

**ADVERSE REPORT**

**OF THE**

**PARLIAMENTARY LEGAL COMMITTEE**

**ON**

**NOTICE OF AMENDMENTS TO THE**

**LAND COMMISSION BILL [H.B. 2, 2016.]**

**Note by Veritas**

The Parliamentary Legal Committee's adverse report forms the first part of this document. It was announced in the Senate on 30th March. The rest of the document contains additional material included by Veritas – the explanation given to the Senate by the PLC chairperson on 4th April, a comment by Senator Chief Charumbira in the Senate the following day and the text of the amendments which are the subject of the adverse report.

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In pursuit of its Constitutional mandate as provided for in Section 152 of the Constitution, the Parliamentary Legal Committee (hereinafter referred to as “the Committee”) on the 30<sup>th</sup> of March 2017 at 1010hrs met to consider the Notice of Amendments to the Land Commission Bill [H.B. 2, 2016], After deliberations, it unanimously resolved that an adverse report be issued in respect of the notice of amendments, due to the following considerations:—

1. The Constitution clearly iterates the jurisdiction of Traditional leaders in particular section 282(1 )(d) states:

*“Traditional leaders have the following functions within their areas of jurisdiction...in accordance with an Act of Parliament, to administer Communal Land and to protect the environment.”.*

2. Section 282(2) of the Constitution states:

*“Except, as provided in an Act of Parliament, traditional leaders have authority, jurisdiction and control over communal land or other areas for which they have been appointed and over persons within those communal lands or areas. ”.*

3. Section 72 of the Constitution defines **agricultural land** as follows:

*“land used or suitable for agriculture, that is to say for horticulture, viticulture, forestry or aquaculture or for any purpose of husbandry  
but does not include communal land...”.*

This is further iterated by section 288 which refers to the definition as stated in section 72.

4. Section 297(1 )(a) of the Constitution states that:

*“The Zimbabwe Land Commission must ensure accountability fairness and transparency in the administration of agricultural land that is vested in the State...”.*

Having considered that the above provisions of the Constitution the Committee was of opinion that the amendments proposed to the Land Commission Bill were ultra vires the Constitution. The roles of the Land Commission are patently clear as are the roles of traditional leaders and the two are not expected to interact. The Commission has jurisdiction over agricultural land while traditional leaders have authority, jurisdiction and

control over communal land or other areas for which they have been appointed noting that the definition of agricultural land in section 72 excludes communal land.



**Hon. F. Chasi**

**ACTING CHAIRMAN**

**PARLIAMENTARY LEGAL COMMITTEE**

**In the Senate Tuesday 4th April 2017**

**CONSIDERATION OF THE ADVERSE REPORT BY THE  
PARLIAMENTARY LEGAL COMMITTEE ON THE LAND COMMISSION  
BILL [H.B. 2A, 2016]**

Second Order read: Committee Stage: Consideration of the Adverse Report by the Parliamentary Legal Committee on the Land Commission Bill [H.B. 2A, 2016].

House in Committee.

**HON. SAMUKANGE:** Thank you Madam Chairperson. I must start by introducing myself. I am Hon. Jonathan Samukange, Member of Parliament for Mudzi South and I am the Chairperson of the Parliamentary Legal Committee. The Parliamentary Legal Committee, just for your information, consists of five senior lawyers. Previously, I indicated that when we take into account the number of service, it is slightly over 100 years of service. For example, I have been in practice for about 40 years.

The Parliamentary Legal Committee considered the amendment to the Land Commission Bill [H. B. 2A, 2016]<sup>1</sup>. After its serious consideration, our main task as the Parliamentary Legal Committee is to consider whether the Bill is consistent with the Constitution; that is the main consideration that we take into account when we deliberate on any Bill or Statutory Instrument that has been presented to us. I believe that all the Hon. Senators have our report before you.

I will begin by stating that Section 152 (3) of the Constitution states that the Parliamentary Legal Committee must examine;

- a) every Bill other than a Constitutional Bill, before it receives the final vote in the Senate or in the National Assembly;
- b) any Bill which has been amended after being examined by the Committee, before the Bill receives its final vote in the Senate or the National assembly;

Further, Section 324 of the Constitution provides for the diligent performance of the constitutional obligations according to the Parliamentary Legal Committee here-in-after referred to as the Committee; diligently and without delay performed its constitutional role or obligation.

