

DA exposes a daring case of 'Land Capture' and marginalisation of communities in KZN

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In order to try and explain the events in Melmoth, I would like to start with a quote by Crispian Oliver from his book: How to steal a city, the battle for Nelson Mandela Bay. Oliver is quoted saying "I had been familiar with the day-to-day fiddling of the procurement process. What I didn't understand was how you could capture an entire organisation and subject it under your will. The sheer extent of their determination was jaw-dropping. It was carefully thought out."

Land reform in South Africa is complex and is a culmination of years of battle, theft of property and territory, legislation and wars fought. Most of us know something about the historical background of the land issue in South Africa but not a lot is known about the process of land administration in democratic South Africa.

What we do know is that land reform in South Africa is failing, not so much in the hectares of land transferred but in ensuring that new land owners benefit from restoration of land transferred to them. Very little is known about the reasons for this failure serve for the reports of corruption and incompetent officials dealing with land reform.

The findings of SIU reports on land reform shows clearly the methods used to misuse the system. Names are added to beneficiary lists while excluding others. People are randomly added to "management groups" in the CPA or to elected trusts. This leads to infighting and a group of beneficiaries that "own" property but benefit very little from this.

It is within this context that the Democratic Alliance announced our "on the ground" tour, visiting individuals and communities on land reform farms. Going to see for ourselves why land reform is failing and what could be done to ensure real transformation in land reform.

Our program started off on the "easy targets", farmers leasing state land. We have seen the incompetence of the state by not even renewing lease agreements and sending eviction letters to farmers who had been farming on state land for years. This led to a discussion in the portfolio committee of agriculture, land reform and rural development in March 2021, where Minister Didiza said: "It's clear what we have in large measure are individuals who may not have the requisite skills to undertake this task."

This was proved to be the case because a group of Mpumalanga farmers who were supposed to get lease agreements by end June are still to get them as promised. No one has attempted to explain to them why they were never contacted again or what the hold-up is.

If the state cannot manage renewals of rent agreements on state land, just imagine what happens on restitution land.

Melmoth

Today we expose the intricate web of how the Department of Agriculture, Land reform and Rural Development (DALRRD) has, over the years, worked to deny communities in the

Melmoth area of Kwa-Zulu Natal of their property rights. Where property is not only land but also assets, including the value of the crop on the land.

A claim for the restitution of rights in land in respect of property, located in the area surrounding the town of Melmoth in KwaZulu-Natal, was lodged on 8 December 1995. The claimed land consists mostly of commercial farms located within the district of Melmoth.

It is clear in documentation and during discussions with affected land owners and community members in Melmoth that the long drawn out process of discussions and negotiations were made even more frustrating by long periods of no response by the department.

The Emakasaneni, Entembeni and Mthonjaneni communities took to the streets to vent their frustration while the landowners approached the courts to get finalisation in the matter.

On 24 November 2018 an agreement was reached that five communities would be awarded land rights in Melmoth. The farms and the rights to each land parcel is set out in case no LCC 03/2009.

On 17 September 2019, minister Didiza lodged a notice in court, a few days before hearings regarding price negotiations were to be heard and made an offer to the landowners to purchase the land for R805 million.

The landowners accepted the offer and on 18 September 2019, the court made an order detailing the amounts to be paid to the previous owners, the details of registration of transfer of immovable properties to each of the claimant communities.

The court also recorded that the parties may undertake to re-commence the post-settlement negotiations, if agreeable and in good faith, within 30 days from upon this order upon appropriate arrangements to be made, which may include the service of a transactional adviser.

The word re-commence is important, as some agreements on the management of the farms were under way and some claimants agreed to go into partnership with the previous owners in order to manage the transition of the high value farming operations.

The value of the properties to be transferred were R577 741 446 for the land and R228 142 123 for the assets including the plantations and crop on the land. The communities were awarded rights in high value profitable farms.

Sequence of events

On 16 September 2019, the land claims court ordered that ten portions of land claimed and awarded to the Mtonjaneni group will be transferred to the state and will be held by the state pending a claim by the KwaBhukuda- toggekry community. Case number LCC 196/2017C in a matter that was introduced by a “new group” of claimants, the Kwabhukuda Toggekry community.

