



UMTHETHO OYISICHIBIYELO WOKUBUYISELWA WAMALUNGELO OMHLABA

Agasti 2014

UMTHETHO OMUSHA OYISICHIBIYELO SOKUBUYISELWA KWAMALUNGELO OMHLABA

Lomthetho omusha i-Restitution of Land Rights Act (i-Act) yaphasiswa yi-National Assembly kanye ne-National Council of Provinces, yabe isisayinwa yaba umthetho nguMongameli uZuma. Isikhathi sokufakwa kwezicelo zokubuyiselwa komhlaba siphindwe savulwa futhi ukusukela ngomhlaka-1 Julayi, 2014.

Le-Act entsha ichibiyela i-Restitution of Land Rights Act (No. 22 of 1994), eyashayelwa ihlombe kakukhulu ekuphasisweni kwawo ngonyaka ka-1994. Inhloso ye-Restitution Act kwakuwukunikeza isixazululo kubantu ababelahlekelwe wumhlaba wabo ngenxa yezenzo zokucwaswa ngokwebala ezifana nokususwa ngempoqo emhlabeni wabo. Lokhu kwakubandakanya abantu ababelahlwe ezindaweni ezaziklanyelwe abantu abamnyama ezazibizwa ngamaBantustan abanye befakwa ngaphansi kwamakhosi abangawazi. Umnqamulajuqu wokufakwa kwezicelo ngaphansi kwalomthetho omdala kwakuwu-1998.

NGABE ITHINI I-RESTITUTION ACT ENTSHA?

Isikhathi sokuvulwa kabusha kokufakwa kwezicelo

Lomthetho uvula isikhathi sokufakwa kwezicelo zokubuyiselwa komhlaba kuze kube umhlaka- 30 Juni 2019.

I-Betterment

Lomthetho wamukela ngokucacileyo abantu abaphucwa umhlaba wabo ngaphansi kwe-Betterment ukuthi bafake izicelo zokubuselwa lowo mhlaba.

Ukusetshenzwa kuqala (prioritisation) kodwa kingavikelwa (ring fence) izicelo zangaphambili

Izimbumba kanye nezinhlangano eziningi zafaka imibono yazo ePhalamende mayelana nezinkinga ezingavela ngokuvulwa kabusha kokufakwa kwezicelo zokubuyiselwa umhlaba.

Enye yezinkinga ezinkulu ukuthi ziningi izicelo ezafakwa ngo-1998 ezingakaxazululwa eminyakeni ethi ayibe u-20 zafakwa. Abafaka imibono babelwela ukuthi kuchitshiyelwe i-Bill ukuze kuvikelwe (ring fence) esezafakwa zingabangiswa ezintsha, okungamisa ukubuyiselwa komhlaba kubantu abafaka izicelo kudala eminye iminyaka eminingi. Umbono wokuvikelwa (ring fence) kwezicelo ezafakwa ngaphambili awuzange wemukelwe ePhalamende. Esikhundleni salokho umthetho uvumela iKhomishani ukuthi isebenze kuqala (prioritise) izicelo ezafakwa phambi komnqamulajuqu ka-1998 ezingakaxazululwa ngokuphelele namanje, kodwa akuthembisi ukuthi lokhu kuzokwenzeka. Lokhu kubekwe ku-Section 6(1)(g) womthetho omusha:

“(1) I-Commission kumele, emhlanganweni noma ngokusebenzisa i-Chief Land Claims Commissioner, i-regional land claims commissioner noma umuntu oqokwe namayiyiphi i-commissioner –

(g) iqikelele ukusetshenzwa kuqala kwezicelo ezafakwa ngale kuka-31 December 1998 kanti futhi ezazingakaxazululwa ngosuku lokuqala kokusebenza komthetho wokuchibiyela wokubuyiselwa kwamalungelo omhlaba (Restitution of Land Rights Amendment Act), 2014.”