For the above mentioned reasons, the Committee on the 30<sup>th</sup> March, 2017 at 1010 hours met to consider the Notice of Amendment to the Land Commission Bill [H. B. 2, 2016]. After deliberations on the amendments proposed, the Committee unanimously resolved that an adverse report be issued in respect of the notice of amendments, due to the following considerations:-

1. the Constitution clearly reiterates the jurisdiction of the traditional leaders, in particular Section 282 (1) (d) which states, “ traditional leaders have the following functions within their areas of jurisdiction – “in accordance with an Act of Parliament,

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<sup>1</sup> *Note by Veritas:* See the end of this document for the text of the amendments.

to administer communal land and to protect the environment”. I must emphasise that traditional leaders have the jurisdiction. In other words, the obligation to administer communal and the inhabitants that are found in that communal land.

2. Section 282 (2) of the Constitution states, “except as provided in an Act of Parliament, traditional leaders have authority, jurisdiction and control over communal land or other areas of which they have been appointed, and over persons within those communal lands or areas. It is patently clear where the role of the traditional leaders lies when it comes to the land in Zimbabwe and that is with the communal land.

3. Subsection 72 of the Constitution defines agricultural land as follows, “land used or suitable for aquaculture, that is to say for horticulture, viticulture, forestry or aquaculture or for any purpose of husbandry”, but does not include communal land. This is further illustrated by Section 288 which refers to the definition as stated in subsection 72. The definition of agricultural land clearly excludes communal land. This was done in order to clearly define the roles of the two constitutional bodies, that is the Land Commission and the traditional leaders.

4. Section 297 (1) (a) of the Constitution states that, “the Zimbabwe Land Commission must ensure accountability, fairness and transparency in the administration of agricultural land that is vested in the State”. Having considered the above provisions of the Constitution, the Committee was of the opinion that the amendments proposed to the Land Commission Bill were *ultra vires* the Constitution. The role of the Land Commission are manifestly clear as are the roles of the traditional leaders and the two are not expected to interact at any point. Had that been the intention, it would have been clearly spelt out in the Constitution.

For the avoidance of doubt, it is the Committee’s view that the Commission has jurisdiction over agricultural land which traditional leaders have no authority, jurisdiction and control over communal land or other areas for which they have been appointed, noting that the definition of agricultural land in Section 72 excludes communal land, thus rendering the proposed amendment unconstitutional. That is the Report from the Parliamentary Legal Committee.

It is our view that the Constitution makes it very clear that it defines what is the communal land, defines who are the authorities in the communal land and the authorities in the communal land are traditional leaders, commonly known as chiefs, assisted by headmen and *sabhukus*. On the other hand, we have agricultural land which the Bill seeks to be administered by the Land Commission, separating the two.

To try to have the two interact can cause untold problems. Apart from that, the Constitution itself makes it clear. It is my submission that unless the Constitution has been amended, the proposed amendments to the Land Commission will violate the Constitution and become unconstitutional. As I have indicated, it will be *ultra vires*. I urge the Senators to seriously consider the Report. I thank you.

*Committee to resume: Wednesday, 5th April, 2017.*

[For extracts from further exchanges in the Senate on the Land Commission Bill and PLC Adverse Report on Senate amendments, please see next page.]

## **In the Senate Wednesday 5th April 2017**

HON. SAMUKANGE: Yesterday we did meet Hon. Sen. Chief Charumbira and some members of the traditional leadership and it was agreed that the debate will be adjourned pending the meeting between the Parliamentary Legal Committee and the leadership. The reason being that, I am not going to say this is going to happen, but there is a possibility that the decision or views taken by the chieftainship may be considered by the Parliamentary Legal Committee. If we are convinced that indeed they are right and we are wrong, we may have to withdraw our adverse report. On the other hand, the other scenario is that our objection maybe amended. The third scenario is that we may stick to our original position and if that happens, we will need to come back and address you on the way we look at the amendment. There will be no point now in debating the issue if the views that I have expressed are going to take place. Yesterday we agreed that the leadership from here will meet the full Committee consisting of the five members of the Parliamentary Legal Committee. My suggestion is that the debate be adjourned pending the discussion and determination of issues.

