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ONS VERW/ OUR REF: GB0003 U VERW/ YOUR REF:

23 June 2006

Regional Land Claims Commission
Gauteng & North West Province
9 Old Bailey Street
Pretoria

FOR ATTENTION: Japhatine and Amos

RE: REPRESENTATION IN TERMS OF SECTION 11A OF ACT 22 OF 1994 IN RESPECT OF GOVERNMENT GAZETTE NOTICE 1340 OF 2005
LAND CLAIM BY HAROLD LEBOGO ON BEHALF OF THE MEKGARENG COMMUNITY
AFFECTED LAND: PETIT MONT ROUGE 479 JQ, PRAETOR'S RIDE 562 JQ, KAFFERSKRAAL 501 JQ, HARTEBEESTHOEK 502 JQ, OPELUGMUSEUM 564 JQ

1. We refer to the abovementioned land claim and confirm that we act on behalf of the current registered owners of the affected land, excluding the farm Hartebeeshoek 502 JQ.

2. We have been instructed by the 26778 Land Claims Action Committee, which also co-ordinates the landowners affected by the publication referred to above, to conduct an investigation into the validity of the claim and, in doing so, have studied all the relevant documents supplied by your office as well as documents sourced from, amongst others, the National Archives. We have further commissioned an expert in the field of aerial photography and the analyses thereof.

3. This representation is in addition to the representation served on your offices on 6 May 2005 as it relates to the same claimant. We also assume that the publication referred to above is an extension of the publication of 17 September 2004 in notice 1961 of 2004. This representation should therefore be read in conjunction with the representation of 6 May 2005 and for ease of reference it is attached hereto and marked annexure **"L"**.

4. For the reasons set out below, our clients are of the opinion that the claim on their respective portions of land is not valid and that the so-called Mekgareng Community is not entitled to the restitution of any rights in land as contemplated in the Act.

5. Shortly after the publication of notice 1340 of 2005 (hereinafter referred to as "the extended publication") we requested access to the documents on which your decision was based to cause the extended publication to be issued. We were supplied with a bundle of documents which consisted of:

   5.1 a land claim form by Harold Lebogo dated 14 November 1998;
   5.2 Surveyor-General's diagrams (41 pages);
   5.3 Hand drawn map, attached as annexure **"S"**;
   5.4 Your acceptance report dated 11 October 2005;
   5.5 A set of duplicate photographs;
   5.6 Six pages of historical documents.

   After having received the documents referred to above you acknowledged that your decision to issue the extended publication was based solely on these documents.

6. The contents of paragraphs 9 (in respect of rights in land) and 11 (in respect of the Mekgareng Community) of our representation of 6 May 2005 is equally applicable hereto and should be read in conjunction with this representation. The contents of paragraph 11 in respect of the Mekgareng Community become even more relevant for the reasons set out below.

7. **CLAIMED LAND**
PETIT MONT ROUGE 479 JQ

7.1 The farm Petit Mont Rouge 479 JQ, in extent 25 morgen, is a consolidation of:

- the remaining extent of portion 55 of Hartbeespoort 482 JQ;
- portion 104 of Broederstroom 481 JQ; and
- the remaining extent of portion 116 of Broederstroom 481 JQ.

7.2 It is assumed that the extended publication included Petit Mont Rouge 479 JQ as it comprises of two portion previously included in the farm Broederstroom 481 JQ.

7.3 The consolidation referred to in paragraph 7.1 above was registered on 26 August 1963 and transferred to French Farmers (Pty) Ltd. Prior thereto the factual information relation to the farm Broederstroom 481 JQ would be applicable and in this respect you are referred to annexure **"L"** hereto.

7.4 Very little historical documents that relate to Petit Mont Rouge could be traced. We have however consulted Prof A Horn of the University of Pretoria who conducted a five year research project of farm histories in the Transvaal. He found no evidence of native residency of the farm Petit Mont Rouge 479 JQ.

