CENTRE FOR LAW AND SOCIETY
RURAL WOMEN'S ACTION RESEARCH PROGRAMME

UMTHETHOSIVIVINYWA OYISICHIBIYELO SOKUBUYISELWA KWAMALUNGELO OMHLABA

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Isendlalelo

Umthetho i-Restitution of Land Rights Act (No. 22 of 1994) washayelwa ihlombe kakukhulu ekuphasisweni kwawo ngonyaka ka-1994. Inhloso yawo kwakuwukunikeza isixazululo kubantu ababelahlekelwe wumhlaba wabo ngenxa yezenzo zokucwaswa ngokwebala ezifana njengokususwa ngempoqo emhlabeni wabo. Lokhu kwakubandakanya abantu ababelahlwe ezindaweni Zabantu Abamnyama ezazibizwa ngamaBantustan base bebekwa ngaphansi kwamakhosi.

Umthethosivivinywa omusha

Ngomhla ka-23 Meyi 2013, uhulumeni wethule i-Restitution of Land Rights Amendment Bill (Umthethosivivinywa Oyisichibiyelo Sokubuyiselwa Kwamalungelo Omhlaba) (lapha obizwa nge-Restitution Bill). Le Restitution Bill yenza izinguquko kwi-Restitution of Land Rights Act of 1994.

Uma le Restitution Bill ivunyiwe ezingeni elilandelayo, izoshicilelwa futhi kuGazethi Kahulumeni, bese-ke kucelwa iziphakamiso. Iziphakamiso, njengohlelo lwe-Traditional Courts Bill (TCB), zizobaluleka kakhulu.

Ngokwesifingqo se-Restitution Bill inhloso yayo enkulu wukuthi ivule futhi isikhathi sokufaka izicelo zomhlaba ukuze kuvunyelwe abantu ababephucwe umhlaba wabo ngaphansi kokubandlululwa ngokwebala kwesikhathi esedlule ukuthi bafake izicelo kuze kube unyaka ka-2018.

Ngaphezulu kwalokhu, i-Restitution Bill ihlinzekela ukuthi abantu abalahlekelwa umhlaba ngaphansi Kwezinguquko Zokwenza Ngcono (Betterment) bangafaka izicelo zokubuyiselwa umhlaba. Ukhomishina Omkhulu Wezicelo Zomhlaba wangaphambilini waphazama weluleka ngokuthi i-Restitution Act ka-1994 yayingafaki i-Betterment.

I-Restitution Bill ifika ngesikhathi lapho uguquko lomhlaba kanye nokwabiwa komhlaba kwehluleka khona. Okwamanje, izigidi zabantu baseNingizimu Afrika basalokhu bengenakho ukuvikeleka kwamalungelo abo omhlaba ngokomthetho,

ikakhulukazi labo abahlala ezindaweni zasemakhaya nasezindaweni ezazenzelwe Abantu Abamnyama esikhathini esedlule (Bantustans). Nakuba bekukhona okunye ukuvikelwa okwenziwa, lokhu (ngaphandle kwe-Interim Protection of Informal Land Rights Act [IPILRA]) akubakhavi abantu abahlala ezindaweni ezihlanganyelwe zasemakhaya. Okunye futhi, kunabahlomuli be-Restitution Act yesikhathi esedlule abasalokhu bengakawatholi amatayitela omhlaba wabo ngenxa yokuphikisa kwabaholi bendabuko.

Ngeshwa, esimeni samanje, umthethosivivinywa angeke kwenzeke ukuthi uhlangabezane nezidingo zabantu abasezindaweni zasemakhaya, futhi ungahle udicilele phansi amalungelo abo omhlaba njengoba evikelekile kuSigaba 25(6) soMthethosisekelo.

Izinkinga nge-Restitution Bill

Izinkinga ezinkulu nge-Restitution Bill zingafingqwa kanje.

