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## **AGRI SA COMMENTS ON THE GREEN PAPER ON LAND REFORM, 2011**

### **GENERAL**

Land reform is one of the most sensitive and critical issues facing South Africa. The challenge posed in this regard is how to strike a balance between land reform, which is a political imperative, and maintaining the productive capacity of agriculture, which is mostly an economic challenge. Land reform gone wrong could have social and economic implications resulting in food shortages, high food prices, a loss of employment opportunities and instability such as food riots. While the direct contribution of agriculture to the GDP may be low, primary agriculture remains important to the economy: it provides markets for agricultural inputs; it provides agribusinesses with products for processing; it employs a significant portion of the labour force; it earns foreign exchange; and it ensures that in most years South Africa is a net exporter of agricultural products. It is also a major driver of the rural economy.

The National Development Plan, Vision for 2030, which was released by the National Planning Commission on 11 November 2011 contains in chapter 6 thereof a vision for an inclusive rural economy. The Plan requires effective land reform and proposes the creation of a million jobs through agricultural development. It talks of sensible and sustainable land reform. The report *inter alia* states that: “Investment by farmers will only occur if they believe that their income streams from agriculture are secure. Tenure security is vital to secure incomes for existing farmers at all scales, for new entrants into agriculture and for the investment required to grow incomes.” It is recommended that commercial agriculture be expanded as this has the potential to create a large number of jobs. Very importantly the Planning Commission recommends that there should be a more rapid transfer of land to black beneficiaries **“without distorting land markets or business confidence in the agribusiness sector.” Offer white commercial farmers and industry bodies the opportunity to significantly contribute to the success of black farmers through mentorships, chain integration, preferential procurement and meaningful skills transfer**”. Agri SA fully supports these sentiments.

Against this background, it is important to broaden and normalise the participation of all racial groups in agriculture for which progress with land reform is a prerequisite.

Many countries have implemented land reform measures during the past century and various problems as well as preferred approaches towards land reform have become evident in this regard. Important lessons can be learned from the history of land reform in South Africa and other countries.

The question is not whether we should have a land reform programme, but how land reform should be implemented, avoiding damaging consequences to the sector and the economy at large. The Green Paper on Land Reform suggests a fundamentally different approach to land reform than was followed up to now, of which the merits but also the possible negative implications should be acknowledged and considered.

From the onset, Agri SA wishes to reconfirm its commitment to participate in the land policy review process as it is in the interest of sustainable agricultural practises and that of its membership to sustain rural stability and to promote development.

The Green Paper is unfortunately silent on the land reform failures of the past 17 years as well as the reasons therefore. Market failure is often put forward as the *raison d'être* for government involvement with land reform. It would seem, however, as if a great degree of implementation failure lead to the dismal performance of especially the land restitution programme. Fact of the matter is that no proper statistics and analyses exist to measure whether policy as such or implementation has failed.

It has become clear that corruption has been rife and played a significant role in excessive prices having been paid for some farms. Many examples exist of poor management of administrative processes, poor communication, poor planning, valuations done incorrectly, no or inadequate post settlement support, lack of commitment, inadequate skills and unsatisfactory work-ethic on the part of government officials, flawed processes and a lack of monitoring of projects.

Agri SA submits that the correct identification and analyses of the reasons leading to dissatisfaction with land reform should pre-empt the adoption of corrective policies, statutory inventions and programmes. Careful scrutiny on the basis of factual information is required to determine:

- The real causes for land reform failures.
- Whether the new structures proposed in the Green Paper are required to eliminate persistent problems experienced with policy implementation.

- Whether policy changes pertaining to land reform are required, e.g. placing a ceiling on land ownership.

With a view to adding content to this approach, the following guidelines have been formulated by Agri SA during numerous policy sessions:

