

## Overview of oral submissions at the public hearings on the Black Authorities Act Repeal Bill

### 1. Background

On 20 and 21 July 2010, the Portfolio Committee on Rural Development and Land Reform heard a presentations and testimonies from representatives of rural communities and organizations on the subject of the repeal of the Black Authorities Act, No 68 of 1951 (BAA). The BAA was one of the legislative cornerstones of the apartheid as well as engineering and controlling communities of Black people. It laid the foundation for the establishment of statutory tribal, regional and territorial authorities to administer the affairs of Black people; it also defined the functions of those black authorities. The BAA remains a symbol of past racial divisions and discrimination and is entirely repugnant to the values and human rights enshrined in the Constitution of the Republic of South Africa, 1996.

The Black Authorities Act Repeal Bill, 2010, therefore, seeks to repeal the BAA, thereby removing it from the statute book. This document provides an overview of oral submissions received by the Committee over the two day public hearing process.

### 2. Overview of submissions

#### 2.1. Law, Race and Gender Research Unit (LRG)

The LRG welcomed the repeal of the BAA. However, pertinent questions regarding the repeal of the BAA were raised, that is, whether the repeal on its own would be sufficient to undo the legacy of the BAA, whether additional steps needed to be taken, and what those steps should be.

The LRG argued that a set of post 1994 measures and legal provisions were in effect entrenching the legacy of the BAA. Some of the post apartheid legislative developments with regards to these issues were regarded as problematic and controversial. "The developments essentially work together to refashion the old tribal authorities as traditional councils without much transformation of their content, purpose, functions and powers". One of those pieces of legislation is the Traditional Leadership and Governance Framework Act 41 of 2003 (TLGFA). Section 28 of the TLGFA entrenches the apartheid era tribal boundaries and authorities in rural areas; it perpetuates and legitimises those boundaries and authorities. This line of argument drew from the Constitutional Court's hearing on the Communal Land Rights Act 11 of 2004 (CLRA), where Deputy Chief Justice Dikgang Moseneke expressed concerns regarding the use of BAA of 1951 as a platform for land reform. **A major concern, as submitted by the LRG, was that the repeal of the BAA falls short of what is required to address the legacy of apartheid in the rural areas of South Africa.**

What is it about the TLGFA that entrenches the BAA provisions?

- Gives traditional councils the very kinds of unaccountable governance powers they had as traditional authorities under BAA;
- It preserves and entrenches the obsolete and repugnant boundaries, authority structures and power relations between traditional leaders and their subjects
- The TLGFA permits possibilities of collection of taxes and levies by the traditional councils (section 4(2) and (3) (note that the Constitution [section 43 and 104] vests these powers to National and Provincial spheres of government). This is in contrast to the

provisions of the White Paper on Traditional Leadership and Governance, which discourages imposition of taxes and levies by traditional authorities.

LRG, therefore, asks parliament the following:

- To note that the Repeal Bill mentions the cut-off dates for continued existence of the old community, regional and other authorities mentioned in section 28(5) & (6) (a) of the TLGFA; it however pointed out that the process is incomplete.
- To note irony of repealing the BAA whilst its key provisions live on in new legislation as illustrated above.
- To note the concerns of the Constitutional Court regarding the reliance on the BAA's tribal authorities and boundaries as a basis for post-apartheid land reform.
- To draw the attention of the Portfolio Committee on Justice and Constitutional Development and that of Cooperative Governance and Traditional Affairs to the concerns above.

## **2.2. Mr. Thabang Motsoeneng**

Mr Motsoeneng emphasised the constitutional rights of the rural people; in particular, the Bill of Rights. His submission was located within the discourse of law and the impact on Roman Dutch Law on indigenous and customary practices. The submission was based on the notions of power, responsibility and accountability. He argued that the repeal of the Black Authorities Act should give due regard to the realization of the constitutional rights for the people in rural villages. Some of the propositions he made are:

- Enactment of laws that would give effect to the communal land rights and dignity for those people in rural villages.
- Allocation financial resources for food production to the rural poor.
- Collaboration of traditional councils and municipalities to ensure development of rural areas.

