

31 January 2020

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RE: ALLIANCE FOR RURAL DEMOCRACY (ARD) SUBMISSION ON THE DRAFT MINE COMMUNITY RESETTLEMENT GUIDELINES

Introduction

The Department of Mineral Resources has now gazetted the long-anticipated Mine Community Resettlement Guidelines [herein after referred to as Resettlement Guidelines] in 2019, at least 25 years after the advent of our constitutional democracy. On the principles of fairness, equality, 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 Resettlement Guidelines.

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 am making 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 Mine Community Resettlement Guidelines are 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. The land question is fundamental for many rural South Africans, and I believe that having about 45 days of

comments on the Resettlement Guidelines that are always published during Christmas holidays when most of us are on leave, with no assurance that those without access to the mainstream media and information technology knows about it, is not fair. 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.

Inputs on the Resettlement Guidelines:

1. Informal Land Rights Holders:

The Interim Protection of Informal Land Rights Act, 31 of 1996 (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 applicable to the land in question in the case of traditional communities. IPILRA expressly requires:

- a) that no person may be deprived of any informal right to land without his or her consent - s 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 - s 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 - s 2(3); and
- d) any sale of land shall be subject to the existing informal rights to that land – sec 3...

The Resettlement Guidelines are essentially silent on the provisions of IPILRA for informal land rights holders. Taking into account the destructive history of mining, extractives, segregation and discrimination in our country, it is also common knowledge that much of the platinum belt and the coal belt can be located in many of the former Bantustans. With up to 18 million people that reside in the former homelands [Bantustans] – some of whom potentially affected by mine resettlement, the Resettlement Guidelines need to take cognisance of the key provisions of IPILRA with respect to informal land rights.

We submit that the Draft Mine Community Resettlement Guidelines 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 enacted Traditional Governance Framework Amendment Act, 2 of 2019. This law will allow traditional authorities established in 1951 to become democratic traditional councils – in the context of where most mining activity occurs it is important for the guidelines to list democratic Traditional Councils as a key stakeholders, not just “traditional authorities”. In so doing, the Resettlement Guidelines will signal to traditional leaders and traditional authorities that are not compliant with the principles of democracy, accountability, transparency, that they are not going to continue to dictate the decisions of community resettlement at the expense of the affected rightsholders. For many communities across the provinces where we work, they have seen mining companies working in close partnership with corrupt and unaccountable traditional leaders that do not act in the best interests of the community. Some community leaders have been issued with summons to appear at the traditional court where they are fined because they are wanting to promote people's basic human rights; in other cases the mines work directly with traditional leaders and completely ignore the needs of people on the ground. And in some instances it is the

mining or prospecting rightsholder or permit holder that is co-opting traditional leaders and using different methods to ensure that they will agree to any proposals [even community resettlement] without widely consulting the affected rightsholders and land users.

2. Clause 7: Meaningful Consultation

The Resettlement Guidelines outlines the key stakeholders, and the generic steps in how consultation should be undertaken. However, the critical component of the specific information that needs to be shared during consultation with respective stakeholders, with specific reference to land claimants [claimants that have lodged a claim but it is not yet finalized or transferred to them], mining-affected communities [mine communities and host communities] and traditional communities living under customary law and rural governance. It is our submission that the nature of consultation should follow the same principles outlined in s2(4) of IPILRA. Furthermore, 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 also 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.

The methods of consultation need to be undertaken in the indigenous language of the affected person/s or community – this includes all verbal communication, written documentation, meetings, outcomes or minutes and financial records. This is a critical element of meaningful engagement – the barriers to formal education due to the historic injustices [aforementioned] often means that affected person/s cannot meaningfully participate in decisions regarding community resettlement if the proposed 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 prior to prospecting or mining 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, locations 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, women, and members of the community that do not reside on the land full time but retain rights in land under customary law.**

Gender Equity with respect to Meaningful Consultation

Meaningful consultation has to also protect women and other marginalized people's rights; with special attention to women in rural areas. As the ARD we submit that the challenges of patriarchy, paternalism and patronage sometimes ignore women's voice and their unique needs; this is more pronounced regarding consultations of mine community resettlement. Accordingly, we submit that women [irrespective of their age, marital status or social rank] should be a key stakeholder in their own capacity so that they can better articulate their needs regarding community resettlement in line with **gender equity**. Without this opportunity to plan, discuss, debate and engage on any such proposals, women's needs may be subordinated to

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

the whims and decisions of men at a household, clan, village and community level. The reality of South Africa is that many women are not able to meaningfully participate in key decisions regarding their livelihoods because of the instruments of oppression that we have listed above.