- Agri SA is committed to orderly, well planned and economically sustainable land and agrarian reform.
- Certainty, investor confidence and sustainability should be strived for.
- Agri SA will adopt a positive, solution oriented approach seeking solutions within the confines of the rule of law and the Constitution of the Republic of South Africa.
- Private property rights must be respected and, with the retention of market principles, should be the preferred approach for access to land. It cannot be expected from individual land owners to incur losses for the purposes of realising national imperatives.
- Agri SA is convinced that the current impasse and related consequences cannot be blamed on the failure of the “willing buyer, willing seller” approach, or on a lack of co-operation and support from stakeholders, or on greed of landowners, but is rather a consequence of poor implementation of programmes and legislation.
- Land ceilings, a right of first refusal in favour of the state and similar interventions encompassing private land ownership will not expedite land reform but will hamper production, financing and growth in the agricultural sector.
- Corruption should be rooted out.
- Finalisation of the restitution programme must be prioritised so that uncertainties around the issue can be eliminated and in so-doing pave the way for faster progress with the redistribution programme.
- The recapitalisation and restoration of dilapidated farms should enjoy higher priority than PLAS land acquisitions.
- Aspects such as better selection of beneficiaries, adequate and well-coordinated post-settlement support and partnership relationships with experienced commercial farmers must serve as elements of programmes with a view to achieving a higher success rate.

- Partnerships between the State and role players in the industry must be an important element of implementation management.
- Good information systems must be developed and applied to promote best practice approaches and to evaluate general progress.
- A proper land audit needs to be done as a matter of urgency.
- Agri SA has taken part and will continue to participate in all national forums and platforms created to enhance co-operation and co-ordination between stakeholders.
- Ultimately clear targets and time lines for land reform should be set. A vital and hugely competitive sector such as agriculture cannot function with continuous uncertainty with respect to the future dispensation of property rights. Normality should be achieved within a reasonable time frame.

These views will again be referred to in appropriate subsequent items of Agri SA's commentary on the Green Paper. The commentary that follows refers to the relevant items in the Green Paper.

## **1. INTRODUCTION OF THE GREEN PAPER**

Agri SA noted that the introduction to the Green Paper on Land Reform sets a specific framework within which the content of the Green Paper is to be viewed. At a meeting of the National Reference Group on the Green Paper, held in Pretoria on 8 September 2011, Dr Moshe Swartz, DDG: Social Technical Rural Livelihoods and Institutional Facilitation (STRIF) explained at length the significance of the introduction. He stated that it described the philosophy behind the Green Paper and that the rest of the Green Paper could only be understood in the light of the philosophical approach set out in the introduction.

Agri SA does not deem it necessary to enter into a debate as to the correctness of the history as set out in the introduction to the Green Paper, save to state that we take issue with the particular exposition of history. A one-sided and controversial perspective should not be used as a point of departure for an important policy document of this nature. These kind of one-sided arguments bring division rather than unity. The history of this country is a complex one, with people of all races having displaced other groups over time. The Nguni people, for example, moved south and displaced many other groups. If the introduction to the Green Paper, as Dr Swartz pointed out, is somehow aimed at motivating the extent and not the principle of land reform, it is important that the historical facts should be correctly set out. Abundant research and

anthropological evidence as to migration patterns in this country are available, if required, to inform the process.

Our approach is to be constructive, but realistic. We recognise the history of land policies and agree with the laudable aims of social cohesion, a dignified existence for all and development of our rural areas. The Green Paper's introduction, however, solely emphasises the need to redress the legacy of land and cultural dispossession as experienced under both colonialism and apartheid in South Africa, without recognition to the complexities of a modern era commercial sector, functioning in a highly competitive market economy.

In dealing with our history, we need to look into the future and tailor solutions that will stand the test of time, recognising and discounting a wide spectrum of realities. These include a growing population (nationally and internationally), a growing demand for food, water scarcity, global competition, market instability, climate change and the need for investor confidence.

The importance of national food security cannot be overemphasised. The reference to production discipline in the Green Paper is no guarantee for national food security. The value of highly efficient and competitive large scale producers - whose contribution to national food security and development cannot be underestimated - should have been noted. The notion of "freehold with limited extent" is probably aimed at this relatively small group of farmers responsible for more than 80% of agricultural production. Careful consideration of the consequences of subdivision of land on food production, employment, etc, is therefore required, especially if it will negatively impact on the viability of existing going concerns.

Whatever approach is decided upon, great care should be taken not to harm investor confidence or endanger food security. These observations should be viewed against the background that investment in agriculture is necessary for growth, whether this investment originates from within the sector or from outside the sector, or whether from domestic or foreign sources. Furthermore, it is unlikely that foreign investment, or domestic investment from outside of agriculture, will take place unless people within the sector are investing - this is a normal pattern – based on the argument that people within the sector have better information. Policy certainty is required for investment. In this regard, Agri SA is of the opinion that land reform should at some point be re-evaluated and when a pre-agreed "new normal" has been attained land reform should be phased out.

