

Civil Society statement on the ANC National Conference

The ANC's 54th National Conference on Saturday is an historic opportunity to acknowledge and reverse growing poverty and inequality, disintegrating social cohesion and the devastating failure of the government's land reform programme, which shows increasing signs of capture by politically connected elites.

Rural activists and policy analysts meeting at the Tshisimani Centre for Activist Education resolved today to demand that delegates give meaningful consideration to the urgent, far-reaching and deeply researched recommendations of the High Level Panel (HLP) headed by former president Kgalema Motlanthe.

The HLP reported to the Speakers' Forum on 21 November and simultaneously launched a website including the report, proposals for amended legislation and video and transcripts of the public hearings at which around 10 000 South Africans gave or heard graphic and devastating accounts of the ways in which South Africa's democracy has failed them. The report and background material are available here: <https://www.parliament.gov.za/high-level-panel> .

Activists from the Alliance for Rural Democracy, Tshintsha Amakhaya, the Land Access Movement of South Africa, the Rural Women's Movement, the Wonderkop Land Claims Committee and a number of other community based organisations assert today that proposals, including the withdrawal of potentially damaging legislation currently before Parliament, must be made binding resolutions of the ANC National Conference and implemented immediately.

The HLP underpins many of the conclusions of the ANC's own mid-year Policy Conference in terms of the lived experience of the 17 million people whose homes are within the boundaries of apartheid's former Bantustans. The report makes it clear that failure to act urgently could see further and probably irreversible elite capture and rural dispossession.

The activists demand that these urgent proposals of the HLP be adopted by the Conference :

1. Develop a new national land reform framework act to define equitable access and set standards and processes for implementation and oversight of redistribution.

The HLP says in its report: *"The right to equitable access to land should be what animates the redistribution of land. Yet, to date, there has been no law that defines the meaning of equitable access to land or sets targets and reporting requirements in relation to redistribution. This has enabled elites to profit disproportionately from land reform. It has also meant that people see the restitution process, which is based on the loss of provable historical rights, as their only hope of getting land.*

"The Panel's recommendations combine a range of high-level, but also detailed, inputs to the formulation of legislation. The recommendations include legislation to provide a framework for land reform, particularly on redistribution. The Panel also makes specific recommendations on various pieces of legislation to improve their clarity, to enhance the prospects of successful implementation and to provide mechanisms to gather information and to monitor and evaluate policy outcomes."

2. Withdraw the Traditional Leadership and Governance Framework Amendment Bill and the Traditional and Khoi-San Leadership Bill, both of which have been adopted in the National Assembly and sent to the National Council of Provinces for consideration.

The HLP notes in its report: *"Current and proposed legislation on traditional leadership denies people living in areas under traditional leaders several constitutional rights, distinguishing them from those living in the rest of the country who enjoy the full benefits of*

post-apartheid citizenship. Such legislation also poses a threat to social cohesion by entrenching and promoting ethnic identities.”

3. Amend the current Traditional Leadership and Governance Framework Act of 2003 to acknowledge that customary law is voluntary and living. Traditional communities should not be defined according to imposed tribal boundaries. The political authority of traditional institutions must be separated from the land rights of people. Traditional councils cannot take decisions that deprive people of land rights. Other kinds of decisions can only be taken after customary consultation with people and meeting all the Act’s accountability and composition requirements. Tribal levies should be prohibited, and traditional institutions should be prohibited from exercising powers that are not in statute or customary law.

4. Amend the Mineral and Petroleum Resources Development Act (MPRDA) to give previously disadvantaged holders of land rights the power to grant or to withhold consent for mining, to ensure adequate compensation to communities, and to enforce accountability in the management of community benefits.

The HLP notes in its report “...mining has led to land dispossession and loss of livelihoods, while there are no real benefits for mine-hosting communities. Hundreds of millions of rands paid over to traditional councils by mining houses have not been accounted for. The Panel makes recommendations for amendment in relation to compensation for loss of land and livelihoods (and) for the transparent sharing of benefits accruing from mining...”

5. Amend the Interim Protection of Informal Land Rights Act (IPILRA) to more robustly entrench the land rights of informal rights holders, and to make IPILRA permanent.

The HLP says in its report: “Of particular concern are recent laws that have been used to dispossess vulnerable South Africans of customary land rights in former homeland areas. As the people who bore the brunt of the Land Acts and forced removals, those living in the former homelands deserve particular protection and redress. The Panel has accordingly proposed that the Interim Protection of Informal Land Rights Act (IPILRA) be urgently amended and properly enforced, and also that other laws that have been interpreted to enable land grabs, such as the Traditional Leadership and Governance Framework Act, the Mineral and Petroleum Resources Development Act and Ingonyama Trust Act, be explicitly made subject to IPILRA and amended in other ways as well.”

6. The Ingonyama Trust Act must be repealed or drastically amended to halt the seizure of land rights by the Ingonyama Trust Board. The amendments proposed by the panel about restitution are nuanced and creatively deals with the expectations raised and the real need for the efficient and swift finalisation of the long outstanding land claims. A concerted and sustained programme of redistribution and tenure reform will also assist in addressing misdirected restitution claimants.

The HLP says in its report: “The Trust is meant to exist and function subject to existing land rights under customary law and not act in ways that undermine and abrogate such customary and other underlying land rights. However, the Trust in some instances, regards itself as the outright owner of land and therefore not subject to any duty to consult or to obtain community consent in dealing with the land.”

7. Transform law making and policy making, so that all people in particular rural people can claim their constitutional rights and participate meaningfully in the protection, promotion and fulfilment of all the social and economic rights in our beloved bill of rights:

“Parliament can play an important role in ensuring secure access to land for millions of South Africans in ways that make a meaningful impact on their quality of life... The elites that benefit from these ongoing processes of exclusion and marginalisation include commercial farmers, traditional leaders, urban property developers, mining capital and political elites who distribute houses and mining licences.”

8. Focus policy on the needs of families and individuals, and recognise and celebrate the agency of our rural people:

“Policy and legislation need to shift focus to seeing people as families and individuals, acknowledging how they live in practice, how they farm in practice and the shape of their families. [p448] This message should be taken serious by all policy makers and rural people are our agency are not going to be ignored into the next 20 years.”

The activists further demand that National and Provincial legislatures facilitate the HLP in reporting back to the many communities and stakeholders who engaged in the public participation process that underpinned the HLPs findings.

The High Level Panel has proposed crucial interventions to prevent the continuing dispossession and exclusion of poor and rural people from meaningful citizenship. The ANC National Conference cannot ignore the work of this panel.

FOR FURTHER INFORMATION, PLEASE CONTACT:

Constance Mogale of the ARD: 082 5590632

Emily Tjale of Lamosa: 082 314 1958

Stha Yeni of Tshintsha Amakhaya: 074 5228819

Sizani Ngubane of the RWM: 083 8405151

Siyabu Manona of Phuhlisani: 082 6598583

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