## **2.3. Silwanendlala Farmers Agricultural Cooperative (Ltd)**

Silwandlela Farmers Agricultural Cooperative is found in Mpumalanga and Mr. Mabuza, a representative of the organization, spoke about the experiences of the rural people in the Matsamo Tribal Authority. He elaborated on problems experienced by the rural people with regards to who the legitimate chief or authority was. The matter was based on discussion of institutions that derives their mandate and powers from the BAA. Tribal Authorities are some of those institutions legislated for by the BAA. Overview of problems in that community:

- Tribal authority obstructs development;
- Tribal Authority sells land that it does not own;
- Tribal Authority charges levies but does not provide services.

Parliament was asked to ensure that government:

- Stops Tribal Authorities from practicing old apartheid laws.
- Must not make laws without consulting the public, especially the rural poor.
- Stops tribal authorities from interfering with development in rural communities.
- Release title deeds to the rural people.

## **2.4. Rural Peoples Movement**

The Key message from the RPM, which had consulted its membership on the repeal of the BAA, was that the BAA together with its Tribal Authorities must go. The BAA undermined the dignity of black people in South Africa. Four major concerns raised were:

- Clustering of black people and imposing chiefs on them;
- Payments of levies and taxes;
- Establishments of Bantustans and homelands
- Divisions and disunity among people.

The RPM further submitted concerns with the new legislation such as the TLFGA and the Traditional Courts Bill (TCB), which they argued that they entrenches the BAA provisions. While Parliament repeals the BAA, its legacy lives in the legislation mentioned above.

## **2.5. Land Access Movement of South Africa (LAMOSA)**

Lamosa welcomed the repeal of the BAA and submitted that the repeal was long overdue. It presented various scenarios that illustrate frustrations and confusion emanating from the Black Authorities Act, 1951. A case of Barokogadi of Melorane was presented before the committee – forced removals forced different communities to live together despite absence of history of prior links or connection among those communities. They were further subjugated to tribal authorities to whom they did not have any allegiance.

Under the land restitution programme, government restored rights in land in favour of the Barokogadi Communal Property Association. However, the community can not escape the authority of the chief, who they do not acknowledge his authority, because the North-West Provincial Government believes that “the traditional authority can not be dismantled, lest floodgates of problems are opened, and this would create administrative problems”. Lamosa hoped that:

- The repeal of the BAA could also resolve problems such as clustering of communities who did not have any prior links nor share any common traditional values.
- Section 28 of TLGFA would be amended and that the TCB would not be passed by Parliament.
- Government would stop Tribal Authorities and chiefs from imposing levies and taxes (The Tribal Authority charges levies but does not provide any service to the community).

## **2.6. Sekhukhune District Land Forum**

The Land Forum submitted that after the promulgation of the BAA, many tribal leaders ‘congested’ Sekhukhune District and the apartheid government preferred certain leaders as opposed to others in order to further its own objectives in the Homelands. A number of changes occurred, including forced removals, change in governance of the homelands, introduction of taxes, and payment of Trust money (rent).

A major challenge today relates to the abuse of power and imposition of taxes by those institutions of traditional authorities which are associated with the BAA. The levies include ‘car levy’ for cars belonging to chiefs despite the fact the Limpopo government gave traditional leaders cars.

The Forum also regard the traditional authority as a level of local government (fourth tier) – and maintained that this is unconstitutional. They argued that the TLGFA be amended to change the power imbalances and adopt a transformative approach to the traditional authorities.

## **2.7. Rural Women's Movement (KZN) - Prisca Shabalala**

The RWM supported the repeal of the Black Authorities Act. However, the RWM's submission covered a wide range of persistent problems confronting rural women and those would continue even after the repeal of the BAA. Such problems included:

- The chief's unilateral decisions about the use of land and other community resources;
- Challenges around service delivery – no tarred roads, limited access to water, lack of sanitation services,
- Traditional courts: The chief appointed 19 people as the Traditional Authority to run the Traditional Court. This contravenes the TLGFA, and the court has so far imposed heavy penalties for the poor – for example, animal trespass to fields would impose R1000.00

The RWM appealed to Parliament to disband current Traditional Authorities and Courts and create structures that gives government support to community members.