A recent report by Harvard economists emphasised the importance of agriculture to a growth strategy for the economy as a whole because of the potential of the sector to engender job-creating growth. While it is sometimes difficult to imagine that employment in the agricultural sector can be turned around (after losses of more than a third of employment opportunities over the past 20 years), one only has to look at the growth performance of our main agricultural sector rivals globally (e.g. Chile and Argentina in fruit; Australia and New Zealand in wine; Argentina and Brazil in beef and field crops; the Asian countries in poultry and dairy products) to fully understand the negative effects of an uncertain investment environment.

Growth in agriculture is, by definition, centred on growth in the rural areas where most of South Africa's poverty is to be found. Growth in primary agricultural production can stimulate off-farm economic activity in the agribusiness sectors that provide inputs and beneficiate primary products. This obviously could lead to employment creation. Given the global food price volatility, climate change and the volatility of our currency, it would be irresponsible to allow the national food security situation to deteriorate. From the point of view of national interest, and especially for purposes of employment creation, it is necessary to even exploit marginal opportunities in agriculture to the fullest possible extent.

To achieve such growth, farmers and investors are looking for policy signals and responses from government which will foster confidence, lower the cost of production, provide access to markets and ultimately reward entrepreneurship. Adherence to free market principles, protection of private property rights, market-related compensation, sustainability and the rule of law will underpin favourable policy signals. Unfortunately, the introduction to the Green Paper is silent on these matters. We are of the view that an introduction which gives recognition to these principles and also to the well researched reasons for failure with land reform should be an appropriate point of departure. The introduction should also caution against possible unintended negative consequences of policies and implementation practices.

## **2. PROBLEM STATEMENT**

### **Dimensions of demand for land**

Whilst the redress of dispossession is an important aspect of the demand for land, it should not be viewed as the predominant demand. The demand for land, particularly agricultural land, has only been partially researched and quantified. Recent studies indicate that there is reason to caution against popular assumptions on the nature and extent of such demands. Experience with land reform has shown that access to land does not mean instant wealth. Access to land without identifying entrepreneurial skills,

training, credit and access to markets has in most instances led to failure and frustration, poverty and even bankruptcy. There is a demand for land for various other applications: for infrastructure, conservation, recreation, housing needs and for industrial purposes. Mining activities also take up a lot of land and should be factored into the quantification of the demand for land. In practice the mining rights also tend to trump the agricultural use of land, which is very problematic from a food security point of view. The real need for farming land for commercial farming purposes by able aspirant black farmers needs to be established.

### **Accumulation by dispossession**

Item 2.2 of the Green Paper's Problem Statement refers to "*accumulation by dispossession*". Agri SA does not challenge this statement, however, a different dimension should be added. Traditionally property rights represent a very strong and comprehensive right. Property includes movable, immovable and immaterial goods. Property rights constitute a package of rights which includes the right to use, enjoy and alienate property. In modern societies, including South Africa, there is a tendency to limit property rights because an individual's rights to property must often be weighed up against a competing interest of the community. Many of these limitations are regarded as planning measures rather than expropriation and no compensation is payable in such cases.

It is, therefore, important to distinguish between limitations on property rights, which amount to expropriation for which compensation is payable in terms of the Constitution, and limitations that merely entail planning measures or "deprivation" without compensation being payable. It is not always easy to make this distinction. When someone is deprived of his rights without receiving compensation, it amounts to expropriation without compensation, especially where the state subsequently allocates such rights to third parties.

It remains, therefore, a challenge for policy makers to respect and uphold property rights as far as possible, and when public purposes or interest requires interventions which may materially limit or infringe upon such property rights, to fairly and adequately compensate such an owner in terms of provisions of the Constitution and relevant legislation.

### **Shared ideals**

It is likely that commercial farmers of South Africa and Government share the following three ideals:

- We all should strive towards an improved standard of living for all our peoples; i.e. poverty must be eradicated. It behoves us, therefore, to adept and adopt policies that would lead to us reaching this overarching national goal. Poverty (or wealth) is simply measured as the quantity of goods and services consumed per person. The better people live, the better they eat, dress and educate their children, the higher their standard of living. It is important to realise, however, that there is a non-negotiable law in economics: in the long run you cannot consume more per person in a country unless you have produced more per person. The debate we have about each and every point in the Green Paper thus demands that we honestly address the question: will this proposal lead to more or less production per person? If the answer is “less”, we must debate how it should be changed to be in line with our overall objective.
  
