Transformasie
Transformation

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BELEIDSKOMITEE
POLICY COMMITTEE

Agri SA Annual Report 2013 | 2014

Home of the South African farmer • Ikhaya lomlimi waseNingizimu Afrika • Tuiste van die Suid-Afrikaanse boer • Lehae la balimi ba Afrika Borwa

Dr Theo de Jager is die voorsitter van die Transformasie Beleidskomitee. Livhu Ngwekhulu dien as bestuurder van die komitee, ondersteun deur Annelize Crosby, Theo Boshoff en Johan Pienaar.

Dié komitee was in die verslagjaar betrokke by die volgende aktiwiteite:

Groenskrif oor Grondhervorming

Die Minister van Landelike Ontwikkeling en Grondhervorming, Gugile Nkwinti, het in Oktober 2011 'n omvattende konsultasieproses rakende die Groenskrif oor Grondhervorming van stapel gestuur. Ses werkgroepe is tot stand gebring. Die werk van hierdie werkgroepe is tot 'n redelike mate gedurende die eerste helfte van 2013 afgehandel.

Die werkgroepe oor kommunale grond en verblyfreg op plase het egter nog enkele vergaderings gedurende die tweede helfte van 2013 gehou. Daar is 14 beleidsdokumente geformuleer voortspruitend uit die Groenskrif-proses, waarvan sommige nog in konsepvorm is. Daar is ook 'n aantal wetsontwerpe wat voortvloei uit die Groenskrif-proses, wat reeds die lig gesien het. Dit is die Wysigingswetsontwerp op die Herstel van Grondregte, die Wetsontwerp op Eiendomswaardering, die Wysigingswetsontwerp op die Uitbreiding van Sekerheid van Verblyfreg en die Wetsontwerp op die Grondkommissie.

Agri SA het skriftelike kommentaar gelewer op al dié wetsontwerpe en in die geval van die Wetsontwerp op Eiendomswaardering en die Wetsontwerp op die Herstel van Grondregte ook mondelinge voorleggings in die parlement gemaak. Agri SA was ook betrokke by die Nasionale Ekonomiese-, Ontwikkelings- en Arbeidsraad (NEDLAC) se bedingings oor die Wysigingswetsontwerp op die Herstel van Grondregte en die Wysigingswetsontwerp op die Uitbreiding van Sekerheid van Verblyfreg as deel van die besigheidsafvaardiging.

Mineraalreg-uitspraak

Agri SA se bestuur en regsverteenwoordigers het gesprekke met verskeie regslui gevoer oor die implikasies wat die uitspraak van die Konstitusionele Hof in die saak van Agri SA v Minister van Minerale oor ou orde-mineraalregte vir eiendomsreg in die breë inhou. Hierdie gesprekke is gedokumenteer en aan bestuurslede beskikbaar gestel. Verdere menings is ingewin na aanleiding van die bepalings van die Wetsontwerp op die Bevordering en Beskerming van Beleggings, wat poog om 'n eng definisie aan die onteiening van beleggings te gee. 'n Strategiese sessie oor dié en ander kwessies rakende grondhervorming is gedurende Junie 2014 gehou.

Onteieningswetsontwerp

Die Onteieningswetsontwerp is in Maart 2013 vir kommentaar gepubliseer. Agri SA het skriftelike kommentaar op die wetsontwerp gelewer. Agri SA is ook in onderhandelinge van die Nasionale Ekonomiese, Ontwikkelings- en Arbeidsraad (NEDLAC) verteenwoordig deur Annelize Crosby en Theo Boshoff, wat deel van

Dr Theo de Jager

Die Onteieningswetsontwerp is in Maart 2013 vir kommentaar gepubliseer. Agri SA het skriftelike kommentaar op die wetsontwerp gelewer.

Agri SA provided commentary on the Expropriation Bill, which was published in March 2013 for commentary.

Dr Theo de Jager is the chairman of the Transformation Policy Committee, while Livhu Ngwekhulu serves as manager of the committee. Annelize Crosby, Theo Boshoff and Johan Pienaar are supporting members.

This committee was involved in the following activities during the report year:

Green Paper on Land Reform

The Minister of Rural Development and Land Reform, Gugile Nkwinti, in October 2011 launched a comprehensive consultation process in relation to the Green Paper on Land Reform. Six working groups were appointed. The work of most of these working groups was completed during the first half of 2013.

The working groups dealing with communal land and security of tenure on farms, however, still held some meetings during the second half of 2013. Fourteen policy documents emanating from the Green Paper process were compiled, some of them still in draft form. A number of bills have already been drafted, namely the Restitution of Land Rights Amendment Bill, the Property Valuation Bill, the Extension of Security of Tenure Amendment Bill and the Land Commission Bill.

