suburbs? These chiefs took all the roles that are supposed to be done by SANCO, even the stamps of SANCO from vulnerable communities.

Traditional council elections

SANCO Amathole Region, strongest in our province/the region formerly known as Border Region during the struggle. They decided to engage the department and MEC responsible on this pieces

of legislation defending their members. The department agreed to convene a workshop where both SANCO and chiefs will be part of, under the same roof the venue was proposed to be Umtata. SANCO allocated comrade Chris Majikazana to serve in the facilitation committee together with Mr Giyose from the department. That workshop never materialized because of failures from side of the department. After the failure of this workshop the department decided to engage us in politics of involvement instead of active participation, They came up with an election date of which SANCO refused in toto. SANCO decided to protest against those elections and that culminated to a march on the 09 September 2009 to the MEC'S office. There is no response from the MEC Gqobana's office. No acknowledgement of the receipt of the memorandum nothing. The only thing he did is to put another date of election of which it was March 6 2010. Rural People's Movement, Ilizwi Lamafama, SANCO picketed on March 05 during the opening of the house of traditional leaders trying to show our anger. Attached as an annexure is the memorandum of the march. 06 March 2010 election SANCO regarded these elections as fraudulent concurring fully with Nkosi Patekile Holomisa. To show that, this was fraudulent in six areas including Patekile Holomisa's area there was no vote. Few people attended voting stations. We heard that out of 95000 voters registered only 3000 voted on that day. Most of the discrepancies happen like that day was not gazetted. SANCO met with MEC about these discrepancies, he said that he is waiting for submissions but again he never responded to those submissions

If the elections were so bad, how can then rural people be expected to respect these traditional councils? They are the same as the tribal authorities of the BAA. And we say phantsi ngazo!

Recommendations

SANCO Eastern Cape is recommending that if we are doing away with repealing the Black Authority Act we must also do the same to the TLGFA, CLARA and the Traditional Courts Bill. All these Acts are perpetrating the atrocities of the BAA. Also before continuing establishing traditional councils we must look who the really chiefs and kings are. We know that President Zuma is still reading the report of the Nhlapho commission. But we cannot wait. If you look only the background of Nhlapho commission report you will end up saying all those who are claiming to be

the chiefs and kings they are not. All Tshawe's belong to lqadi not indlu enkulu. Therefore we appeal that let us wait until the findings are finalized.

Courts Bill and levies.

We appeal also as SANCO to our government not to promulgate the Traditional Courts Bill. If you look at Bumbane (King Dalindybo's Great Place) presently people there are no longer subjects of the king they are slaves. This Bill will give more powers to unelected few and marginalize the majority and relegated them to slavery. Levies at this point in time none of this have been reported in province.

The resolution taken in our last Provincial General Council on 28 March 2010 was that communities must stay away from these notorious laws. We will mobilise to ensure that this resolution is implemented to the full.

We ask the committee to take action to help us address the restitution of the victims of betterment. Specifically, we want to the committee to ask Minister Nkwinti for reasons of his opposing of restituting the rights of those who were forcibly removed by betterment. We also ask the committee to ensure that those who benefit from land reform and restitution are able to form their own land structures without being forced to have their land under chiefs.

Conclusion

Let us once more thank the house for rendering this opportunity of coming to parliament and talk about the laws of country. Hoping that our participation will help parliament. We also attach here background documents that provide evidence of decisions taken by our structures on the issues we speak to in this submission.

Away with politics of false involvement away! Away with marriage of convenience away! Phantsi nokugotyelwa phantsi!

Forward with people's government forward! Amandla!

Thank you

Presented by: Mqondisi A. Ngojo

SANCO ORGANISING SECRETARY, Eastern Cape