- Long-term food security should be a priority. The population should have access to a variety of good quality food at reasonable prices.
  
- Policies on land reform should comply with South Africa’s Constitution. If any policy proposal is in conflict with the Constitution it should be modified to bring it in line.

### **Eliminate implementations flaws**

A key focus of the Green Paper should be on how to get implementation right. Unless capacity problems, poor administration, lack of monitoring and corruption can be satisfactorily addressed, new policies and programmes are also likely to fail.

In our view, the above should form part of the problem statement.

### **3. VISION FOR LAND REFORM**

A four-tiered system of land tenure is envisaged by the Green Paper. The vision is, amongst others, to provide "*reasonable access to land with secure rights in order to fulfil basic needs for housing and productive livelihoods*". This is a real challenge considering the structural unemployment of our growing population. A question begging an answer is whether commercial agricultural production is to be enhanced to supply food to city dwellers already comprising more than 60 percent of the population; or should political imperatives that could lead to an uncertain outcome in terms of food production be considered?

Statement 3.4 refers to "*optimal land utilisation in all areas and sectors*". We agree that effective land use planning is essential, also with a view to the urban-rural land trade-off. Cognisance should be taken of two different approaches towards land use, namely

a “planning and regulatory” system *versus* an “entrepreneurial, market driven” system. Statutory arrangements give effect to the implementation of relevant policy choices.

The Draft Spatial Development and Land Use Bill proposes that the functions of land use planning and administration be mainly delegated to structures at municipal level, where very little capacity and know-how exist to ensure effective administration. There should, therefore, be concerns about the quality of planning and regulatory services which can be rendered at this level.

Land reform should lead to a dispensation which will attract entrepreneurial skills to agriculture, provide quality and sustainable career opportunities, enhance food production and contribute towards food security and rural development. To achieve this vision, the following prerequisites must be met:

- A land reform policy based on facts and proper research, including a complete, up to date audit of land ownership and use.
- Effective implementation mechanisms.
- Adequate budgets.
- Capable, skilled and committed government officials who execute the policy and programmes.
- A functional public-private partnership for delivery and sustainability.
- The optimal use of the market-mechanism for redistribution.
- Careful selection and ongoing training and mentoring of beneficiaries and mentors.

#### **4. PRINCIPLES UNDERLYING LAND REFORM**

Agri SA agrees broadly with the three stated principles of deracialisation of the rural economy, democratic and equitable land allocation and sustained production discipline. However these terms need to be unpacked in order to be fully understood.

#### **5. CURRENT CHALLENGES AND WEAKNESSES: RATIONALE FOR CHANGE**

Market principles should not be viewed as impediments to land reform. Agri SA believes that the market mechanism and incentives should be used optimally and that the state's direct involvement in the land market should be confined to a minimum.

Land reform is a national priority that should be funded by the fiscus. Landowners, whose land is subjected to land reform, must be placed in a position to continue farming elsewhere in a similar manner, should they wish to do so. The Constitution requires fair and equitable compensation to be paid and states that market value is but one of the factors that can be taken into account when determining compensation. It is very difficult, however, to place a fair value on the other factors mentioned in section 25(3) of the Constitution. Market value should therefore be the predominant factor dictating the price that is offered.

There is no empirical evidence to support the contention that the willing-buyer-willing-seller model in itself has led to exorbitant prices being paid by the state for land. It needs to be pointed out that government was not and is not obliged to buy farms at high prices. In redistribution, government had the option to simply refuse to buy farms offered at above market-value and in restitution it had the option of requesting the Land Claims Court to resolve disputes on compensation. Also, it needs to be recognised that the state has indicated a preference for expensive land close to cities and major routes and highly productive land. Moreover corruption, collusion and poor valuation practices in all likelihood also contributed to the state in some cases paying too much for land.

We do agree that selection of beneficiaries is critical, that rural unemployment needs to be addressed and that the restitution model needs a rethink.

It is critical that outstanding land claims be dealt with speedily and land already transferred be brought back into production.

## **6. AN IMPROVED TRAJECTORY FOR LAND REFORM**

### **6.1 Agri SA is in agreement with the proposals with respect to:**

- Improved performance with land reform which will not disrupt agricultural production and food security; and
- Avoiding or minimising of land redistribution and restitution which do not generate sustainable livelihoods, employment and incomes.