7.5 The aerial photography analyses indicate that as little as one structure for human habitation existed on the farm between 1949 and 1968. Between 1968 and 1984 the amount of structures actually increased to a number of six.

7.6 No other objective evidence could be found to suggest that the claimant community held rights in land in respect of this farm or that they had been dispossessed of rights so held.

7.7 From the claim form, referred to in paragraph 5.1 above, it is noticed that, apart from the fact that the farm itself is not claimed by the claimants, one can also not identify the farm from the hand drawn map, which was attached to the claim form.

7.8 A *"claimant"* is defined in section 1 of the Restitution Act as *"a person who has lodged a claim"*. The Restitution Act limits restitution to persons who have lodged claims. In this regard you are referred to the judgement in IN RE: Former Highlands Residents 2000 (1) SA 489 (LCC) at 495 paragraph [10] as well as Jacobs vs Department of Land Affairs LCC 120/99 decided on 28 February 2000 (paragraph [26]).

7.9 We are therefore of the opinion that the publication of the farm Petit Mont Rouge 479 JQ in the second publication is arbitrary and bad in law. For the reasons stated above you are requested to withdraw the publication in respect of Petit Mont Rouge 479 JQ.

8. **PRAETOR'S RIDE 562 JQ**

8.1 The farm Praetor's Ride 562 JQ is a consolidation of:

- portion 58 (a portion of portion 13) of the farm Hartbeesthoek 498 JQ; and
- portion 2 of the farm Kafferskraal 501 JQ;

in total extent 606,5042 morgen.

It was consolidated as such on 29 November 1982 and transferred to Oracle Ranch Company (Pty) Ltd on that day.

8.2 The aerial photography analyses shows that between 1949 and 1968 the number of structures for human habitation increased confirming the overall shift in focus of land use. No areas which would be consistent with a resident community, such as traditional dwellings huddled together with common kraals, land etc. could be identified. Apart from that no traditional subsistence farming areas or points of assembly of people were identified.

8.3 The arguments contained in paragraph 7.8 above are *mutatis mutandis* applicable to the farm Praetor's Ride 562 JQ.

8.4 We are therefore of the opinion that the publication in respect of the farm Praetor's Ride 562 JQ is arbitrary and bad in law. You are requested to withdraw the publication forthwith.

9. **KAFFERSKRAAL 501 JQ**

9.1 The farm Kafferskraal 501 JQ, originally 1782 morgen in extent, was first registered and transferred to Pieter Johannes Vorster on 29 September 1859. Since then the farm was always been held in white ownership.

9.2 The arguments contained in paragraph 7.8 above are *mutatis mutandis* applicable to the farm Kafferskraal 501 JQ. It is clear from the claim form, which comes under discussion below, that the claimants never claimed the farm Kafferskraal 501 JQ. This farm is easily distinguishable from other farms, both by virtue of its name as well as its location. It is also not indicated by name on the hand drawn map. As the

farm lies between Hartbeeshoek 498 JQ and Hartebeesthoek 502 JQ, it can hardly be missed if one has regard to a general map of the area. It has been registered as such since 1859.

9.3 We are of the opinion that your decision to publish the farm Kafferskraal 501 JQ is *ultra vires* and should be withdrawn immediately.

9.4 The analyses of the aerial photography show a number of kraals with associated subsistence cropping lands. The numbers increase between 1949 and 1968 after which it decreased to a certain degree.