On 14 March 2020, the Mtonjaneni claimants signed an agreement with the previous land owners, only 7 farms were transferred to the Mtonaneni claimants at this stage as 10 of the farms were pending investigation on the Toggekry claim.

On 21 April 2020, the DALRRD signed a memorandum of agreement with a third party for the appointment of caretakership of 6 properties.

On 24 July 2020, the regional Land Claims Commisioner rejected the claim by the KwaBhukuda-Toggekry Community.

On 9 October 2020 the DALRRD extended the caretakership agreement to the 10 properties still registered in the name of the state and extended the date of the caretaker agreement to end on 30 September 2021

On 4 November 2020 the DARRD brought an urgent court application, LCC 171/2020 directing the previous land owners of 7 properties to immediately vacate the land and to hand over all management to the department and appointed caretaker.

The importance of all of this

The events described above is only on the one section of the Melmoth claims, other community members has also contacted the Democratic Alliance, wrote to minister Didiza, made court applications, blocked the streets of Melmoth to raise awareness.

The Democratic Alliance mentioned the alledged corruption and outcries to Minister Didiza during the budget debate, put in written questions and also filled in a PAIA application to get to the bottom of the events that led to this point.

We have also seen in a written reply by Minister Didiza, how many land claimants have not received title to the land due to court cases and “infighting” in communities.

It is also clear that Minister Didiza is not well informed about the events affecting the Myonjaneni community, written reply on question regarding court cases.

The Democratic Alliance is committed the constitutional mandate and recommits itself to ensure justice on land reform.

The 'confidential agreement'

The Public Finance Management Act (PFMA) requires that any government entity, including the Department of Agriculture, Land Reform and Rural Development, must adhere to the Act's strict requirements for transparency and fairness when entering into contractual agreements. The DALRRD has not provided any clarity as to whether, before entering into the caretaker agreement that it has with caretaker partner in Melmoth, it invited other interested parties to come and bid.

The curious case between the caretaker agreement that subsists between the two parties is the lengths that they took to keep it hidden from public scrutiny. A confidentiality clause in the agreement states that:

"Each party agrees not to use, disclose, reveal or allow third parties to use or disclose the others Confidential Information either during this Agreement or at any time thereafter..."

For an agreement where the DALRRD was to use public funds to enable this third party to implement its caretaker function, it is puzzling why the Department agreed to this non-accountability clause.

The DA has previously revealed that the Department made grant transfers of R133 million in 2018/2019 and a further R25 million in 2019/2020 financial years to this third party. The PFMA Act supersedes any confidentiality clause that the Department may have entered into and taxpayers have a right to know how this money was spent.

DA action step to assist affected communities

The Minister and officials from the DALRRD have repeatedly shown that they are not willing to assist the Mthonjaeni and Isizwe SakwaDludla communities. Their land rights have constantly been infringed on, forcing them to spend hundreds of thousands in legal fees, money which they do not have.

The DA will be writing to Parliament to request a joint hearing before the Trade and Industry Committee and the Agriculture, Land Reform and Rural Development Committee. This will enable the affected communities to present their case and the challenges they have gone through as they tried to secure title to their land. We will also write to the Auditor General to request a full audit of all the funds that were transferred to this third party by the DALRRD.

The struggle that the Mthonjaneni and Isizwe SakwaDludla communities have endured at the hands of the DALRRD is a forewarning of the chaos that awaits land administration in South Africa should state custodianship become government policy.

State custodianship of land, as advocated for by the ANC/EFF coalition through the amendment of Section 25 of the Constitution to allow for land expropriation without compensation, will worsen the plight of tens of thousands of land restitution claimants who have waited for years to have their cases settled.

The state's delay in expediting land claims has left land claimants waiting for years without any hope of ever seeing their claims resolved. These unresolved claimants are the owners of at least 1.2 million hectares of land that must still be transferred.

What is clear is that the state is adamant on keeping land registered in its name rather than transfer it to communities. The ANC government wants to keep South Africans as permanent tenants of the state. This is precisely why the DA is taking a firm stand against the amendment of Section 25 of the Constitution because it will trample on people's right to justice and ownership of private property.