### **6.2 Programmes and institutions**

A number of new institutions are proposed to deal with real and perceived problems which are experienced with land reform. The improved trajectory for land reform, as envisaged in the Green Paper, is relying on the functions and efficiency of these institutions. Present frustrations with land reform largely emanates from implementation inefficiencies. The same could be experienced with new institutions

unless fundamental shortcomings with implementation can be addressed. It is our view that this can only be done through meaningful partnerships with the private sector. We reiterate that careful consideration should be given on whether the structures proposed in the Green Paper will eliminate persistent problems experienced with policy implementation, including their staffing and budgetary requirements.

### **6.3 Recapitalisation and Development Programme**

Agri SA is in agreement with a recapitalisation and development programme as proposed in the Green Paper, subject to the details thereof. As was earlier mentioned in this document, Agri SA supports the recapitalisation and restoration of dilapidated farms. This should enjoy higher priority than PLAS.

### **6.4 Four-Tier Tenure System**

#### **a) State land: Leasehold**

Regarding the proposed four-tiered system of land tenure, it appears that the Green Paper is biased against the concept of private ownership, favouring an increased holding of land by the state. Although Agri SA acknowledges the difficulties experienced by the state to re-allocate transferred land which has become unproductive, the holding of agricultural land by the state should rather be a transitional arrangement and not become a permanent feature of land management. The research done by the Hernando de Soto Foundation shows a direct correlation between the strong protection of property rights and Gross Domestic Product (GDP) per capita. The inverse is also true. There are strong arguments to be made against state ownership of agricultural land. The state is not geared to farm efficiently and there is little incentive to improve and conserve state land leading to long term unsustainability.

Agri SA is not opposed to the state holding onto land on behalf of beneficiaries for a limited time with a view to overseeing the productive use of the land in question, but this period should not exceed say, three to five years. If beneficiaries are carefully selected, trained and supported, they should be able to keep production going and eventually qualify for owning such farms.

International experience points to the fact that the agricultural resource is best cared for under a system of private ownership. State land which is leased out is often over-utilised and little investment into the land takes place. This will place a

heavy burden on the state to protect the resource against exploitation and degradation.

With regards to state owned land, Agri SA therefore holds the following views:

- It should not be the objective of the state to increase its holding of land. If a beneficiary has proven his/her ability to use land productively, a programme should provide for the transfer of ownership of such land to that individual.
- Selection criteria should be applied to identify beneficiaries of land reform.
- The leasing of state owned land to beneficiaries should be linked to mentorship and performance agreements.
- To allow beneficiaries to be successful, state owned land should be leased at between 1.5% and 2% of the market value thereof.

#### **b) Privately owned land: Freehold, with limited extent**

The Green Paper seems to propose land quantity restrictions or land ceilings. No detail as to how this will be done is given in the document. The international experience with land ceilings has generally been quite negative. Maitreesh Ghatak and Sanchari Roy in an article entitled "*Land reform and agricultural productivity in India: a review of evidence*" in the *Oxford Review of Economic Policy* (2007), comes to the following conclusion regarding land ceilings:

*"Our empirical analysis reveals that overall land reform legislation seems to have had a negative and significant effect on agricultural productivity in India. However, this hides considerable variation across types of land reform, as well as variation across states. Decomposing by type of land reform, the main driver for this negative effect seems to be land ceiling legislation, which in turn might be capturing the effect of fragmentation of land holdings."*

Given the fact that less than 20% of farmers in South Africa produce more than 80% of the country's food, restrictions on the quantity of land held by any individual or legal person, in especially this group, is likely to have a major negative impact on food security and export revenue. This issue should be carefully researched and the possible unintended consequences weighed. Land ceilings are likely to also be a very difficult system to implement and enforce. Macroeconomic factors, farming systems and individual ability and needs should

be allowed to dictate farm size. The artificial regulation thereof will, from an economic perspective, be sub-optimal and therefore counterproductive.

Stats SA's agricultural surveys indicate that farm sizes are increasing and the number of commercial producers is decreasing. This is a global trend caused by economic realities, but could also be policy induced. It will require a different economic paradigm with huge cost to the fiscus to reverse or even slow down this trend. The complexities to achieve such an outcome should be properly assessed when considering related policy options.