HON SENATOR CHIEF CHARUMBIRA ... The whole basis on which they have relied on in making the adverse report to us is not quite correct. To say traditional leaders are only in charge of communal land in terms of the Constitution, that is not correct. ...

We are saying if you go to the same Constitution, Section 282 (2) is very clear. It says, “traditional leaders will be in charge of communal land including any other land which has been given to them”. So, when you say they cannot be in charge of resettlements, that is not correct in terms of this same Constitution. This clause, in law we say it is permissive; it allows traditional leaders to be in charge of land that is not communal.

Beyond that, there should be a law which allows traditional leaders to be in charge, is it not it? That law is there and it is called Traditional Leaders Act; it is already there. Section 29 of that law says, emplacement of resettlement land under authority is there and there are procedures in that law, then you gazette that area. <sup>2</sup>We have more than 15 chiefs today whose jurisdiction is squarely resettlement areas. We have Chief

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<sup>2</sup> *Note by Veritas:* Senator Chief Charumbira is right on this point. A recent example of a Gazette Notice giving chiefs jurisdiction over resettlement areas are to be found in GN 164/2017 of 7th April 2017 [Zvishavane District]. Section 29 of the Traditional Leaders Act is as follows:

### **29 Placing of communities on resettlement land under authority of chief**

(1) After consultation with the rural district council and the chief of the area concerned, the Minister may, by notice in the *Gazette*, declare that any area of resettlement land

(a) shall fall under the authority of such chief as he may specify in the notice:

Provided that no such declaration shall result in villages in a single resettlement ward falling under the authority of more than one chief; and

(b) shall constitute a village or such number of villages as the Minister may specify in the notice.

(2) Where the Minister has made a declaration in terms of subsection (1), the resettlement land concerned shall be deemed, for the purposes of this Act, other than Part VI, to be a village or villages, as the case may be, within the area of the chief specified in the notice, and Parts III, IV and V shall apply, *mutatis mutandis*, to villages in resettlement areas.

### **30 Resettlement land not to form part of Communal Land**

Notwithstanding section *twenty-nine*, resettlement land that is the subject of a declaration under that section shall not form part of Communal Land.

Chanetsa in Mashonaland West, Chief Beperere in Zvimba - I can go on and on. There is no consistency. The findings that chiefs cannot be in charge - to us, even in reading the Constitution, it is not correct. We are saying let us sit down and discuss this. Mr Chairman, I rest my case.

[For the text of the amendments made by the Senate on 29th March 2017, please see below.]

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**Amendments to Land Commission Bill made by Senate during  
Committee Stage on 29th March 2017**

**Clause 2**

Hon. Sen. Chief Mtshane moved:

Between lines 32 and 33 on page 9 of the Bill, to insert the following definition:

**“National Council of Chiefs” means the National Council of Chiefs established by section 285(1) of the Constitution;”**

Amendment put and agreed to.

**New Clause 3,**

Hon. Sen. Chief Mtshane moved:

Between lines 35 and 36 on page 9 of the Bill, to insert the following clause in Part II of the Bill, the remaining clauses being renumbered accordingly:

**“3 Procedure for appointment of members**

**(1) Before the President appoints a member, the Minister shall, in writing, invite the National Council of Chiefs to submit to him or her the names of at least two traditional leaders, qualified in terms of section 296(2) of the Constitution, to be considered for appointment to the Commission.**

**(2) The Minister shall without delay forward to the President the names of any suitably qualified traditional leaders nominated by the National Council of Chiefs in response to an invitation in terms of subsection (1) and, subject to section 296 of the Constitution, they shall be considered for appointment to the Commission.”**

Amendment put and agreed to.

New Clause 3 put and agreed to.

**Clause 36**

Hon. Sen. Chief Mtshane moved:

Between lines 43 on page 21 of the Bill and line 1 on page 22, to insert the following subclause, the remaining subclauses being renumbered accordingly:

**“(4) Where the appeal or dispute concerns agricultural land, or any other land that is under the jurisdiction of a chief, at least two of the names on the panel referred to in subsection (3) shall be that of a chief.”**

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