



PRESS STATEMENT

SYMPOSIUM DELEGATES CALL FOR NATIONAL LAND REFORM DIALOGUE

20 April 2017

Delegates to a symposium on land, heritage and human rights gathered in Pretoria for an urgent dialogue.

They heard that a human rights approach to land redistribution, grounded in the effective implementation of Section 25 of the 1996 Constitution of South Africa, can still guarantee a life of dignity, equality and freedom for all South Africans. This was the view expressed by Prof. Bongani Majola, Chair of the South African Human Rights Commission. Prof Mathole Motshekga, Chair of the Parliamentary Portfolio Committee for Justice and Correctional Services, agreed with this sentiment, adding that Parliament has not done enough to effectively make use of the possibilities allowed for under Section 25 of the Constitution, to adopt enabling legislation.

Section 25 of the Constitution guarantees the right to property, but also allows for its limitation. It has increasingly come under attack by many, and Prof Motshekga pointed out that, as far as the ANC's position is concerned, the matter will be further deliberated upon as part of its imminent policy conference.

The issue of land reform in South Africa was the topic of discussion at the symposium co-organised by the Centre for Human Rights, University of Pretoria, the Community Law Centre at the Kara Heritage Institute, and the Nelson Mandela Metropolitan University (George Campus). The Embassy of the Kingdom of the Netherlands in South Africa partnered by providing financial support. This topic is very timely in light of recent divergent and often divisive stances adopted by political parties towards addressing the matter. Increasingly, the demand for land by the majority of South Africans

and slow pace of delivery, threatens our foundation of human rights and democracy in South Africa.

Nelson Mandela University Professor Quinton Johnson convened the one-day symposium for academics, students, civil society groups and state representatives on 19 April 2017. He introduced the dialogue as a vital engagement about land for the restoration of our dignity, reclamation of our heritage and advancement of our human rights. He further urged that radical reform must be driven within the rational framework of our Constitution. Moreover, Advocate Leks Makua from the Johannesburg Bar, identified several factors that must be addressed in order to accelerate the process. Judge Johann van der Westhuizen, Inspecting Judge of the Judicial Inspectorate of Correctional Services, chaired and facilitated the interactions of the symposium panel. The panellists took different and thought-provoking views on Section 25 of the Constitution in addressing the question: 'What legal reforms are needed for an effective and timely redistribution of land in South Africa?' This included positions on whether we should embrace the principle of expropriation of land without compensation.

Prof Majola made it clear that payment of compensation for expropriated land is required both by South Africa's Constitution and by its obligations under international law. It would be difficult to foresee a situation where compensation is excluded without also ousting the courts' jurisdiction on the issue. Judge van der Westhuizen cautioned that the principle of the rule of law, which is a cornerstone of our democracy, should not be compromised.

Following an intensive and lively discussion on land reform, it emerged that Section 25 in itself is not an impediment to land reform. Those who contend that Section 25 is the main obstacle to equitable land distribution often do so because they do not pay close attention to or misunderstand this provision. There was general agreement that more needs to be done to educate South African about their rights, generally, and particularly about the provisions of Section 25 of the Constitution.

Several speakers pointed out that Section 25 of the Constitution does not guarantee an absolute right to property, but allows expropriation in the public interest provided that just and equitable compensation is paid. To establish compensation, an equitable balance has to be struck between the public interest in expropriation the one hand, and the interests of those affected, on the other. Even if Section 25 requires that compensation be paid, it does not require that the willing buyer-willing seller principle be adhered to, and that additional factors such as property use and the history of its acquisition for example, also be considered in the process.

Delegates Noted:

First

Existing land reform legislation is not effectively implemented. The Land Claims Commissions and Land Claims Court, set up under the Under the Restitution of Land Rights Act (1994), have not been effective agents for land restitution. Unnecessary bureaucratic bungling, significant corruption, limited expert skills exacerbated by cadre deployment, together with the reality that these institutions have to be made more accessible, and more representative, are some of the challenges that must be addressed.

Second

The possibility of adopting further enabling legislation to accelerate land reform is not being used, even though Section 25(8) of the Constitution specifically indicates that this can be done.

Third

The possibility of repealing existing legislation inconsistent with or hampering land reform is not being pursued.

Fourth

There is a need for national legislation on expropriation. The Expropriation Bill, which is currently before Parliament, has been late in being introduced and has been processed without urgency. We should also consider the possibility of effecting appropriate amendments to the 1975 Expropriation Act.

Fifth

There should be improved communication and co-ordination between various government departments. Currently, the location of relevant land reform mandates and competencies are spread across several departments, and should be better aligned to accelerate the pace of the process.

It is clear that the issue of land reform is urgent. We need a Land and Economy CODESA, to radically address poverty, inequality and unemployment in order to restore our dignity, strengthen our economy and advance our democracy.

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