## **2.8. Daggakraal Committee of 12**

The repeal of the BAA was welcomed; however the concern was that the BAA still lived within the TLGFA which stripped the Kalkfontein their status as a Community Authority. The TLGFA gives chiefs' authority over the community authorities even if they existed independent of any traditional authority. The submission appealed that:

- Parliament repeals the TLGFA or amends its section 28; and
- Disestablishment of tribal structures associated with the BAA.

## **2.9. Kalkfontein B and C Trust**

Mr. Stephen Tongoane is one of the leaders of the Kalkfontein community, one of the communities that went to the Constitutional Court to challenge the CLRA. He submitted that the community welcome the repeal of the Black Authorities Act. However, the remained concerned about the fact that the repeal on its own was inadequate to address the damage caused by the BAA because of the fact that a set of post 1994 measures and provisions that in effect entrench the legacy of the very Act that is being repealed. Those problematic laws are the TLGFA, TCB and CLRA and are an embodiment of the BAA because they bestowed more powers to the institution of traditional leadership. The traditional councils were also viewed as problematic structures as it resembles more 'cosmetic changes' to the traditional authorities of the BAA.

## **2.10. Farm Evictions and Development Committee (FEDCO)**

FEDCO, presented by Ms. Maria Mabaso, submitted that it supported the repeal of the BAA. Their major problem is that the Tribal Authority, an institution that was legislated under the Black Authorities Act, imposed levies and taxes to rural communities. What are the kinds of taxes and levies?

- If a girl becomes pregnant, parents of the girl child pay amount ranging between R200-R1000 to the chief (only levied to the parents of a girl-child)
- When a widow has to remove her mourning dress, she pays a tax/levy ranging between R300 – R1000 to the chief.
- Development tax; for example, each family pays R500 for the construction of roads etc.
- When land reform beneficiaries acquire land (bought by government for them), those beneficiaries who are subjects of a chief are compelled to pay levies in order to access the land.

- Communities fund the costs of private legal matters of chiefs; for example, R150.00 per person.
- Weddings, unveiling of tombstones a family between R300 and R1000 – paid to the traditional leader.
- An example of Emakhuzeni, each household pay R50 towards the education fund for the chief's child.
- Horse tax (chief's car), tax for the traditional skirt of the chief, palace. Etc.

#### **2.11. Cala University Students Association (CALUSA) and Siyazakha Land and Development Forum**

CALUSA and Siyazakha's submission of Tsengiwe case study illustrated a need for the repeal of the BAA. The proposition was based on the fact that The BAA gave birth to current kinds of Tribal Authorities which are different from people's local customs. The local custom and practice in Cala was to elect their own headman. But the Eastern Cape Provincial Leadership and Governance Act of 2005 forbid this practice.

Communal area is understood as those areas under traditional leaders bestowed with legislative powers to control and manage development processes. On the other hand, municipalities are charged with responsibilities of facilitating economic development and delivery of basic services to all Citizens of South Africa. CALUSA & Siyazakha argued that this context is characterised by tensions and conflicts; Tsengiwe, Sakhisizwe Local Municipality, Eastern Cape.

CALUSA and Siyazakha elaborated on tensions existing between the TLGFA and other legislation on local government. They also spoke about the significance of role clarification at a local level (municipalities and chiefs). The greatest concern is that whilst the Constitution seeks to entrench democracy by encouraging direct community participation, TLGFA gives more powers to Chiefs.

#### **2.12. Mokgaetsi Pilane and Mmothi Pilane (Bakgatla Bakautlwane)**

The submission illustrated frustrations by Bakgatla Bakautlwane who, under the apartheid government, were forced into the authority of the Bakgatla Bakgafela (paramount chiefs). This chieftaincy was imposed on the Bakautlwane people. The impacts of being wrongfully subjected to other chiefs are:

- Their land claim was registered under the Bakgatla baKgafela – who do not have legitimate claim on the land under claim;
- Misuse of the revenue generated from mineral resources - the proceeds do not benefit the broader community of Bakgatla, but the Chief.

The submission expressed concern and worries because the new legislation (TLGFA) entrenches the BAA by reinforcing the status of some Chiefs on people who do not recognize them. "These laws make it very difficult for people like us to challenge abuse of power".