Izincazelo (Definitions)

Izicelo ezingakaphothululwa (Outstanding claims): ezingakafinyeliswa emaphethweleni kwahlalo. Bheka ngemuva kwekhasi lomqulu wamaqiniso ukuze uthole umdwebo walohlalo lwezicelo.

Izicelo ezisemaphethweni (Finalised claims): zonke izimali sezikhokhiwe kanti futhi wonke umhlaba othengiwe usudluliselwe kubanini bawo.

Izicelo zangaphambili/abafaki zicelo (Prior claims/claimants): aBantu abafaka izicelo zabo zokubuyiselwa komhlaba wabo ngaphambi kokuphela konyaka ka-1998.

NgokweKhomishane Yokubuyiselwa Kwamalungelo Omhlaba (Commission on Restitution of Land Rights), zingu-20 592 izicelo (kumbe 25% kuzo zonke izicelo eziqotshelwe phansi noMnyango Wezomhlaba (Department) ezingakafikiswa emaphethweleni okanye kufinyelelwe esivumelwaneni. Umhlaba osondela ku-50% osusezandleni zikaHulumeni kodwa ongakathunyelwa kubanini bawo. Iningi lezicelo selokhu zalinda kwaze kwaphela iminyaka engu-10 ukuze kufikelelwe emaphethelweni ezivumelwano zazo.

Izicelo zokubuyiselwa umhlaba ezingakaphothululwa ziletha ukwesaba ukuthi lezizicelo ezizofakwa kulelithuba elisha lokufakwa kwezicelo zingaphinde zivimbe ukuphothulwa kwalezicelo ezafakwa kuqala. Okubi ngale kwalokho ukuthi ukufakwa kwezicelo ezintsha eziphikisana nalezi ezafakwa phambilini kungasetshenziswa i-Khomishani noMnyango wezoMhlaba njengesizathu sokuphikisana nezivumelwano esekwafinyelelwa kuzo zokudlulisela umhlaba kubanini bawo nokuphoqayo ngokomthetho ukuthi zifezwe.

Ekubonakaleni kwalezi zingqinamba nge-Resistution Act yathi imibono eyafakwa ePhalamende kumele kucelwe inkantolo ivumele kuvikelwe (ring fence) izicelo zangaphambilini ukuze kusetshenzwe kanyekanye izicelo ezindala ezafakwa ngonqamulajuqu wango-1998 nalezo ezintsha eziqophisana nezindala. Kodwa iPhalamende

aliwemukelanga lombono. Ekugineni le-Act ithi iKhomishani kumele icabangisise ukuqala ngezicelo ezindala ezafakwa ngaphambi komnqamulajuqu wango-1998 kanti futhi ayikwazi ukushiya lezi zicelo ukuze ziphendulwe ekugineni ngoba kulikhuni ukuziphothula. KODWA le-Act ayichazi kabanzi ukuthi iKhomishani kumele ikwenze kanjani lokhu. Ngokwamagama ale-Act, uma kufakwa izicelo ezintsha emhlabeni esezafakwa izicelo kuwo ngokomnqamulaju wango-1998, iKhomishani kumele izibheke ngesikhathi esisodwa zombili izicelo ezintsha nezindala. Ngakho ke iKhomishane ingazithathela ngokwayo isinqumo sokuthi uma isacubungula isicelo esisha, esidala ngeke sisetshenzwe size siphothulwe. Ngakho-ke ukufakwa kwesigaba esithi akusetshenzwe izicelo ezindala kuqala kwi-Act akuzivikeli izicelo ezafakwa kuqala ngokwanele.

