MINUTES OF BAKWENA BA MARE A PHOKGOLE LAND CLAIM STAKEHOLDERS MEETING

Date: 24 November 2016  
Venue: Emperors Palace Conference  
Time: 10H00  

Programme Director: Mr. Mkhacani Makamu (RLCC: GAUTENG)

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<th>DISCUSSIONS &amp; RESOLUTIONS</th>
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<td>1. Opening</td>
<td>The Programme Director officially declared the meeting open by introducing himself, and further introduced the Regional Land Claims Commissioner, Mr. L.H Maphutha, and Deputy Land Claims Commissioner, Mr Thami Mdontswa.</td>
<td>Mr Mkhacani Makamu</td>
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<td>1.1. A word of Welcome</td>
<td>The Regional Land Claims Commissioner, Mr. L. H. Maphutha greeted and welcomed everyone, observed protocol in the house and also recognized the presence of the following people: Deputy Land Claims Commissioner Mr Thami Mdontswa, Chief Land Claims Commissioner Ms. Nomfundo Gobodo-Ntloko in her absentia, all traditional leaders, land claimants for Bakwena Ba Mare a Phogole, all land owners affected, political parties, NGO’s, all interested and affected parties.</td>
<td>Mr. Lebjan Maphutha</td>
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| 1.2. Attendance and Apologies | Every member present in the meeting registered and signed attendance register  
No apologies were received.  
Attendance register is attached | All                          |
| 1.3. Introductions        | The Programme Director started by introducing the head of office RLCC Gauteng office, as Chief Director Ms. C.J Benyane, members of the Commission, Ms Mehlomakulu who will be making presentation, the Manager responsible for the land claim, Mr R.A Serumula, and other officials from the office and further handed over to everyone in the meeting to introduce themselves.  
The following members in the house introduced themselves: Legal Representatives, Landowners, Traditional Leaders, | All                          |
1.4. Opening Remarks

Ms Benyane made opening remarks: She highlighted activities conducted by the Office in order to comply with the Law/Act. She also remarked about the documents prepared and packaged for the attendees which included copies of the programme for the meeting, presentation, court orders, research report by Bakwena ba Mare a Phogole, land claim form, mediation report and government gazette notice.

Ms. Cindy Benyane

She further clarified that the research report completed by the Commission was not in the document pack due to its volume and that other additional information will be emailed at the later stage. She urged all members present to sign the attendance register and provide their emails in order to receive soft copies of other documents as a paper saving measure.

She further announced that interested parties were notified about the land claim through the media (adverts were placed in the STAR, and Daily Sun) and notices were also placed at Municipal areas. She indicated that other landowners received notification letters and that those who did not receive the letters will be issued at the end of the meeting.

2. Purpose and Background

Programme Director also announced that there will be an inter-link between speakers.

Deputy Land Claims Commissioner, Mr Thami Mdontswa, greeted all and also observed protocol in the house. He further gave a brief history on land dispossession in SA starting in 1910 at the time when the majority lost their land as a result of 1913 Land Act. He further discussed the land reforms introduced by CODESA and the Constitution of South Africa. He highlighted the following in his presentation:

- He affirmed that all lodged land claims are against the State and not the current land owners.
- Current land laws must comply with the Constitution. Section 25 (1) of the Constitution (property clause) provides a definition of property which is wider than land.
- Property rights are also limited as the State is given power to expropriate land only in public interest or for public purposes.
- Land restitution process was explained and land owners were advised not to stress and panic as the Commission is still at the third stage of processing the land claim which is gazetting and notification stage but the land claim has passed other processes such as: lodgement, preliminary investigation, gazetting and giving notice to the public.
- He explained the purpose of the Restitution of Land Rights Act which entitles a community or person dispossessed of land rights after 19 June 1913 to lodge land claims.
- He elaborated more on the four elements of land reform which includes Land Reform, Land Redistribution, Land
Tenure and Land Development. To add to his presentation he mentioned in details the four elements of Land reform and the relevant legislations such as Interim Protection of Land Rights Act of 1993 which is renewed every year that protects the land rights of people staying in rural areas with unsecured land tenure, Land Restitution Act, and Communal Land Tenure Bill which will be tabled in Parliament soon.