9.5 We have consulted Daniel Pieter Pretorius, previous owner of the remaining extent of the farm Kafferskraal, who became the owner thereof in 1935. He was born on the farm Hartebeesthoek 498 JQ in 1915 and his father started farming on that farm in 1903. He has a clear recollection of the factual circumstances on both Hartebeesthoek 498 JQ as well as Kafferskraal 501 JQ. He says, amongst others:

- He remembers 10(TEN) families who used to be in the employ of first his father and later himself. They resided on the farm Kafferskraal 501 JQ.
- That all those families resided on the farm because they were employed and that, at all relevant times, they were under the direct control of this father or himself.
- That no evictions forced removals or similar events occurred on these farms. He further denies the allegations by the claimants that they had been forcefully removed off the farm.
- That he has never heard of an entity called the Mekgareng Community
- That he remembers one April Lebogo and his son, Andries Lebogo, who used to be in the employ of Commandant General Andries Pretorius as an

"agterryer", who came to live on the farm in approximately 1925.

- That a portion of land approximately 6 morgen in extent was granted to Andries Lebogo, referred to above, to practise share cropping thereon.
- That after Andries passed away he was buried on that portion.

Having regard to the information supplied by Mr Pretorius we are of the opinion that anyone who had resided on the farm did so in terms of an individual labour agreement with the then owner and that his or her right of residence arose solely from their employment relationship and not by virtue of any ancestral or traditional rights.

9.6 We have also consulted an elderly black gentleman, whose particulars are being withheld based on a fear of intimidation by the claimants, who has also provided us with relevant facts about the usage and habitation of the farm. He was born in 1926 and has resided on the farm for most of his life. He previously resided on Hartebeesthoek 498 JQ and used to be in the employ of Mr van Blerk, a previous manager. He corroborates Mr Pretorius' version that the employees used to reside on Kafferskraal. Amongst them was Israel Lebogo who we believe is the son-in-law of April Lebogo referred to above.

9.7 This witness also states that all those families have been buried on the farm after having lived there their whole lives. He further strongly denies that any removals, forced or otherwise, took place on either Kafferskraal 502 JQ or Hartebeesthoek 498 JQ. He also acknowledges that some families over the years did in fact leave the farms but did so voluntarily, especially at the proclamation of the erstwhile homelands.

From the information received from both the abovementioned persons we are of the opinion that:

9.7.1 any person who had resided on the farm Kafferskraal 502 JQ did so by virtue of an individual employment relationship with the then owner;

9.7.2 any person so residing had been under the direct control of the then owner at all relevant times;

9.7.3 the only shared rules of access to land which existed in respect of the farm Kafferskraal 502 JQ were those of the then landowner; and consequently it is denied that the claimant community held rights in land in respect of the farm Kafferskraal 501 JQ or that it had been dispossessed of such rights in land.

10. **HARTEBEESTHOEK 502 JQ**

10.1 The farm Hartebeesthoek 502 JQ, originally in extent 3716 morgen, was first registered on 19 October 1866 and transferred to Jan Hendrik Prinsloo and Gert van der Merwe.

10.2 The farm was subdivided and transferred to different white owners until the early 1960 when most of the farm was transferred to the Government.

10.3 It is well known that the farms house both the Hartebeesthoek Radio Astronomy Observatory (HARTRAO) as well as Satellite Application Centre (SAC). Both these sites are of national and international importance. The observatory is still in full operation and provides an important link in many co-ordinate astronomical programmes around the world.

10.4 No documents relating to any removal of persons from this farm could be located. The relevant files of the Department of Development, the CSIR as well as the Post Office, all of which are interested parties in the claim, were scrutinised but did not show any evidence of forced removals.

10.5 The site that was chosen to build HARTRAO on was, according to D G Kingswill in his publication "The CSIR: The first 40 years" (Pta, CSIR, 1990), "a valley uninhabited since the days of the Voortrekkers".

10.6 The aerial photography was equally inconclusive as only parts of the farm were flown, at the time, and the areas that were flown mostly show the development of HARTRAO and SAC.

10.7 Although our clients are not the registered owners of the farm, they remain interested parties in respect of the publication of Hartebeesthoek 502 JQ and have therefore included the information above in this representation. We are of the opinion that the restoration of the farm Hartebeesthoek 502 JQ is unfeasible due to the two national key points situated thereon. The validity of the claim in respect of the farm Hartebeesthoek 502 JQ is in any event denied due to the reasons set out herein read with the representation of 6 May 2006.