Ukuze kuphoqelwe iKhomishane ukuthi ifezekise izethembiso zokusetshenzwa kuqala (prioritisation) kwezicelo ezakwa ngaphambi kokuphela kuka-1998, kumele kubhekwe izicelo eseziphothuliwe ukuze kubonakale ukuthi yilezi ezafakwa phambilini yini. Kanti futhi, izimbumba ezisalinde kuphothulwe izicelo zazo kumele ziye emahhovisi eKhomishani ukuze zifake incwajana enesicelo sokuthi izicelo zazo zisetshenzwe kuqala futhi incwadi icele ukuthi kwenziwe lokho singakapheli isikhathi esiyinyanga. Uma kungekho okwenziwe, lokho kungasiza iNkantolo yomthetho ukuthi ihlaziye ukuthi iKhomishani iyazisebenze yini kuqala izicelo ezindala njengokusho kwe-Act.

Umnqam'lajuqu ka-1913 usamile

Ngale kokusho kukaMongameli Zuma ukuthi i-Restitution Act kumele ishiciyelwe kuze kuzosizakala labobantu abaphucwa umhlaba wabo ngaphambi konyaka ka-1913 bakwazi ukufaka izicelo, i-Act ayivuleli izicelo zomhlaba owalahleka ngaphambi kuka-1913.

NGABE UCHAZANI UMNQAMULAJUQU KA-1913?

AmaKhosi amaningi, ikakhulu awaKwaZulu-Natal, asecaiseli ukuthi ahlose ukufaka izicelo somhlaba. ISilo, sihlangene neNgonyama Trust, bathembise ukufaka izicelo zomhlaba ezingathatha sonke isifundazwe saKwaZulu-Natal – lezizicelo zizobandakanya neDurban Metro kanye nezinxenye eziseMpumalanga Kapa, eMpumalanga naseFree State. Inhloso yalezi zicelo egameni leSilo ukuthi kubuyiswe wonke umhlaba owathathwa emaKhosini akwaZulu ngezikhathi zengcindezelo – ekusukeni kuka-1838 kuze kube manje - kuqala uthathwa amaVoortrekkers emva kwalokho kwaba ngaMangisi. Ngokuseqiniseni uMongameli Jacob Zuma uyawagqugquzela amaKhosi ukuthi afake izicelo ezifana nalezi. Emhlanganweni we National House of Traditional Leaders ekuqaleni kwalonyaka ka-2014, wathi amaKhosi awabathole abameli abanekhono ukuze afake izicelo.

Kodwa ngokwe-Restitution Act abantu abaphucwa umhlaba wabo ngale kuka-1913 kuphela abangakwazi ukubuyiselwa umhlaba wabo. Uma iSilo singafaka isicelo somhlaba owalahleka ngo-1838 lesicelo asivumelekanga emthethweni. Kuzokwenzeka okufanayo nakuwo wonke amaKhosi azofaka izicelo zomhlaba owalahleka ngaphambi kuka-1913. Isigaba 2 se-Restitution Act sikuveza ngokusobala ukuthi abantu abangena ngaphansi kwezimfuneko ezilandelayo abangafaka izicelo zomhlaba:

- Umuntu, umphakathi noma amalunga omphakathi aphucwa amalungelo omhlaba awo emva kuka-19 Juni 1913 ngenxa yomthetho wokucwaswa ngokwebala;

Incazelo

Umphakathi (Community): I-Restitution Act ithi umphakathi yinoma yiliphi iqoqwana labantu abanamalungelo omhlaba athathelwa emigomeni elizimisele yona lelo qoqo labantu yokwabelana ngokungena emhlabeni ophethwe ngokubambisana yilelo qoqwana, kanti futhi ibandakanya nanoma yiyiphi inxenye yalelo qoqwana;

- Abe yisizukulwane somuntu owathathelwa amalungelo akhe omhlaba ngemva kuka-19 Juni 1913 ngenxa yomthetho wangaphambilini wokucwaswa ngokwebala.
- Abe ngumlawuli mafa womuntu owathathelwa amalungelo akhe omhlaba ngemva kwa-19 Juni 1913 ngenxa yomthetho wangaphambilini wokucwaswa ngokwebala.
- Umuntu owathathelwa amalungelo akhe omhlaba ngemva kwa-19 Juni 1913 ngenxa yomthetho wangaphambilini wokucwaswa ngokwebala kodwa owanxeshelwa ngenxa yokulahlekelwa kwalelo lungelo ngendlela egculisayo ehambisana nesigaba 25(3) soMthetho Sisekelo (Constitution) waseNingizimu Afrika.