- He mentioned that the Commission accepted a claim for investigation as required by the Act to make it known that we are at a stage of conducting further investigations.
- He urged the Banks not to take land claim as a risk factor and reported that the office is busy engaging banks individually.
- He further explained that not all land parcels were gazetted but parent farms and townships names as a cost saving measure.
- He also mentioned that the office has gazetted what has been pointed out to them by the claimants during in loco inspection as they submitted hand written map with traditional names that do not exist anymore.
- He mentioned that the Restitution of Land Rights Act required that in settling claims the Commission ought to avoid major social disruptions. This meant that successful claims over already-developed land would be settled by providing alternative state-owned land or money. He emphasized that the Commission never bought a Residential Estate, Township or Shopping Malls.
- He reported on the Restitution of Land Rights Amendment Act which reopened the lodgement of new claims and how the Amendment Act was found to be unconstitutional by the Constitutional Court. He emphasized that that the Commission is currently dealing with claims lodged before 31 December 1998.
- He pleaded with affected parties to submit their written presentations which have to be recorded and presented to Court.
- Any organ of state is in terms of section 34 of the Act entitled to approach the Land Claims Court and apply for an order declaring that should the claim by the claimants found valid that it is not feasible to be restored to the but an alternative redress must be ordered by the court.
- He emphasized that Government respect the rule of law with the Constitution as supreme law of the land and that should there be any disputes they would be resolved by the Courts.

2.2. Presentation of Bakwena Ba Mare A Phogole land claim

Ms Mehlomakulu started her presentation by mentioning that the Deputy Land Claims Commissioner, Mr Thami Mdontswa, has already touched on other issues to be addressed in her presentation. A copy of the presentation is attached on these minutes.

She highlighted the following in her presentation:

- She also made a note and reminded land owners that before they submit their representations, they should refer to the definition of the “Right in land” as explained in Section 1 of the Restitution Act.
- She advised landowners to submit representations by email or hand delivery to the office and further added that the 60 days within which representations must be submitted refers to Court days. She highlighted that landowners are entitled to request extension of the sixty (60) days’ notice period if they provide valid reasons.
- When a date has been changed as a result of request for further extension such date will be gazetted for everyone to know. A definition of a day is found in section 1 of the Restitution Act.

Ms. Nonqaba Mehlomakhulu
3. **Questions and comments raised**

   The following questions and comments were raised in the meeting:

   1. Mike Fountans from Brackenville Country Club – asked if individual owners of suburbs will be issued with notification letters and the date for submission of representations.
   2. One landowner requested to know the timeframes involved after submission of objections on 4 February 2017.
   3. Berry Hiana requested to know what will happen to ongoing developments such as the road that goes through their Estate.
   4. Rand Water wanted to know whether the Bakwena land claim is the only land claim, and why the claim form doesn’t have a date stamp and can the date for objections be extended taking into considerations holidays including the Christmas.
   5. A comment was made that the Court found the land claim as *prima facie* valid and the Judge said the Commission did not comply with the Court Order of 2014.
   6. How does the Commission view the land claimant of Bakwena, when can they read the history of Bakwena? What are the principles and decisions on payment without consultation? Is the government only considering current value of the land?
   7. What about some of the properties not included in the gazette notice and when can the map of the claimed area be made available?
   8. What will happen to properties adjacent to the affected properties?
   9. What will be the contributions towards the settlement of the Bakwena land claim and how?
   10. What about buildings plans and subdivisions already approved, do they require 30 days’ notice?
   11. Properties gazetted does not correspond with his title deed, he also wanted to know if his suburb is affected. Can a map with boundaries be used?
   12. Khoisan Association- should this claim be awarded to Bakwena tribe what about the Khoisan claim before their land claim? What about heritage site? Whose ownership is that?
   13. Afri-business - response to gazette notice (60 days) is not sufficient until we receive documentation. Will there be another meeting for those who did not attend? What about the Khoi San opposing/competing claim to the Bakwena land claim?
   14. Gauteng Khoisan – In terms of legislation/current bill they found not to be recognized as free people/equal citizen? The constitution was imposed to them and was not part of the documentation.
   15. Whether applications for subdivisions/consolidations need approval before finalization? Do they also require notification for alterations? Do they require 30 days’ notice to submit plans?
   16. More details to be included/ affidavit is not detailed but vague.
   17. Mosotho speaker - will the presentation presented today be sent it to us or emailed, section 12 say something about recognition of traditional leader, and that was not mentioned anywhere in the presentation wherein the King was not involved?. Chapter 14 (self-determination) this claim does not address that? The cutoff date is putting communal owner aside?
   18. Steve Foster from Elandfontein - How does the claim defines the borders on claimed property?
   19. Who should make representation between her and the developers?
   20. What about current developments, are they affected by the land claim?
   21. One of the land owners wanted to know if schools are excluded?
   22. Ebenezer church - what is going to happen to that portion 23 claimed by Bakwena?
23. Land owner - is it treated as one claim? Is the national road excluded?
24. Rand Water – wanted whether the landowners need the claimants permission if they want to sell their land?
25. One landowner commended the manner in which the government is handling the claim and further remarked that land claims could a chain reaction which is unstoppable. He further urged government to give reparation where is due and spoke against objections as being unprogressive and not serving justice.
26. Whether there will be another risk after this restitution land claim is completed?