- *I-Bill ikhombisa ukungabi bikho kokubonisana (noma isikhathi sokubonisana) nabantu basezindaweni zasemakhaya.*

Umthethosivivinywa wethulwa ngaphandle kwesaziso esiyaye size ngaphambili ngomhla ka-23 Meyi 2013, futhi uvumela kuphela izinsuku ezingama-30 zokuphawula. Lesi sikhathi esibekiwe sasingavumeli ukubonisana ngokubanzi, ikakhulukazi nabantu basezindaweni zasemakhaya abazothintwa yilokhu. Ukuba kufishane kwesikhathi sokuphawula akuhambisani nenhloso ye-Bill yokuqinisekisa ukuthi abantu abaningi bayazi ngesikhathi sokufaka izicelo zokubuyiselwa umhlaba kunalabo abagcina bazile phansi komthetho ochitshiyelwayo.

- *Uma ukubuyiselwa komhlaba kunombandela "wezindleko" kanye "nokukhiqiza okuyimpumelelo" i-Restitution Bill ibukela phansi ilungelo lokubuyisa umhlaba.*

Isigaba 33 se-Restitution Act sichitshiyelelwa ukwenza imibandela emisha yomhlaba okufanele ubuyiselwe kulabo abafake izicelo:

> *Lapha kuchitshiyelwa Isigaba 33 somthetho omkhulu ngokufaka esikhundleni saso endimeni (cA) indima elandelayo:*
> *"(cA) uma kufakwe isicelo sokubuyiselwa ilungelo lomhlaba –*
> - *ukuphumelela <u>kanye nezindleko</u> zalokho kubuyiselwa; kanye*
> - *<u>namandla omuntu ofaka isicelo okukwazi ukusebenzisa umhlaba ukukhiqiza okuthile ngokuyimpumelelo"</u>*

Ukunikezelwa kokubuyiselwa kwemihlaba manje sekuncike ngokucacile ezindlekweni zokudluliswa komhlaba kanye namandla abafakizicelo okukwazi ukusebenzisa umhlaba "ukukhiqiza okuthile ngokuyimpumelelo". Akukho ncazelo enikeziwe ngokuthi izindleko 'ezamukelekile' zizonqunywa kanjani noma "ukukhiqiza okuthile ngokuyimpumelelo" kuzokalwa kanjani. Le mibandela ibukela phansi ilungelo lokubuyiselwa umhlaba, okufanele engabe liyindlela yokubuyisela umhlaba kubantu abahlushwa ubandlululo lwesikhathi esedlule, ngokoMthethosisekelo. Le

mibandela iphinde ivule ithuba yokuthi izinqumo zithathwe ngendlela engalandeli migomo futhi enenkohlakalo ngenxa yokungabi bikho kwencazelo yokuthi inani kanye nokukhiqiza okuyimpumelelo kuzokalwa kanjani. Ukukhiqiza okuyimpumelelo njengesidingo sokubuyiselwa umhlaba kuvula indlela yokuthi ukubuyiselwa komhlaba kwaliwe ezicelweni eziningi, njengoba imiphakathi empofu eminingi efaka izicelo zomhlaba obiza amanani aphezulu kungenzeka ikuthole kunzima ukutshengisa ukuthi umhlaba "izokhiqiza ngokuyimpumelelo" kuwo.

- *Umthethosisekelo uvula umnyango kubaholi bendabuko ukuthi bafake izicelo zobunikazi bomhlaba ozobuyiswa egameni 'lezizwe' ezazichazwe ngokwe-Bantu Authorities Act of 1951 (uMthetho Weziphathimandla Zabantu Abamnyama ka-1951).*

Uma sibuka eminye imithetho kanye nezitatimende ezenziwe nguNgqongqoshe Wezokuthuthukiswa Kwezindawo Zasemakhaya kanye Nokuguqulwa Komhlaba uGugile Nkwinti, kunengozi yokuthi i-Restitution Bill ingavula ithuba lokuthi abaholi bendabuko bafake izicelo zomhlaba omningi kakhulu. Ungqongqoshe uthe Izinhlangano Zomhlaba Ohlanganyelwe (ama-CPA) akusafanele avunyelwe ukuthi abe abanikazi bomhlaba otholakale ngokusebenzisa ukubuyiselwa noma ukwabiwa komhlaba 'ezindaweni zomphakathi wonke' (communal areas).