Izicelo zokubuyiselwa umhlaba zaMaKhosi obuso wendabuko azikucubunguli ubunzima bomlando waKwaZulu-Natal lapho amaqoqwana amaningi angafani abanezicelo zokubuyiselwa umhlaba wazo eziphikisanayo ngenxa yokuthi lamaqoqwana ahlala kuleyondawo ngezikhathi ezingafani. Lezizicelo azivumelekile ngokomthetho oyisishicilelo womthetho wokubuselwa umhlaba (Amendment of Land Restitution Act) wango-2014.

IMIPHUMELA YE-‘HERITAGE’ POLICY EHAMBISANA NE-RESTITUTION ACT

UNgqongqoshe wezokuThuthukiswa kwaseMaphandleni Nozoguquko Lomhlaba uGugile Nkwiti wathi ngo-July 2014 uhulumeni uzokwenza umgomo (policy) kanye nomunye umthetho ozosiza ukuze izicelo zabantu zokubuyiselwa umhlaba owathathwa ngaphambi kuka-1913 zizokwamukelwa. Okwamanje, lokhu akukabi semthethweni kodwa kusewumgomo okusaxoxiswa ngawo. Abasebenzi bakaHulumeni le-policy bayibiza ngokuthi “exceptions to the 1913 cut-off date” noma ngomgomo wamagugu (“heritage” policy). Ngale kokuthi le-policy kukhulunywa ngayo maqondana nama-Khoi San, iyawabandakanya namanye amaqoqo abantu.

Le-policy izobe iqondaniswe nani?

Ngokwamaphepha e-‘draft policy’ kahulumeni, izobe iqondane:

1. Nokwabelana kabusha komhlaba (redistribution), hhayi ukubuyiselwa kubantu komhlaba owathathwa ngaphambi kuka-1913 (restitution);
2. Nokwahlulwa kwezinye zomhlaba njenga-heritage sites kanye nama-historical landmarks, (akukacaci ukuthi amalungelo okusebezinsa nokubolekisa ngomhlaba azonikezelwa kubantu yini phansi kwalomgomo).

Akucacisiwe kule-policy ukuthi obani abavumeleke ukufaka izicelo kuloluhlobo oluyisipesheli lokwabiwa komhlaba kanye nokuthi obani abuvumeleke ukufaka izicelo zokukhethwa kwama-heritage sites kanye nama-historical landmarks. Le-policy ayikucacisi ukuba ngabe

umuntu ngayedwana noma amaqoqwana uvumeleke ufaka lezizicelo. Le-policy ayisho ngokucacile ukuthi yimaphi amaqoqo angakhona ukufaka izicelo zawo kodwa lokho kungasho ukuthi izibandakanya;

“AmaKhoi San, AmaNguni (imiphakathi ekhuluma isiZulu nesiXhosa), abeSotho-Tswana, abeSotho, amaTsonga kanye nabantu abakhuluma isiVenda.”

Yiziphi izimfanelana okumele indawo ibe nazo ukuze ikhethwe njenge-heritage site noma i-historical landmark?

Iphini likaKhomishina Wezokubuyiselwa Komhlaba (Deputy Land Claims Commissioner) uThami Mdontswa wachaza lamagama ngo-April wathi:

