



Office 1106 Braamfischer towers,
20 Albert Street, Marshalltown
010 021 0572
Email: ruraldemocracytrust@gmail.com

19 February 2020

The Director-General: Rural Development and Land Reform
Att: Mr Barry Levinrad
Private Bag X833, PRETORIA, 0001
By email: Bsla@drdlr.gov.za

RE: ALLIANCE FOR RURAL DEMOCRACY (ARD) SUBMISSION ON THE DRAFT BENEFICIARY SELECTION AND LAND ALLOCATION POLICY

Introduction

The Department of Agriculture, Land Reform and Rural Development has now gazetted the long-anticipated Draft Beneficiary Selection and Land Allocation Policy [herein after referred to as the Draft Policy] in 2020, at least 25 years after the advent of our constitutional democracy. The programme of land redistribution was often touted to be the pillar of land reform with the ambitious targets of 30% of all land to be transferred to non-whites as a marker of real transformation in racially-skewed land ownership patterns. On the principles of fairness, equality, equity, non-discrimination and rectifying the racial, economic, spatial, social and political injustices of the past – the Alliance for Rural Democracy (ARD) makes this submission on the Draft Policy.

Who is ARD

The Alliance for Rural Democracy (ARD), a cross-section of civil society organisations sharing a common concern about the on-going struggle to defend rural land rights and democracy against the onslaught of new laws and policies that favour the interests of traditional leaders and politically connected business investors at the expense of the land and political rights of poor South Africans living in the former Bantustans. Our core areas of work are advocacy and mobilization on issues of land restitution [pre-settlement, settlement, and post-settlement], living customary law and rural governance, and mining-affected communities. I make this submission in both my personal and professional capacity. The views contained in here are inspired by my personal experience, as well as views of communities that I interact with across the provinces of Limpopo, Mpumalanga, North West, Eastern Cape and KwaZulu-Natal where the ARD has a geographic footprint.

The Draft Beneficiary Selection and Land Allocation Policy is relevant to my personal life as a rural activist, and to my work in the land sector. I have been involved in land related matters ever since the inception of the land reform work in South Africa, from 1993 Land Tenure Conference in Bloemfontein, to the development of White Paper in Land Reform. I made my first submission in 3rd Parliament on Slow Pace of Land Reform, chaired the 2005 Land Summit in Nasrec, and made many oral submissions on land and agricultural matters, as well as other related laws in the past.

Given that experience, I share the view of many other rural comrades who are of the opinion that law making processes and legislators in this country have failed us by continuously rushing through processes. The land question is fundamental for many rural South Africans, and we need to ensure that those without access to the mainstream media and information technology [such as the rural masses] knows about it because it impacts on their livelihoods. ARD and its partners have always worked towards mobilising the countryside especially rural dwellers to know of their rights, but irrespective of how many times we make submissions, engaged with land related processes, the final word lies with the Department. We don't give up, we will keep on engaging and strategizing to realise our vision and build South Africa as a country where all of us will belong, and not feel othered. This Land belongs to our Great grandparents, we will fight for it. I will go straight to my submission.

Content of the Draft Policy:

1. Legislative Provisions

Having reviewed all the laws cited in this section, the ARD submits that the policy is excluding the provisions of the Interim Protection of Informal Land Rights Act, 31 of 1996 (IPILRA). IPILRA applies to all land where anyone holds rights to the use, occupation of, or access to land in terms of customary law or is otherwise state-held communal land. It is thus relevant to this Draft Policy. IPILRA expressly requires:

- a) that no person may be deprived of any informal right to land without his or her consent - section 2(1);
- b) that land held on a communal basis may not be deprived unless consented to by at least the majority of the affected rights holders - section 2(4);
- c) where the deprivation is caused by a disposal of the land or a right in land, persons deprived shall be appropriately compensated - section 2(3); and
- d) any sale of land shall be subject to the existing informal rights to that land – section 3...

The Draft Policy is essentially silent on the provisions of IPILRA for informal land rights holders. Taking into account the destructive history of land allocations on security of tenure in the former Bantustans, with up to 18 million people that residing in these former Bantustans in present day, the Draft Policy needs to take cognisance of the key provisions of IPILRA with respect to informal land rights, consultation, compensation and most importantly consent.

2. Eligibility Criteria - Who Qualifies:

Qualifying Municipalities and Communities in Communal Areas

Under section the Draft Policy is clear to state that categories of beneficiaries are to apply directly to the Department for consideration. Furthermore, the Draft Policy stipulates that the Land Acquisition for Sustainable Settlements (LASS) will be used to implement the applications for commonage and sustainable settlements. As the ARD, we find ourselves now confused because the Department has up until now indicated that the LASS and the accompanying conditional grant under the LASS is for the purposes of urban areas for urban commonages and housing.