11. **OPELUGMUSEUM 564 JQ**

11.1 The farm Opelugmuseum 564 JQ is a consolidation of:

- Portion 234 of Broederstroom 481 JQ
- Portion 235 of Broederstroom 481 JQ
- Portion 87 of Hartbeespoort 482 JQ

- Portion 88 of Hartbeespoort 482 JQ;

and in total extent 74 hectares.

11.2 It houses two old telescopes which was moved there form the Union Observatory in Johannesburg in the 1950's. It is still used today mostly to stimulate interest in astronomy amongst amateur astronomers.

11.3 Certain archaeological artefacts were discovered in 1973 which revealed remains of a village believed to be 1500 years old. An area of 55 hectares surrounding the ancient city was declared a National Monument in 1980 and is currently owned by the Pretoria Technikon and is mostly used as an educational facility called Toppieshoek Development Centre.

11.4 In a report of the Technikon it is submitted that your Commission confirmed that no land claim had been lodged against the property. The Minister of Land Affairs subsequently recommended that the land (Opelugmuseum 564 JQ) be transferred to the Pretoria Technikon. We attach hereto and extract from said report marked annexure **"M"** as well as a letter from the National Department of Public Works to the State Attorney, dated 30 October 2000, marked as annexure **"N"**, dealing with the transfer.

11.5 Although our clients are not the owners of the farm in question, they are interested parties and have included this information as it is pertinent to your further conduct in this matter.

11.6 The contents of paragraph 7.8 are *mutatis mutandis* applicable to the farm Opelugmusuem 564 JQ.

11.7 The analyses of the aerial photography also indicate that the only structures on the farm were those relating to the old Hartebeestpoort Astronomical Observatory as well as the Open Air Museum. No agricultural activities could be identified.

It is therefore also denied that the claimant community held rights in land in the farm Opelugmuseum 564 JQ or that they had been dispossessed of rights so held.

12. **DOCUMENTS SUBMITTED BY CLAIMANTS**

12.1 It should be noted that the claim form we were supplied with (referred to in paragraph 5.1 above) is the same claim form supplied to us shortly after the first publication, except for the fact that two other claim forms were also supplied to us shortly after the first publication in October 2004.

12.2 All three claim forms appear to contain similar information such as:

- All three claims the farms Broederstroom, Leeuwenkloof, Hartebeeshoek and Klein Hartebeeshoek;
- They are all ostensibly signed by one Harold Lebogo on 14 November 1998;
- They all allege the "Voortrekkers" dispossessed them from rights in land during the 1940's ("± before and after 1945").

12.3 We attach all three forms hereto and mark it as annexure **"P"**, **"Q"** and **"R"** respectively. The three forms however differ in many respects:

- They were not completed by the same person as is blatantly evident from the difference in handwriting

- Annexure **"P"** was apparently received first from the numbering of your office in the right hand top corner (numbered 96). This form bears a date stamp which seems to be 30 November 1998 and it contains a reference number "4201/98" above the office stamp. It is initialled by the same person who initialled a note on the last page of the form which reads *"to use this address in future, 28-03-02"* referring to the contact details of the claimants.
- The form itself (annexure **"P"**) also contains two different sets of handwriting
- The form which was received next according to your numbering, (annexure **"Q"**) (numbered 96 – 100) bears two different official date stamps from your Commission, respectively 8 and 29 December 1998.
- A reference number *"151/98"* appears on top of the stamp dated 8 December 1998 but does not contain the handwritten note dated 28 March 2002 referred to above.
- The form received last by your office (annexure **"R"**) (numbered 128 – 131) does not bear a date stamp, neither a reference number nor a handwritten note referred to above.