**c) Land owned by Foreigners: Freehold, but Precarious Tenure, with obligations and conditions to comply with.**

Foreigners apparently have a fairly insignificant influence on the South African farmland market. Being an open economy, South Africa should be circumspect with the imposing of selective limitations on foreign investors in our agricultural industry.

Productive investments which could enhance food production, food security and contribute to job creation and rural development should not be unduly disincentivised by regulatory reform.

**d) Communally owned land: Communal Tenure, with institutionalised use rights.**

With regards to communally owned land, Agri SA holds the following views:

- The potential and imperative to increase the productive use of communally owned land should be recognised.
- The entrepreneurial skills of people living in communal areas should be developed for purposes of food production and rural development.
- Improved tenure security should be a point of departure for the commercialisation of farming in communal areas.
- The long-term objective should be to make it possible for farmers to attain private property rights in the present communally owned areas.

The National Development Plan, Vision 2030 has the following to say regarding communal land: *“South Africa needs to convert some under-used land in*

*communal areas and land reform projects into commercial production... Better land use in communal areas has the potential to improve the livelihoods of at least 370 000 people". Agri SA supports this recommendation.*

## **6.5 Land Management Commission (LMC)**

In principle Agri SA does not have an objection against a commission to be made responsible for compiling and managing a database for land. We have, however, concerns about the extensive powers to be allocated to the proposed LMC. We assume that this institution will, amongst other things, enforce land ceilings if it were to become a policy imperative. Agri SA is not in favour of judicial powers being granted to an administrative body. Only a court can and should have the mandate to subpoena persons, grant amnesty or initiate prosecution or invalidate title deeds. There are other questions to be raised about the powers of the LMC, for example: What will it grant amnesty for? On what basis will it be able to prosecute people? We are also strongly against such a body having the power to confiscate any land for whatever reason.

Regarding the composition of the Land Management Commission Agri SA should be allowed to nominate its own representatives on the Commission, rather than the Minister nominating all representatives.

With respect to a database for land, Agri SA is of the view that there is currently inadequate research and information to support policy development and monitoring of progress made with the implementation thereof, including a database on land ownership which, after efforts of several years is still not in place. Good information systems should be developed and applied, inter alia to promote best practice approaches and to evaluate general progress. Such a database should be updated continuously.

The Land Management Commission may be positioned well to manage public-private partnerships for support services and implementing selection criteria for beneficiaries. The LMC should also manage lease agreements on state land.

The National Development Plan: Vision for 2030, in the chapter dealing with rural development, supports the concept of local committees with functions broader than those envisaged by the Green Paper. In terms of its proposals these committees will identify 20% of farmland and give commercial farmers the option of assisting in its transfer to black farmers.

## **6.6 The Land Valuer-General (LVG)**

Agri SA supports the idea of a specialist valuation office which can advise government on property (not only land) values and valuations. However, Agri SA feels strongly that there should always be recourse to the courts when disputes about valuations arise. The Office of the Valuer-General should not have the mandate to determine compensation upon expropriation, to the exclusion of a court of law.

Supplementary to this, Agri SA has the following views with respect to the Valuer General (VG):

- Such an institution should be a valuer-general for all properties, e.g. also for residential properties, and not exclusively for farmland.
- The VG should have no responsibility to interpret section 25(3) of the Constitution.
- The future relationship between the VG and existing institutions such as the Board as well as Institute for Valuers should be clarified.
- The VG should be independent from the Department of Rural Development and Land Reform.
- Appeal procedures should be available against findings or rulings of the VG.
- The VG should not be used to manipulate the price of land.
- Comparable market transactions should remain the basis for valuations.
- The VG should not make final decisions on compensation in cases of expropriation. A property owner should have recourse to a court of law when dissatisfied about an offer for compensation.
- Organised agriculture should have access to and a say in processes of the VG.

## **6.7 Land Rights Management Board (LRMB)**

Agri SA supports in principle the concept of a body such as the Land Rights Management Board and Land Rights Management Committees. However, this need not necessarily be a statutory body. It is critical that all stakeholders (to be

defined) be represented on the Board and committees and that it operates according to an agreed and clear terms of reference.

It seems that the Board is intended to be a formalisation of the Land Rights Management Facility. However, the proposed composition of the Board seems to be different and broader than the composition of the Facility. The proposed functions are also broader than those currently exercised by the Facility. Clarity is needed as to the exact relationship between the Board and the committees and also the powers to be exercised by both the Board and committees. The question also needs to be posed as to whether a separate institution is in fact required. The functions allocated to the LRMB can probably be exercised by the Department of Rural Development and Land Reform in co-operation with other relevant stakeholders such as organised agriculture. The cost of establishing and staffing such a new institution is likely to be huge.