Deputy Land Claim Commissioner highlighted before responding that questions won’t be responded in sequence since some of the questions were repeated. He responded as follows to the questions and comments made:

- The reason why properties are not appearing in the gazette notice could be that there is no record or there were subdivisions and consolidations to certain portions and that resulted in portion numbers not being in sequence. Again listing all properties will be costly for the state.
- Those not listed on the list at adjacent properties means they are not affected at all and the list will of affected properties will be provided. He emphasized that the office gazetted what was pointed out to them by claimants.
- All land claims are lodged against the state and the state will negotiate to buy the land and land owners need not to contribute to the payment of compensation to the claimants should this claim be found valid.
- All claims falling within the Bakwena claimed land should be settled at the sametime.
- The Commission dismissed the claim; however the community was not happy with the decision of the Commission and lodged an application in Court to force the Commission to publish the claim.
- The properties claimed are within the boundaries of the claimed land and the Act requires the Commission to avoid social disruption e.g. The Commission won’t restore land where there are suburbs/schools since those are for public interest. The programme is not only targeted for one race even white people can claim.
- It is difficult to respond on time frame in which the Commission will have to conclude further investigations taking into consideration the volume of representations the Commission is still going to receive.
- All Annexures/Affidavits to the research report will be e-mailed to the land owners and it was not copied due to its hugeness.
- Where there are plans for development, the responsible developer should give notice to the Commission. Municipalities must continue to process all applications but only give notice to the Commission before building. The Commission will not stop any development on properties after receiving the notice.
- When sending a notice it will suffice to send a letter. There is no need to send maps/plans unless requested by the Commission.
- There is only one land claim by the Bakwena tribe but the Commission still need to investigate to prove all requirements mentioned in Rule 5 of the Restitution Act.
- The Commission can only do what is mandated to do and the traditional leadership is nowhere in the Act where the claim is referring to the Traditional Leaders.
- Options will be considered if people claimed same land. There will be consultations with both claimants before finalisation of the claim to avoid conflict.
- The Act says the Commission should be given a notice before any implementation of any development and people are advised to give notice within reasonable time.
- The Commission has tried to justify the existence of the claim by providing the information, what is outstanding in a pack is the research report commissioned by the Commission which will address the link to the history of
Bakwena.

- Land restitution is not the only tool to redistribute land but can only assist hence financial compensation is also offered.
- The meeting today serves the purpose of informing all affected parties of a claim on the gazetted properties. Interested and affected parties have a right to make representations on the published notice.

Deputy Land Claims Commissioner concluded that no one’s property is going to be taken without knowing or being informed and/or given just and equitable compensation as required by section 25 of the Constitution of the Republic of South Africa, the expropriation is not meant to scare people and they should not panic. The Commission will make alternative resolutions and will identify the critical issues that might arise.

4. Way-forward

The wayfroward was summarised as follows:

- The Commission created an e-mail specifically for this claim in order to ease communication with those who registered their contact details and all affected parties.
- All the affected and interested parties have until 02 February 2017 to submit their representations to the RLCC.
- Every request for an extension of time to submit representation must be made in writing and the agreed date will be published in the gazette notice again.
- Documentation pertaining to this meeting will be emailed upon request.
- Representations should be forwarded to email address: Bakwena.claim@drdlr.gov.za

5. Closing Remarks

Programme Director, Mr. Mkhacani Makamu, gave a vote of thanks to all the attendees and in his closure he encouraged further engagements with the Commission in moving forward with the land claim.

6. Closure

The meeting was closed officially at 13:40