Traditional Leaders

The ARD is gravely concerned that the Department is considering allowing Traditional Leaders to qualify as beneficiaries for land allocation at the discretion of the Minister. This concern stems from the fact that many traditional communities where traditional leaders administer communal land are impoverished because of the maladministration carried out by the members of the Traditional Council and the Traditional Leader. In many instances, Traditional Leaders enter into land deals and land investments [such as mining, game farming, and others] on behalf of the community without their Free, Prior, and Informed Consent. Furthermore, many traditional communities are facing livelihood constraints because the land on which they hold informal land rights is being allocated by Traditional Leaders for residential sites or business sites without any regard for the provisions of Land Use Schemes as outlined in Spatial Planning for Land Use Management legislation and policies. It is therefore unjust that the same Traditional Leaders will now be eligible for land allocation under this Draft Policy whilst they have been responsible for infringing on so many informal land rights in communal areas.

3. Beneficiary Selection Criteria:

Communities, state land and township residents

As a special target group, communal farmers and state land residents are given priority for land allocation under section 6(7)(e) of the Draft Policy; to this end the land to be earmarked for allocation to communal farmers is that which is adjacent to their communities or villages for the purpose of reducing decongestion on communal land. This is a principle that the ARD supports. But we must explain that from our experience, this land [adjacent to villages] is already held in trust by the State (governed by traditional communities living under customary law and rural governance), or is subject to a land restitution claim where people were removed or in the case of land-buyers their land was not registered in their name after 1913. On this basis, the ARD submits that the land adjacent to villages and communities most likely already has occupants or land rights holders [formal or informal] and we recommend that the Department again defers to the provisions of IPILRA when conducting the needs assessment and allocating land for communities, and state land residents under section 8(5).

In addition, the ARD submits that the provisions of section 8(5)(d) wherein the Department will develop the rules for how the land is collectively used and shared may not be in line with the provisions of living customary law. Under section 8(5) the Draft Policy suggests that the various categories of land users: communities, state land residents, villagers, Urban or township residents approach the Department on their own accord because they want to undertake collective agricultural or small-scale production. For this reason, the ARD submits that in order to obtain any type of 'community resolution' it seems that these land users already have some agreement on what they wish to do with the land, and how they believe it should

be governed and allocated amongst themselves before they approach the Department. It stands to reason that whatever decision-making processes are undertaken to be able to approach the Department in the first place, should be recognized and empowered in order to allow these land-users to decide how they will then govern and manage the land once it has been allocated. The Department should serve as an advisory role, but not the ultimate decision-maker for land use rules.

4. Control Measures:

Agricultural Production for Communal Farmers, State Land Residents and Township Residents

In section 9(1)(f) the Draft Policy stipulates that the Department will audit the land users' number of livestock and brand thereof. However, ARD submits that the number of livestock that communal farmers and state land residents own may fluctuate; similarly the brand of livestock that they graze may also change during the period that the communal farmers are utilizing the land. In our experience, communal farmers graze their livestock according to the land available but the herd does not remain stagnant, it can grow and multiply in a short time depending on a number of factors. The ARD submits that the audit of the number of livestock and the brand should be used to guide the carrying capacity of the land being earmarked for communal farmers and state land residents, with the understanding that the but it must not be used to infringe upon their rights.

Secondly, the Draft Policy further requires that a veld management plan must be submitted with the application to the Department. The ARD submits that this is onerous on communal farmers and state land residents. Given that the Department has already launched an Animal and Veld Management Programme (AVMP) in 2013; we submit that this AMVP programme should be used to guide officials to work in collaboration with communal farmers or state land residents to draft a veld management plan. In the previous years, the Department has put out tenders for service-providers of Animal and Veld Management and this has cost the country a lot of money. We therefore submit that the Department should make use of the indigenous knowledge of the communal farmers and state land residents by consulting, employing or contracting them to be the service providers and implementers of the veld management plan. Communal farmers and state land residents are often perceived to be the root cause of loss of biodiversity and environmental degradation but it is actually large enterprises and corporations that bring most harm to the environment.

Land For Industrial Development Purposes

Under section 9(4)(a) the Draft Policy stipulates a development study and needs assessment must be undertaken for all applications of land for industrial development. *As ARD we submit that the development study must be undertaken in the form of a socio-economic impact assessment that will include heritage impact assessment and an environmental impact assessment. Furthermore we submit that the impact assessments should be conducted in consultation with key land rights-holders including traditional communities, land claimant communities, and state-land residents that hold informal or formal rights in land. The methods of consultation need to be undertaken in the indigenous language of the affected person/s or community – this includes all written documentation, meetings, outcomes or minutes and financial records. This is a critical element of the principles of Free, Prior, Informed Consent*

(FPIC) which is an internationally recognized right under the United Nations Declaration on the Rights of Indigenous Peoples (UNDRIP). This principle is further enshrined under section 2(4) of IPILRA which outlines the requirements for how any meeting and decision on the deprivation of informal land rights must be undertaken.