Agri SA does not oppose the concept of agri-villages in principle. Agri SA does, however, believe that agri-villages in commercial farming areas should only cater for farm workers, ex-farm workers and their families. It should not become rural settlements where people with no connection to farming, are settled.

Agri-villages, however, are definitely not the sole solution to the tenure security problem of rural dwellers. There are many practical difficulties that will have to be overcome to establish viable agri-villages. The most important of these relate to infrastructure needs and services, which are expensive to provide in outlying areas. There is a danger that agri-villages may become poverty traps where there is little access to services and job opportunities. Past experience with agri-villages has unfortunately been quite negative. Proper planning will be critical to ensure that viable settlements are created.

Supplementary to this, Agri SA has the following views with respect to the LRMB:

- The Green Paper should comprehensively deal with the tenure security and related rights of rural dwellers and not only have a narrower focus on institutional arrangements, such as of the LRMB and its committees.
- Because of the current lengthy and costly court processes required to resolve tenure disputes, a more cost and time effective mechanism should be developed.
- Due to capacity and cost constraints, provincial forums (representative of role-players) should be considered, rather than local forums.

- The LRMB should also act against illegal occupiers of land.
- In cases of dispute, the state should not only provide legal aid to occupiers of land but also to land owners.
- There should be policy coherence between the Department of Human Settlements' policy and programmes with respect to agri-villages and that of the land reform policy.

## **6.8 Land Tenure Security Bill, 2010 and the Restitution of Land Rights Act**

Agri SA has serious concerns regarding some of the provisions of the draft Land Tenure Security Bill. Furthermore, we view it as irresponsible to create expectations amongst farm dwellers on the basis of a draft Bill, which is highly contentious. Agri SA therefore requested the Minister to delay the tabling of the Land Tenure Security Bill in Parliament until the Green Paper process has been concluded and there are clear policy guidelines on the tenure issue and hopefully also a greater measure of consensus on the way forward as far as farm dwellers are concerned. We also requested the Department of Rural Development and Land Reform to convey a clear message to all levels (national and provincial) that this Bill is only in draft form and that people cannot claim rights on the basis of the contents of the draft Bill.

With respect to land restitution, it is Agri SA's view that the finalisation of this programme must be prioritised so that uncertainties around the issue can be eliminated and so-doing pave the way for faster progress with the redistribution programme. Due to the frustration experienced with this programme as well as with the Labour Tenants Act, Agri SA proposes that a conference be held where government and affected role-players can discuss solutions such as aborting the restitution programme and giving claimants preference in the redistribution process.

## **6.9 Legislative amendments**

The Green Paper says very little about the need for legislative amendments to e.g. the Restitution of Land Rights act and the communal Property Associations Act.

However there is a working group dealing with these and possible other amendments. Agri SA has grave reservations regarding the possible re-opening of the claims process. Agri SA has identified some of the implementation failures of the restitution process. These include:

- Poor quality research.

- Slow processing and gazetting of claims.
- Poor communication by the Commission with both landowners and claimants.
- Valuations done by inexperienced valuers and poor monitoring of valuations.
- The lack of an effective system to monitor budgets and spending and junior officials entering into contracts to purchase farms.
- Lack of planning and post-settlement support.
- Corruption that has crept into the process.

In view of the past experience with restitution, and particularly the capacity, budgetary and corruption-related problems which led to the high number of failed projects, Agri SA is of the opinion that it would be unwise to re-open the claims process. Such a step will also create huge uncertainty, which holds serious consequences for further investment in farming and food security.

On possible amendments to the Communal Property Associations Act, Agri SA is of the opinion that the CPA is not a suitable entity for operating a farming business. Clear management structures, decision making procedures and conflict resolution mechanisms need to be put in place to manage these community farms.

## **7. THE STRATEGIC THRUST OF LAND REFORM**

The relevant content of the Green Paper is noted.

## **8. LAND REFORM EXPERIENCE ELSEWHERE**

Land reform has been attempted over many centuries and in many countries. If experience has proven anything, it is indicative of how complex and difficult it is to get land reform right. Hans Binswanger, Rogier van den Brink and Camille Bourguignon write in their book entitled: *Agricultural Land Redistribution*, that land distribution have troubled nations for ages and that it was at the heart of politics of Chinese dynasties and the and Roman Empire. More than 2000 years ago the Roman Empire already experimented with land reform.