3. Clause 9: Resettlement and Compensation

The Resettlement Guidelines are good in theory but there is a definite gap – the calculation of compensation. Without a standard formula, mine communities are at the mercy of the valuation put forward by the ‘Independent Valuer’. From our experience with the communities that we have interacted with, many mining or prospecting rightsholders or permit holders have engaged in unethical behaviours in the past with the help of Consultants regarding how consultations are conducted and how compensation [if any] is agreed upon. As such, we are not convinced that an Independent Valuer can really be “independent” unless they work alongside officials from the Office of the Valuer General. In so doing, at least rural communities can have some hope of getting a fair valuation and compensation offer and recourse if there is a dispute on the calculations of compensation. We submit that compensation must be determined fairly and equitably with an understanding of the specific circumstances of the affected person/s.

Agricultural and Grazing Land:

With respect to the replacement costs the Resettlement Guidelines fail to acknowledge the future or potential earnings, revenue or other value of the assets. **Market value as the sole determinant of compensation is an archaic system that continues to regard land as a commodity – this ignores the religious, cultural, spiritual and psychological value of land. Many academics and land activists have explained to Government and land investors on numerous occasion that land holds greater meaning than its productive use or potential.** For rural communities, graves and other heritage artefacts may be present on the land that is earmarked for development and when resettlement occurs this is another consideration in calculating the rate of compensation.

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 [thus lowering the calculations for productive use] but the reality is that circumstance determines if, when and how any land user is able to exercise their rights in land. As ARD, we submit that the guidelines should include an additional qualification for agricultural and grazing land: the economic, social and cultural rights of the land users in line with the United Nations International Covenant on Economic, Social and Cultural Rights (ICESCR)² to which South Africa is a signatory. Furthermore, we submit that the Resettlement Guidelines should also consider the current and potential livelihood strategies that should also be compensated in the event of a mine community resettlement. As such, the current stipulation on compensation for agricultural and grazing land is far removed from the lived experience of many rural communities for whom land is about identity. Land in rural South Africa also serves as an insurance policy in the case of illness or death, a

² <http://www.ohchr.org/EN/ProfessionalInterest/Pages/ICESCR.aspx>

retirement annuity for the aged, a scholarship fund for those of school-going age or those pursuing tertiary education, and a burial scheme for those with strong social ties within the community.

Land in Urban Areas:

The Resettlement Guidelines prioritize market value. **However, communities that reside in urban areas the compensation will also take into account the proximity to public infrastructure and services when calculating the rate of compensation. This signals that people residing in rural areas are punished because of spatial planning – which is an inherited legacy of Apartheid’s spatial segregation confining people to the former Bantustans which served as a source of cheap Black labour.** It cannot be that rural land which is typically located away from urban centres should be valued any lower than urban land, simply because of the fixed geographic boundaries in which millions of people are born. With a population size that is almost one third of the country, rural people should not be othered and receive a lesser compensation or be othered. We submit that the compensation rate should also factor in that rural dwellers are not living far from proximity to public infrastructure and services by their own design; this is a failure of Government to better integrate the provision of services and public infrastructure to all who reside in South Africa.

Conclusion

The ARD submits that the Resettlement Guidelines must stipulate that **a mining or prospecting rightsholder or permitholder should not sign a resettlement agreement with the traditional leader or traditional council, on behalf of a traditional community unless they also submit a community resolution in line with IPILRA.** And we also submit that wherever possible, the prospecting or mining rightsholders or permit holders must undertake an individual household/homestead compensation or consultation approach in recognition that communities are not always homogenous and women’s rights especially are not fully recognized in some cases when a community consultation is the only method of engagement.

Alliance for Rural Democracy is calling on Government to make resources available for public consultation and meaningful public participation in drafting these Resettlement Guidelines. We further call for the immediate recognition of Motlanthe High Level Panel’s proposals with respect to mine community resettlement and compensation. Adequate resources are needed to educate ordinary rural people and ensure enforcement of their rights under an improved Mine Community Resettlement Guidelines which remains the duty of the Department of Mineral Resources and other stakeholders accordingly. We look forward to the opportunity to make oral presentations on this submission.

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