12.4 The additional documents supplied to us by your office in respect of the extended claim do not take the matter any further. As stated above the majority of the documents were printouts of surveyor general maps of the additional farms gazetted in the extended claim as well as six pages of irrelevant archival documents.

13. **<u>YOUR ACCPETANCE REPORTS</u>**

13.1 The acceptance report in respect of the initial publication of 17 September 2004 have been compared with the acceptance report provided to us by your office shortly after the publication of the extended claim ("*the second acceptance report*"), attached hereto marked as annexure **"T"**. In comparing the two reports it is noteworthy that

the additional farms were simply inserted into the first acceptance report. The second acceptance report still refers to *"four farms"* which is a direct reference to the four farms initially published on 17 September 2004. It is clear that the author of the second report simply added the additional farms to the first report and, except for other minor details, the two reports are virtually identical to one another.

13.2 Two new paragraphs in the second report are paragraphs 3.5 and 3.6. In paragraph 3.5 it is alleged that the *"claimants worked under the labour tenant contract for different landowners on different portions until such time that they were evicted from the farm"*. It is also noteworthy that the claimants now concede that they were in the employ of different landowners on different portions of the claimed land at different times. In this regard you are once again referred to the judgement of the Popela Community versus the Department of Land Affairs and others (case number LCC 52/00) delivered on 3 June 2005 by Presiding Judge Gildenhuys. We provided you with a copy thereof under our covering letter of 17 November 2005. The judgement deals specifically with the situation where persons are resident on land whilst in the employ of the landowner and sets out the terms of entitlement to restitution of such persons. It also deals with the requirements that a community must meet before they would be entitled to restitution. The balance of the contents of paragraph 3.5 of your second acceptance report is denied insofar as it is inconsistent with what we have already stated in our initial section 11A representation as well as what is stated above.

13.3 The contents of paragraph 3.6 of your second acceptance report is equally denied. It is a vague and unsubstantiated statement and there is no legal justification for the assumptions made.

13.4 The allegation in paragraph 5.1 of your second acceptance report, which allegation is also made in the first acceptance report, is denied. There is no legal justification for an allegation of this nature to be made and no objective evidence exists to substantiate this allegation. The fact that the Native Land Act, Act 27 of 1913 or the Native Trust and Land Act, Act 18 of 1936, was in existence at a time, would not automatically entitle any person or community to the restitution of rights in land. You have to date not been able to supply us of any objective factual evidence that any of the acts referred to above was used in the so-called *"dispossession"* of the claimant community in respect of the affected land.

13.5 In paragraph 5.3 of your second acceptance report the allegation is also made that *"this farm was constituted a black spot hence the blacks were removed according to the abovementioned acts* (sic)". Yet again there is no justification for an allegation like this. All farms that were considered as *"black spots"* were properly declared and you are assured that not one of the farms published, either in terms of the first publication or the extended publication, were declared as such. This allegation is therefore denied and rejected. It shows that your office has not done proper research into the factual circumstances surrounding the dispossession and we assume that these vague and unsubstantiated allegations are simply repeated in all acceptance reports issued by our office. Paragraph 9 of your second acceptance report is also an addition to the first acceptance report. The submissions made in paragraph 9 of your second acceptance report are denied and rejected. We have already dealt with each and every submission made in this paragraph.

14. <u>SECTION 11A REPRESENTATION OF 6 MAY 2005</u>

14.1 On 6 May 2005 we lodged, on behalf of the affected landowners of the farms initially published, a formal representation in terms of section 11A of the Restitution Act. On 18 May 2005 you acknowledged receipt of our representation and indicated that *"a comprehensive report regarding the matter would be forwarded to you in due course."*