Over time there have been attempts at land reform on every continent. India implemented land ceilings in all of its provinces. Generally this approach is regarded as not having been comprehensively successful. China progressed from a system of collective ownership to private ownership and farms tended to get bigger as time went by. Taiwan is generally cited as one of the few countries where land reform had been successful. Key to their success was a holistic approach and the involvement of organised agriculture. Salim Rashid, a professor at the University of Illinois studied the Taiwanese experience and writes: “*The effective*

*implementation of this comprehensive approach to agricultural development is perhaps the most distinctive feature of Taiwan's reform policy. Critical for this achievement were the farmers' organizations, cooperative associations operating with government assistance and direction, which also had their roots in the colonial period. The Farmers' Association in particular provided marketing, financial, insurance and extension services, thereby placing its members into regulated market environments."*

## **9. CHALLENGES AND CONSTRAINTS**

Agri SA welcomes the fact that the Green Paper recognises that the main constraint is poor capacity of organs of state to implement. However the Green Paper contains no proposals on how to rectify this. It in fact proposes more institutions without interrogating where the capacity to staff these and make them functional will come from. The reasons for past poor performance in terms of implementation need to be thoroughly interrogated in order to move forward in a meaningful way.

Agri SA also agrees that poor co-ordination and integration of effort and resources among public institutions and between public and private institutions has been part of the problem and is a challenge that will have to be addressed.

## **10. SUMMARY AND CONCLUSION**

Agri SA agrees that there is no quick or easy solution to the land question and that we need to learn from the experiences of other countries. Although the Green Paper acknowledges this, it still advocates the *"rapid and fundamental change in ownership patterns"*. Agri SA wishes to caution against rapid and radical changes in policy and proposes that the effect of all policy changes be tested against the three questions:

- Will it lead to higher standards of living?
- Will it lead to continued food security?
- Will it be in line with the Constitution?

The Green Paper as such also needs to adhere to the provisions of the Constitution.

Agri SA's overarching vision for land reform and rural development entails the following:

- A collective effort is required to address the global and regional African prerogative of maintaining food security in the light of the global challenge of

feeding 9 billion people by 2050 (agriculture's main objective globally). To achieve this, food security should have a central role within sustainable rural development at local, national and regional level; and

- Land reform should contribute towards poverty alleviation and job creation by establishing commercially successful black farmers.

Agri SA, its affiliates and commercial farmers can support this vision in the following ways:

- Enabling environment: Contribute towards an enabling environment for sustainable agriculture within the rural development context. Such a contribution will be based on scientific evidence and functional requirements.
- PPP's: Participate in public private partnerships, contributing from our own perspective/initiative at an early stage of project conceptualisation.
- Farmer development/mentorship programmes: By developing and applying selection criteria for new beneficiaries of State Land, using scientific methods and techniques to assist in placing the right people on the land and thus improve their success rate at farming. We will also avail our members as mentors. We also want to expand on the proven successes of our affiliated commodity associations' farmer development programmes. We can multiply the commodity approach exponentially with some additional help and the creation of the enabling environment to do so.
- Farm workers: Encourage and assist with setting up farm worker trusts and equity schemes. More opportunities for dedicated farm workers can be created.
- Access to markets: Contribute by expanding current markets and developing new markets in collaboration with other private sector role-players and Government though *inter alia* active participation in broad based black economic empowerment.
- Land transfer: By identifying land which is available for sale and offering it to government. We can also approach other partners, locally and globally, to contribute towards financing land reform and developing commercial black farmers. We believe that an incentivised market mechanism did and can continue to facilitate the transfer of agricultural land to previously disadvantaged individuals. There is no scientific evidence against this. Enough

land is coming onto the market annually for us to achieve our mutual objectives.

Land reform should form part and parcel of a comprehensive rural development strategy. There should be strong synergies between this Green Paper and the still awaited Green Paper on Rural Development.

Agri SA would appreciate having an opportunity to submit a more comprehensive proposal on a policy approach towards land reform, conforming as far as possible with the general accepted principles which should underpin land reform, i.e. deracialising the rural economy; democratic and equitable land allocation and use across race, gender and class; and a sustained production discipline for food security.

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