- **I-Heritage site:** yizindawo, amabhilidi, izakhiwo kanye namathuluzi abalulekile ngokwezamasiko, izindawo ezibalulekile kubantu ezitholakala emlandweni odluliswa ngomlomo noma eziyigugu; izindawo zomphakathi ezinomlando nama-townscape; nomhlaba onothile ngendalo ebalulekile ngokwezamasiko, nezindawo ezibalulekile kososayensi noma ngokwezamasiko; nama-archeological and paleontological sites; kanye nezindawo ezibalulekile ngokoLwazi Ngezemvelaphi (Indigenous Knowledge Systems).
- **Ama-Historical landmark:** lezi izindawo ezibalulekile ngokomlando wokuphucwa umhlaba la eNingizimu Afrika; amangcwaba nezindawo zokungcwaba ezihlanganisa namangcwaba abantu bendabuko; amangcwaba amakhosi nabasebukhosini, amangcwaba abantu abafa ngezikhathi zezinxushunxushu, amangcwaba abantu ababalulekile, amangcwaba anomlando kanye nezindawo zokungcwaba ezinomlando; izindawo ezibalulekile emiphakathini noma emlandweni waseNingizimu Afrika; izindawo la kukhona imvelo noma amasiko endabuko aseNingizimu Afrika okusengcupheni yokushabalala.

Imiphumela engalandela

Le ‘heritage’ policy inokuletha ukwesaba kubantu abafaka izicelo zokubuyiselwa umhlaba. Ngale policy, amaKhosi avela KwaZulu-Natal angakwazi ukufaka izicelo zokubuyiselwa umhlaba onamangcwaba abantu basebuKhosini noma nezindawo zezimpi zangesikhathi kufika umbuso wengcindezelo. Lezi zicelo zingaba semhlabeni osekufakwe izicelo zokuthi ubuyiselwe kubanikazi bawo, lokho okuzobambezela ukuphuthulwa kwalezi zicelo. Lokho kungasho ukuthi abanye abantu abezukubuyiselwa umhlaba wabo ngoba sekukhona iNkosi esifake isicelo sokuvikelwa kwalowomhlaba njenge-heritage site noma i-historical site. Ngokujwayeleki, nokho, izindawo esenziwe ama-heritage sites ziba yizindawo ezicacisiwe, hhayi odedangendlale nje bezwe.

Isibonelo: endaweni yaseBabanango lokhu sekuqalile kuyenzeka. Lapha kukhona abantu abanomlando omude kanti futhi bawukhonzile umhlaba wabo. Bafaka isicelo sokubuyiselwa umhlaba wabo eminyakeni elishumi edlule kodwa namanje isicelo sabo asikaxazululwa. ISilo neNdlunkulu baphezu kwamalungiselelo okwakha isithabatha sesigodlo kuwo okufakwe isicelo sokuthi ubuyiswe. INdlunkulu izezingxoxweni naMafa AkwaZulu-Natal ukuze

asebenzise umhlaba waseBabanango ngezizathu zokuthi lendawo ibalulekile emvelaphini kaZulu. Izindawo esezikhethwe njengama-heritage site ziyavikelwa ngaphansi komthetho ngezindlela eziningi. Imvume yokuthuthukisa kanye nokwakha umuzi womndeni noma ibhizinisi endaweni eyi-heritage site idinga ukucutshungulwa kabanzi kwenziwe novivinyo lokuthi izothinteka kanjani uma kwakhiwa kuyo (impact assessment). Ngale kwalokho amalungelo okubuyiselwa umhlaba abantu abathathelwa wona ngemva kuka-1913 kumele abandakanywe ezixazululweni okuzofinyelelwa kuzo.

UKUCUTSHUNGULWA KOKUFAKWA KWEZICELO

Kungenzeka ukuthi sewasifaka isicelo sokucela ukubuyiselwa umhlaba ngaphambi kokuphela konyaka ka-1998. Uma kunjalo loluhla lubalulekile ngoba lucacisa konke okudingayo ngokuthi i-Resitution Commission kumele ngabe yenzeni ukuze isicelo sakho siphothulwe. Ngabe seyikwenze konke lokhu iKhomishani?