14.2 By 29 June 2005 we were not supplied by the comprehensive report to which you referred in your letter of 18 May 2005 and a meeting was held at your office to discuss the way forward in respect of the claim. During the meeting several points were discussed but it was confirmed by an official of your legal unit that our representation in terms of section 11A have been studied and an undertaking was made that your office will take a formal decision in respect of our representation and convey it to us by no later than 15 July 2005. By 20 July 2005 and having not received your formal response to our representation, we reminded you that your decision in respect thereof is due. On 22 July 2005 you indicated in a letter to us that *"we are attending to this matter and we apologise for the delay. You will be advised of any development in due course."* By 25 August 2005 we addressed another letter to yourself in respect of the lack of an official response by our office to our section 11A representation. We further drew your attention to the judgement of the Popela Community, which is attached hereto for your attention. We also proposed that a joint verification process be conducted in terms whereof all of the members of the claimant community were to be verified. We confirm that you rejected our proposal for a joint verification process. The chairman of our client, Mr Jonsson, addressed a letter to your Mr Rambuda Thiathi during September 2005 setting out the difficulties that the members of our client were experiencing specifically in respect of the actual number of individual claimant community members and again proposed a joint verification process. Again our proposal was rejected.

14.3 On 7 October 2005 you indicated in a letter to us, after our proposal for a joint verification process was rejected, that the *"total number of original households amount to 508 (this represents the number of families forcibly removed in four (4) farms"*. You further indicated that *"upon further verification the figure rose to 981"* and that *"currently only 729 households have been verified and linked to the original dispossessed"*. The balance of your letter relayed the so-called *"settlement options"* of the claimants.

14.4 By November 2005 your office addressed letters to some of our clients, notably the

chairperson of our client Mr Jonsson, indicating that "*the office of the Regional Land Claims Commissioner has an interest to acquire your property for restitution purposes*". We responded to this uncalled for invitation and on 16 November 2005 an agreement was reached between writer and your Mr Amos Serumula that the land claim would be referred to the Land Claims Court for adjudication in terms of section 14 of the Restitution Act. In this regard we attach hereto a copy of our letter of 17 November 2005 confirming such an agreement as well as your response thereto dated 28 November 2005. It is attached hereto marked annexure **"V"**.

14.5 As you know, the extended publication was published on 2 December 2005, by which time we have not received a response to our section 11A representation.

15. **CONCLUSION**

15.1 By this time it should be clear that the affected landowners of both the initial publication as well as the extended publication highly disputes the validity of the claim by the Mekgareng Community. There can be no doubt that this dispute cannot be solved through a process of mediation or negotiation. We have since the outset indicated that, as a result of the disputes regarding the validity of the claim, our clients are not prepared to sell their respective portions of land to the State thereby acceeding the validity of the claim.

15.2 Once a dispute arises in relation to the validity of the claim, the Regional Land Claims Commissioner should certify as such and refer the matter to court. You are reminded of the agreement reached between writer and your Mr Serumula, who is the project officer in respect of both the initial publication as well as the extended claim, to refer the matter to court. Despite this agreement and several reminders thereof, you have still not done so. Instead you went ahead and published an additional six farms as an extension to the original claim.

15.3 The disputes in this matter are of such nature that it can only be adjudicated upon by the Land Claims Court. This is exactly one of the reasons why the Land Claims Court was instituted and we are of the opinion that the matter needs to be referred as soon as possible.

15.4 In terms of the relevant provisions of the Promotion of Administrative Action Act (PAJA) your Commission is under the obligation to make a decision in respect of both the representations made by our client in terms of section 11A of the Restitution Act. You have to date not responded to our first representation which was already served on your offices on 6 May 2005. Your refusal to make a decision in respect thereof is a reviewable administrative action and we have already been instructed to consider an application for appropriate relief in respect of you refusal to make a decision.

15.5 We have also been instructed to consider launching an application against your Commission for a *mandamus* order which will force your Commission to refer this matter to court. In this regard you are afforded 30 (THIRTY) days to respond to this representation.

Please acknowledge receipt hereof.

Yours faithfully,

Peet Grobbelaar