The barriers to formal education due to the historic injustices in South Africa [aforementioned] often means that affected person/s in these areas cannot meaningfully participate in decisions regarding community resolutions when the activities are all undertaken in English or a language that is not widely spoken in that geographic area. As the ARD, we have seen instances of written notices for public participation relating to land investments, land deals and changes in land use being issued in English or Afrikaans to predominantly Black person/s. In so doing, a barrier to access to information is created and without this access affected person/s are effectively excluded from meaningful consultation. Furthermore, the date, times and nature of public meetings needs to be mindful of the circumstances of the key stakeholders being the informal land rights holders, registered land claimant groups, communal farmers and state land residents.

*With respect to section 9(4)(c) the Draft Policy stipulates that any application for land allocation for Industrial Development and be accompanied by a Council Resolution, Development Plan, SPLUMA development approval and Community Resolution in accordance with IPILRA procedures. **As the ARD, we submit that the existing Pro Forma Land Rights Holders' Resolution in terms of the "Interim Procedures Governing Land Development Decisions Which Require the Consent of the Minister of Land Affairs as Nominal Owner of the Land"**¹ outlines key considerations for what information needs to be documented when undertaking any decisions on land development where the now Department of Agriculture, Land Reform and Rural Development is the custodian of the land.*

As the ARD we submit that the challenges of patriarchy, paternalism and patronage often ignore rural women's voice and their unique needs; this is more pronounced regarding consultations and the community resolution for the allocation of land for industrial development. Accordingly, we submit that women [irrespective of their marital status or social rank] should be a key stakeholder in their own capacity so that they can better articulate their land needs during community resolutions.

5. Administrative Controls

Under section 11(5) the Draft Policy stipulates that the Department will assist the community or villagers with governance structures. We reiterate our previous submission made on section 8(5)(d) on the rights of land users to develop their own natural resource governance structures and systems in line with living customary law.

Still under section 11(5) the Draft Policy stipulates that the **Department will register a personal servitude on the land allocated to a community or villages.** On these grounds, the ARD submits that the *registration of a personal servitude does not address the tenure*

¹ http://www.incrementalsettlement.org.za/wiki/images/2/27/A_07_-_Interim_procedures_as_amended_to_1999.08.17_-_final_%282016%29.pdf

needs of informal land rights holders [as communal farmers, community members, villagers or state land residents]. In fact, this provision is stripping farmers and informal land rights holders of their security of tenure because the land reverts back to the Department on the grounds that the land use has changed from the time when the community or villagers made the initial application. As the ARD we submit that this provision must be removed from the Draft Policy in its entirety if the Department is earnest about redressing security of tenure in the former Bantustans.

Furthermore, many people living in communal areas are not able to continuously work the land because of circumstances beyond their control. These include: drought, climate change conditions, lack of inputs or implements, and lack of human capital for households where the elderly or the young are permanently residing and the able-bodied individuals only return on occasion. In such cases, the land appears to be abandoned but the reality is that circumstance determines if, when and how any land user is able to exercise their rights in land.

Conclusion

We propose that the Draft Beneficiary Selection and Land Allocation Policy be revised to be more explicit on the rights of informal land rights holders living in the former Bantustans. This is especially important in light of the newly signed but not yet promulgated Traditional and Khoi-San Leadership Act, (TKLA) 3 of 2019. **Under section 24 of this TKLA traditional leaders and traditional authorities allowed to enter into any deals with third parties on behalf of the community without their consent. The ARD submits that no traditional leader or traditional council shall be duly authorized to sign a community resolution or any legal document on behalf of a traditional community unless they can submit a community resolution in line with the principles of consultation, consent and compensation as outlined in IPILRA.** And we also submit that wherever possible, *the land development plan and socio-economic impact assessment must undertake an individual household/homestead compensation or consultation approach in recognition that communities are not always homogenous.*

Alliance for Rural Democracy is calling Government to put make resources available for public consultation and participation. We further call for the immediate recognition of Motlanthe High Level Panel's proposals as well as the Presidential Panel report released in 2019. Adequate resources are needed to educate ordinary rural people and ensure enforcement of their rights under an improved Draft Beneficiary Selection and Land Allocation Policy.

Submitted by

Constance Mogale, National Coordinator

Alliance for Rural Democracy

E: constance.mogale@gmail.com

C: 0825590632