

THUSI RAPOO'S INTRODUCTORY PRESENTATION BEFORE THE PARLIAMENTARY SELECT COMMITTEE ON PETITIONS AND MEMBERS LEGISLATIVE PROPOSAL, JOHANNESBURG, 03 MAY 2013

1. INTRODUCTION

Communities and leaders present

- i. Chief Mmuthi Pilane of Motlhabe village
- ii. Mr Motene and Mr Joseph Magobe of Chaneng Village
- iii. Chief Rammereki Mekgwe and Mr Lucas Mekgwe of Baphiring clan in Luka Village
- iv. Mr Setuke of Lefaragatlha village
- v. Mr Monty Huma of Thekwana village
- vi. Mr Phillemen Khunou of Tsitsing village (could not make it)

Invited Civil Society Organisations who have conducted studies in the mining areas

- i. Bench Marks Foundation
- ii. Federation for a Sustainable Environment

Other Parties involved or affected

- i. Government through various Departments, Municipalities and Legislatures
- ii. Multinational corporations
- iii. Traditional Councils

2. BACKGROUND

BLBA's and Mmuthi Pilane's presentation on the Traditional Courts Bill before the NCOP on the 21 September 2012

BLBA's submission to the Farlam Commission dated 23 October 2012

BLBA's petition to National Parliament dated 24 October 2012 on human rights atrocities in Greater Rustenburg

BLBA's petition to National Parliament dated 11 April 2008 on 'entrenchment of land ownership rights and self determination for certain communities within the Bafokeng 'tribe' and the preservation of mining rights for the said communities'.

3. NOTING THAT:

- i. Government and Chapter 9 institutions are supportive of community hardships and indifferent to community concerns

- ii. Government has the overall responsibility to ensure that citizens and their rights are always promoted and protected.
- iii. Government has oversight authority over state institutions including tribal institutions.

4. NOTING FURTHER THAT:

20 out of 32 or 60% of the following relevant provisions in the bill of rights have since democratic government been consistently violated

Equality

- 9 (1) Everyone is equal before the law and has the right to equal protection and benefit of the law.
- (2) Equality includes the full and equal enjoyment of all rights and freedoms. To promote the achievement of equality, legislative and other measures designed to protect or advance persons, or categories of persons, disadvantaged by unfair discrimination may be taken.
- (3) The state may not unfairly discriminate directly or indirectly against anyone on one or more grounds, including race, ethnic or social origin, culture.

Human dignity

10. Everyone has inherent dignity and the right to have their dignity respected and protected.

Life

11. Everyone has the right to life.

Freedom and security of the person

- 12 (1) Everyone has the right to freedom and security of the person, which includes the right –
- (c) to be free from all forms of violence from either public or private sources;
- (e) not to be treated or punished in a cruel, inhuman or degrading way.

Slavery, servitude and forced labour

13. No one may be subjected to slavery, servitude or forced labour.

Privacy

14. Everyone has the right to privacy, which includes the right not to have –
- (c) their possessions seized; or

Freedom of expression

16. (1) Everyone has the right to freedom of expression, which includes –
- (d) academic freedom and freedom of scientific research.

Assembly, demonstration, picket and petition

17. Everyone has the right, peacefully and unarmed, to assemble, to demonstrate, to picket and to present petitions.

Freedom of association

18. Everyone has the right to freedom of association.

Citizenship

20. No citizen may be deprived of citizenship.

Environment

24. Everyone has the right –
- (a) to an environment that is not harmful to their health or well-being; and
- (b) to have the environment protected, for the benefit of present and future generations, through reasonable legislative and other measures that –
- (i) prevent pollution and ecological degradation;
- (ii) promote conservation; and

- (iii) secure ecologically sustainable development and use of natural resources while promoting justifiable economic and social development.

Property

- 25** (1) No one may be deprived of property except in terms of law of general application, and no law may permit arbitrary deprivation of property.
- (2) Property may be expropriated only in terms of law of general application –
- (a) for a public purpose or in the public interest; and
 - (b) subject to compensation, the amount of which and the time and manner of payment of which have either been agreed to by those affected or decided or approved by a court.
- (3) The amount of the compensation and the time and manner of payment must be just and equitable, reflecting an equitable balance between the public interest and the interests of those affected, having regard to all relevant circumstances, including –
- (a) the current use of the property;
 - (b) the history of the acquisition and use of the property;
 - (c) the market value of the property;
 - (d) the extent of direct state investment and subsidy in the acquisition and beneficial capital improvement of the property; and
 - (e) the purpose of the expropriation.
- (4) For the purposes of this section –
- (a) the public interest includes the nation's commitment to land reform, and to reforms to bring about equitable access to all South Africa's natural resources; and
 - (b) property is not limited to land.
- (5) The state must take reasonable legislative and other measures, within its available resources, to foster conditions which enable citizens to gain access to land on an equitable basis.
- (6) A person or community whose tenure of land is legally insecure as a result of past racially discriminatory laws or practices is entitled, to the extent provided by an Act of Parliament, either to tenure which is legally secure or to comparable redress.
- (7) A person or community dispossessed of property after 19 June 1913 as a result of past racially discriminatory laws or practices is entitled, to the extent provided by an Act of Parliament, either to restitution of that property or to equitable redress.
- (8) No provision of this section may impede the state from taking legislative and other measures to achieve land, water and related reform, in order to redress the results of past racial discrimination, provided that any departure from the provisions of this section is in accordance with the provisions of section 36 (1).
- (9) Parliament must enact the legislation referred to in subsection (6).