#### **2.13. SANCO – Eastern Cape**

SANCO raised concerns about the 'cruel and unscrupulous' pieces of legislation that emanated from the BAA, which comprise the TLGFA, Communal Land Rights Act, Traditional Courts Bill and the Eastern Cape Provincial Traditional Leadership Act 2005. It does not regard these pieces of legislation as authentic because they are based on the old

defunct and notorious apartheid laws. SANCO welcomes the repeal of the BAA. However it submitted to the committee that the legacy of the BAA runs very deep, entrenched in new laws mentioned above. The traditional authorities are still not transformed and there are huge problems with regards to the election of traditional councils. SANCO submitted cases where the effects of the BAA are harshly felt, those areas are: Qawukeni, Tsholomnqa, Mooipiaas and Kwelera, Kolomane village, and Gwatyu.

SANCO's main concerns centred on the elections in terms of the TLGFA, imposition of levies and betterment claims. They recommended that Parliament seek measures to do away with the BAA, TLGFA, TCB and CLRA.

#### **2.14. Maria Mateza**

Miriam Mateza is a trained, black female farmer who bought a piece of land that did not form any part of traditional authority in 1983. The Chief of Gcina Tribal Authority claimed he owned the land on which she farmed. She was evicted from the land. As a woman, she could not own any land. She attempted in vain, under restitution, to claim the land BUT all in vain because "government only took claims of people who were dispossessed by Whites". In 1990s she was promised financial compensation but she found it unsatisfactory as a farmer. She now lives in a shack, a life that she is unaccustomed to. All this she blames on the ruthless chiefs and the fact that she is a woman. She urged Parliament to repeal the BAA in its entirety.

#### **2.16. Ilizwi Lamafama Small Farmers Union (ILSFU)**


ILSFU represents 3000 members in 44 villages in Buffalo City, Ngqushwa, Amahlathi and Nkonkobe municipalities. They support the repeal of the BAA. However, their major concern relates to the many problems that will continue even after the repeal of the Act. Those problems include: the powers of Chiefs as legislated by the TLGFA. ILFU presented experiences of its members with regard election of traditional councils, e.g. the Amandlambe Tribal Authority which elected the 40% from the 60% submitted by the Chief Makinana. They submitted before the committee that if Parliament repeals the BAA, communities will still remain with the very problematic BAA structures. They therefore urged parliament to "repeal the BAA and its structures".

#### **2.17. Legal Resources Centre**

The repeal of the Black Authorities Act signals one of the significant final steps in removing the traces of parliamentary sovereignty and 'indirect rule' from democracy. However, if the repeal is to be more than a mere symbolic act, it is crucial that the Act that fills the void left by the repeal be true to the principles of our constitutional democracy and ensure that, as far as possible, the damage done by the BAA is undone.

The LRC referred the Committee to the ANC 52<sup>nd</sup> National Conference Resolutions Polokwane Resolutions, particularly resolution 84 under social transformation; the resolution states the strengthening of the voice of rural South Africans, empower poor communities and build the momentum behind agrarian change and land reform. It also advocates for democratization of allocation of customary land in manners that empower rural women and support the building of democratic community structure at village level.

The LRC drew a link between some new legislation and the BAA. Those legislations are:

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- The Traditional Leadership Governance Framework Act: The TLGFA allows for the tribal authorities established under the BAA to continue. The LRC submitted that the BAA did not represent living customary law and unless that happens, any new legislation will be unconstitutional.
  - Traditional Courts Bill links to the BAA. It defines the traditional leader as presiding officer, representation of parties by a Spouse and no right to opt out.

They urged parliament to consider meaningful engagement by relevant parliamentary portfolio committees on these issues or else the legacy of the BAA will live continuously.

### **Access to Ancestral land by Ramunangi Family**

The family is in dispute with the chief of the area regarding access to ancestral burial site. According to the Venda customs such sites are sacred and very important for communication with their ancestors and god.

The tribal authority, associated with the BAA, has permitted development of a picnic site on this piece of land. The development is interfering with the cultural and religious practices of the Ramunangi family. The matter has been referred to court.