1. Ikiphe i-Gazette eshoyo ukuthi ususifakile isicelo?
2. Usazisiwe umnikazi womhlaba nabo bonke abantu abathintene nalowo mhlaba (lokhu kubuzwa nge-'stakeholders meeting')?
3. Sebezile abeKhomishani ukuzobona lowomhlaba bacubungulula isicelo sakho?
4. Sebekuthumele incwadi noma i-email echazayo ukuthi isicelo sakho sivumelekile ngokomthetho?
5. Sekungeniwe ezingxoxweni nomnikazi womhlaba nalabo abafake izicelo?
6. Uma nifake isicelo niyiqoqwana, hhayi ngamunye, sebeyenzile i-workshop nani ukunisiza nenze i-Communal Property Association noma i-Trust?
7. Isibhalisiwe i-CPA noma i-Trust ngemuva kokufaka amaphepha afunakalayo?
8. Sezisayiniwe zonke izivumelwa ezidingekayo?
9. Usubuyiselwe umhlaba obekumele ubuyiselwe wona, noma omunye umhlaba, noma wakhokhelwa imali?
10. Bakutshelile ngezimali eziyizinsiza (grants) zokuthuthukisa lowomhlaba ongaphinde ufake izicelo zokuzithola?

Uma omunye umuntu efaka isicelo sokubuyiselwa umhlaba osufake isicelo sawo, iKhomishane kumele ukwazise ngalokho. Uma uzwa ukuthi kukhona umuntu ofake isicelo kumhlaba osufake kuwo isicelo kumele usazise.

Okunye omele ukwazi

Emva kokuthi isicelo sokubuyiselwa umhlaba sesikhishwe kwi-gazette akekho omunye umuntu ovumeleke:

- Ukuvimba ukuphethwa kwaleso sicelo;
- Adayise, ashintshise noma aphisane, ahlukane, aklame kabusha, noma athuthukise umhlaba osuceliwe ngaphandle kokuthinta ngencwadi iKhomishani achaze inhloso yakhe bese enikeza iKhomishani inyanga ngaphambi kokuthuthukisa umhlaba lowo;
- Akhiphe noma axeshe umuntu ofake isicelo sokubuyiselwa umhlaba ohlala kuleyo ndawo afake kuyo isicelo sokubuyiselwa kusukela ngosuku lokuqala

kokusebenza kwe-Restitution Act ngaphandle kwemvume ka-Chief Land Claims Commissioner;

- Asuse, aphule, alimaze noma enze ngcono umhlaba osuceliwe ngaphandle kwemvume ebhalwe ngu-Chief Land Claims Commissioner;
- Angene ahlale emhlabeni osuceliwe ngaphandle kwemvume yomnikazi wendawo noma umuntu ohlala khona ngokusemthethweni.

Sicela usazise uma kukhona umuntu osebenzisa umhlaba osewuwucelile ngenye yalezi zindlela ezichazwe ngenhla. Sazise futhi uma uzwa ukuthi kukhona iNkosi efake isicelo emhlabeni ohlala kuwo noma emhlabeni owawufake isicelo sawo ethubeni elidlule lokubuyiswa komhlaba.

Ukuze wazise omunye wethu, sebenzisa lezi zinombolo:

	Centre for Law & Society (CLS)	Association for Rural Advancement (AFRA)	Legal Resources Centre (LRC)
Phone	021 650 3405	033 345 7607	011 836 9831
Fax	021 650 3095	033 345 5106	011 838 4876
Email	clsuct@gmail.com	afrakzn@gmail.com	thabiso@lrc.org.za
Postal Address	Centre for Law and Society Private Bag X3 Rondebosch 7701	AFRA P O Box 2517, Pietermaritzburg, 3200	LRC P O Box 9495, Johannesburg 2000
Physical Address	Centre for Law and Society All Africa House Middle Campus University of Cape Town Rondebosch Cape Town	123 Jabu Ndlovu (Loop) Street Pietermaritzburg, KwaZulu-Natal, South Africa	15th and 16th Floor, Bram Fischer Towers, 20 Albert Street, Marshalltown, Johannesburg
Contact	Tara Weinberg or Nolundi Luwaya	Mike Cowling	Thabiso Mbhense