Housing

- 26** (1) Everyone has the right to have access to adequate housing.
- (2) The state must take reasonable legislative and other measures, within its available resources, to achieve the progressive realisation of this right.
- (3) No one may be evicted from their home, or have their home demolished, without an order of court made after considering all the relevant circumstances. No legislation may permit arbitrary evictions.

Health care, food, water and social security

- 27** (1) Everyone has the right to have access to –
- (a) health care services, including reproductive health care;
 - (b) sufficient food and water; and
 - (c) social security, including, if they are unable to support themselves and their dependants, appropriate social assistance.
- (2) The state must take reasonable legislative and other measures, within its available resources, to achieve the progressive realisation of each of these rights.
- (3) No one may be refused emergency medical treatment.

Children

- 28** (1) Every child has the right –
- (c) to basic nutrition, shelter, basic health care services and social services;
- (2) A child's best interests are of paramount importance in every matter concerning the child.
- (3) In this section "child" means a person under the age of 18 years.

Cultural, religious and linguistic communities

- 31** (1) Persons belonging to a cultural, religious or linguistic community may not be denied the right, with other members of that community –
- (a) to enjoy their culture; and

- (b) to form, join and maintain cultural, religious and linguistic associations and other organs of civil society.

Access to information

- 32 (1) Everyone has the right of access to –
- (a) any information held by the state; and
 - (b) any information that is held by another person and that is required for the exercise or protection of any rights.

Just administrative action

- 33 (1) Everyone has the right to administrative action that is lawful, reasonable and procedurally fair.

Access to courts

34. Everyone has the right to have any dispute that can be resolved by the application of law decided in a fair public hearing before a court or, where appropriate, another independent and impartial tribunal or forum.

Arrested, detained and accused persons

- 35 (3) Every accused person has a right to a fair trial, which includes the right –
- (b) to have adequate time and facilities to prepare a defence;
 - (d) to have their trial begin and conclude without unreasonable delay;
 - (f) to choose, and be represented by, a legal practitioner, and to be informed of this right promptly;
 - (g) to have a legal practitioner assigned to the accused person by the state and at state expense, if substantial injustice would otherwise result, and to be informed of this right promptly;
- (5) Evidence obtained in a manner that violates any right in the Bill of Rights must be excluded if the admission of that evidence would render the trial unfair or otherwise be detrimental to the administration of justice.

5. NOTING ALSO THE FOLLOWING SPECIFIC URGENT ISSUES RAISED IN THE TWO ABOVEMENTIONED PETITIONS:

- i. Land rights Inquiry and Restitution
- ii. Tribal Cessation
- iii. Cessation of (mining) developments on land without and to the exclusion of land claimants
- iv. Investigation, Research and monitoring of covert military, police or security operations and brutality in mine hosting communities
- v. Distortion of cultural practices and traditional systems in mine hosting communities – Regents appointed by Government for own personal business interests
- vi. Maladministration and mismanagement of public funds and office by illegitimate traditional leaders (+ R1.3b paid out in bonuses to Niall Carrol's team; signing of mining rights without authorization and meaningful consultation with land owners; continued arrogance and inaccessability)

6. NOW THEREFORE REQUEST THE FOLLOWING URGENT INTERVENTION:

- i. Appointment of Administrator
 - To facilitate a land rights inquiry process

- For the protection of rights on claimed lands
- For the freezing and control of tribal funds

7. PROCESSES?

- Each of the 6 community leaders will have 10minutes to present their own cases and experiences
- Care and understanding must be allowed to emotional presenters as their cases are quite emotive
- What would be the next step for the Chairperson and his Committee after this hearing?

8. PRESENTATIONS

- a. Motlhabe Presentation by Chief Mmuthi Pilane
 - i. Will touch on Cessation, Leadership claim, Land claim, and mining developments

- b. Chaneng Presentation by Ms March Motene
 - i. Denial of right to protest; Illegal arrests; Land claim and current mining developments and land displacement

- c. Luka Presentation by Mr Lucas Mekingwe
 - i. Denial of right to protest; House demolitions; Recognition of Baphiring as a independent clan and land claims

- d. Lefaragatlha Presentation by Mr Setuke
 - i. Imposing of illegitimate sub-chief; new mining development and relocation; cessation

- e. Thekwana Presentation by Mr Huma
 - i. Land Claim, Promotion and development of Informal settlements (Bokamoso, Nkaneng, Marikana)