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May 25, 2011

## **MEDIA BRIEF**

### **THE ADMINISTRATION OF SPECIAL AGRICULTURAL AND BUSINESS LEASES Customary Land and the Lease-Lease Back System**

#### **A Preliminary Summary of Findings by the National Research Institute**

##### **Introduction**

The *Land Act* from 1996 provides that customary landowners may lease their customary land to the state in return for the state granting a special agricultural and business lease (SABL) over the land. This lease lease-back system was designed to enable customary landowners' access to credit for agricultural ventures on their customary land.

##### **Framework of Special Agricultural and Business Leases**

The Land Act outlines a two-step process for issuing a SABL over customary land. In the first instance, the State needs to acquire the customary land by leasing it (the head lease). This lease is executed between the Minister and the customary landowners or their representative(s). The requirement for the customary landowners to sign the lease implies that they are aware of and consent to the state's acquisition of their land.

Once the State has acquired the relevant customary land, the Minister may lease the land to a lessee for a special agricultural and business purpose. The *Land Act* states that this lease (the SABL or 'sub-lease') shall only be granted to a person (whether natural or corporate) to whom the customary landowners have agreed.

Apart from specifying that the customary landowners must consent to the state acquiring their land and then leasing it to a nominated lessee, the *Land Act* is silent on the procedures to be employed in granting SABLs. The Department of Lands and Physical Planning (DLPP) has no formal written policy on the procedure to be undertaken. However, the DLPP has advised that it uses the same process that is used when it conducts general customary land acquisitions.

## **Summary of Findings.**

There are major problems with the manner in which SABLs are processed and approved for leases. These include the following.

### **Preliminary Checks over Proposed SABLs.**

Simple preliminary checks have not been done leading to prolonged and expensive investigations and court cases as a result of not doing preliminary checks on proposed SABLs and informing landowners of potential problems.

### **Land Investigation and Land Investigation Reports.**

1. Identification of Land Owners.  
There are problems with the identification of landowners and obtaining consent of landowners on use of land for SABLs.
2. Establishing Boundaries  
The procedures for the Department of Lands and Physical Planning officers to establish boundaries by walking the perimeter of proposed land have in many instances not been complied with.
3. Verification by Provincial Administration  
It has been observed that Land Investigation Reports have in most instances not been verified by the Provincial Administration.

### **Granting Special Agricultural and Business Leases.**

1. Consent by Land Owners  
The law requires the landowners to give consent to whoever is awarded the lease, but this has not happened in many instances.
2. Award of Leases.  
The terms, procedures and other problems surrounding the award of leases are not consistent with law and established procedures.

It would be wrong to assume that just because it is not explicitly prohibited or stated under the Land Act, any impromptu procedures can be devised, and especially resulting in the loss of customary landownership claims over thousands of hectares of land.

### **Some General Issues.**

1. The Law is not clear on some issues and there are issues with clarity and error in the drafting of the law in some instances.
2. Where there are laws and approved procedural guidelines, there are obvious weaknesses observed in many instances of non compliance.

### **Conclusion and the Position of the National Research Institute.**

1. That the findings support the position taken by the Government to suspend the issuance of SABLs until investigations are conducted and corrective measures is taken to rectify the many problems identified.
2. Following on from this general report, the NRI will now undertake a case study of one SABL to outline what steps, procedures were undertaken and whether the processes complied with the law. It will also help us understand better what happens.
3. It is clear that there are problems in several key areas identified in the report.
  - a. First is the proper identification of who the landowners are, how they make decisions, who are elected as office bearers to speak and represent them, how they disburse proceeds of land leases etc.
  - b. Secondly, there is a problem with how land proposed for SABLs are identified, boundaries established and registered.
  - c. Third, is the issuance of leases to developers over the areas of land identified for development.
4. We want to point out that the Government passed two critical legislations in 2009, the Incorporated Land Group Act and the Land Registration Act. Both those legislations were developed through the Government's Land Development Program and were to deal with the weaknesses identified in all of the three key areas highlighted.

Both Acts cannot be operationalised because the ILG Act has not been certified by the Speaker and Clerk of Parliament.

We would like to urge that the ILG Act be signed off as a matter of urgency to operationalise and allow landowners to develop their land in a manner that addresses the weaknesses identified in the administration of SABLs.

5. Finally, at the 2005 Land Summit, many speakers pointed out that there were major weaknesses in the operations of the Department of Lands and Physical Planning. Since then the recommendations relating to improvements have not been acted upon. We would like to call upon the Government as part of the Inquiry into to issuance of SABLs to conduct a complete inquiry to stop a lot of abuse and corruptive practices that currently exist in the Department of Lands and Physical Planning.