Indlela yama-CPA yayenzelwe ukuvumela abahlomuli bohlelo lokubuyiselwa komhlaba ukuthi babe nomhlaba ngokuhlanganyela. Yahlinzeka abantu abafake izicelo abahlala ezindaweni ezazenzelwe Abantu Abamnyama esikhathini esedlule (Bantustans) ngamandla okukwazi ukuthi bazihlele ngokwabo njengezinhlangano ezisemthethweni ukuthi zithole umhlaba. Uma ama-CPA engasakwazi ukuba ngabanikazi bomhlaba obuyisiwe, umnyango uvulekile emakhosini ukuthi afake izicelo zobunikazi bomhlaba obuyisiwe 'wezizwe' ezazichazwe ngokwe-Bantu Authorities Act of 1951.

Lokhu akusiyona nje indaba yenqubomgomo yesikhathi esizayo. Sekuvele kuyenzeka, okungenani eMpumalanga Kapa (Eastern Cape). Isibonelo yiCata CPA eMpumalanga Kapa, lapho abafake izicelo sebelinde amatayitela abo omhlaba kusukela ngonyaka ka-2000 kuze kube manje. Uhulumeni usandakushaya indiva umyalelo wenkantolo othi akadlulisele itayitela lomhlaba kuCata CPA ngomhla ka-20 Meyi 2013. Ngokwe-afidavithi ka-2012 eyenziwe ngumsebenzi omkhulu kahulumeni ecaleni eliphathelene neCata, iCata CPA ayikawutholi umhlaba wayo ngenxa yokuphikisa okuvela kubaholi bendabuko.

Ezinsukwini zokwethulwa kwe-Restitution Bill iSilo uGoodwill Zwelithini sethembisa umhlangano wabaholi bendabuko abangama-40 KwaZulu-Natali ukuthi Ingonyama Trust izobasiza abaholi bendabuko ukuthi benze izicelo zomhlaba, kubandakanya nokubahlinzeka ngosizo lomthetho. ISilo sathi, "Njengenkosi yenu, ngizohambisana nomthetho futhi ngiqonde ngqo uhulumeni ukuthi siphinde siwuthole wonke futhi umhlaba wakwaZulu."

Amakhosi isikhathi esiningi ayeyingxenye yezinhlelo ze-Betterment, okungesinye sezigaba ezintsha zokubuyiswa komhlaba ezifakwe ku-Restitution Bill. IBetterment

kwakuyindlela yokwephucwa umhlaba. Ngakho-ke kubalulekile ukuthi uhlelo lokubuyiswa komhlaba luvulelwe futhi izicelo ze-Betterment.

Kodwa-ke, uma izinguquko zokukhipha ama-CPA ziphumelela lokhu kuhlinzeka okusha kwe-Betterment nakho kungavula intuba yokusetshenziswa ngendlela engafanele kwamandla amakhosi. Uma umhlaba we- Betterment uya emakhosini esikhundleni sama-CPA kuzobeka labo abasuswa emhlabeni wabo ngaphansi kwamandla abaholi bendabuko okungenzeka ukuthi babevumile ukuthi abantu basuswe kwasekuqaleni. Ukuze amakhosi athole 'umhlaba wesinxephezelo' ngesikhathi kususwa abantu ngempoqo kwakumele ayivume i-Betterment. Lawo avuma anikezwa izindawo ezinkudlwana ukuthi azibuse.

Indlela engcono okungenziwa ngayo

- Uhlelo lokushaya umthetho kufanele luvule isikhathi eside sokubonisana ukuze kuhlinzekwe ithuba kubantu abephucwa umhlaba wabo ukuthi balalelwe futhi izidingo zabo zibhekelwe.

- Kumele kuthathwe izinyathelo ngokushesha zokuvikela amalungelo abesifazane kanye nemiphakathi ebekeke engozini. Esikhundleni sokugxila kwi-Restitution Bill, Umnyango kunalokho kufanele uchibiyele i-IPILRA ukuze iqinise amalungelo abaningi ababekeke engozini.

- Kanye kanye nohlelo lokwephucwa umhlaba kanye nokulahlwa kwabantu abamnyama ezindaweni eziyizabelo zasemakhaya, amakhosi kanye neziphathimandla zezizwe (tribal authorities) babevele bafakwe nje kubantu. Nanoma yimuphi umthethosivivinywa ohambelana nomhlaba kufanele ubheke izinto ezimbili: ukuphucwa umhlaba kwabantu kanye nokulahlekelwa yilungelo lokuba yizakhamuzi.