Agri SA submitted written commentary on all the legislation and in the case of the Property Valuation Bill and the Restitution of Land Rights Amendment Bill also made oral submissions in Parliament. Agri SA was also involved in the National Economic, Development and Labour Council (NEDLAC) negotiations on the Restitution of Land Rights Amendment Bill and the Extension of Security of Tenure Amendment Bill as part of the business delegation.

Mineral rights ruling

Agri SA's executive and legal representatives have met with various legal practitioners to discuss the implications of the Constitutional Court ruling in the case Agri SA vs. Minister of Minerals regarding 'old order' mineral rights, for property rights in general. These discussions were documented and made available to the Agri SA Executive Committee. Further opinions were sought in light of the provisions of the Promotion and Protection of Investments Bill, which aims to provide a narrow definition for expropriation of investments. A strategic session to deal with this and other issues relating to land reform was held in June 2014.

Expropriation Bill

Agri SA provided commentary on the Expropriation Bill, which was published in March 2013 for commentary. Agri SA was also represented in the NEDLAC negotiations by Annelize Crosby and Theo Boshoff, who formed part of the Business negotiating team.

The bill was improved considerably during the NEDLAC process. It grants no new expropriation powers, but standardises the process that have to be followed for all expropriations in line with the constitutional criteria for, among others,

Besigheid se onderhandelingspan gevorm het.

Die wetsontwerp is heelwat in die NEDLAC-proses verbeter. Dit verleen geen nuwe onteieningsbevoegdhede nie, maar standaardiseer die proses wat vir alle onteienings gevolg moet word in ooreenstemming met die grondwetlike vereistes vir onder meer administratiewe geregtigheid en regverdige en billike vergoeding. Agri SA skakel tans met die Bankvereniging van Suid-Afrika om gesamentlik die ekonomiese risiko's uit te wys van 'n afwyking van markwaardekompensasie in voorleggings wat in die parlement voorgelê sal word.

Restitusie

Die Wysigingswetsontwerp op die Herstel van Grondregte is op 23 Mei 2013 gepubliseer. In terme hiervan het die Regering die heropening van die restitusie-eiseproses vir 'n tydperk van vyf jaar in die vooruitsig gestel. Agri SA het die heropening teengestaan, hoofsaaklik omdat die geweldige probleme wat met die huidige proses ondervind is, lank nie opgelos is nie en omdat die onsekerheid wat geskep gaan word deur 'n verdere termyn van eise nadelig op die sektor kan inwerk.

Agri SA het 'n regsmening by 'n senior advokaat ingewin, wat aangetoon het dat die heropening nie ongrondwetlik is nie. Daar bestaan dus nie regsgronde om die heropening te verhinder nie. Nogtans het Agri SA ekonomiese, produksie en praktiese argumente op die tafel geplaas waarom heropening nie behoort plaas te vind nie. Agri SA het die standpunt ingeneem dat daar eerder na ander geteikende maatreëls gekyk moet word om groepe soos die Khoisan-afstammelinge en die slagoffers van verbeteringskemas ("betterment schemes") te help.

Agri SA het as deel van besigheid se onderhandelingspan deelgeneem aan die NEDLAC-proses met betrekking tot die wetgewing en het ook 'n voorlegging aan die Parlement gedoen oor die organisasie se standpunte oor heropening. Ten spyte hiervan het die Nasionale Vergadering ten gunste van heropening gestem.

Die Departement van Landelike Ontwikkeling en Grondhervorming het ook 'n konsepbeleid vrygestel waarin die heropening en die prosesse wat gevolg sal word, uiteengesit is. Agri SA het ook hierop omvattend kommentaar gelewer. Agri SA se standpunte hieroor sluit in dat, indien daar wel 'n nuwe rondte van eise gaan wees, die bestaande eise geprioritiseer moet word. Verder behoort navorsing oor eise uitgekontrakteer te word na die privaatsektor. Grondeienaars wat eise teenstaan, behoort ook vir regshulp te kwalifiseer en daar moet streng tydperke gestel word waarbinne elke fase van 'n eis afgehandel moet word.

Herverdeling van grond

Agri SA het Dr Stuart Ferrer aangestel om 'n ondersoek te doen na moontlike alternatiewe modelle van grondhervorming. Dr Ferrer het 'n verslag voltooi wat deur die Transformasie Beleidskomitee bespreek is.

Dr Theo de Jager neem ook namens Agri SA deel aan 'n taakspan van die Nasionale Beplan-

administrative justice and just and equitable compensation. Agri SA is currently liaising with the Banking Association of South Africa in an effort to jointly identify the economic risks of deviating from market value compensation in their respective submissions to be made in Parliament.

Restitution

The Restitution of Land Rights Amendment Bill, which was published on 23 May 2013, envisaged reopening of the restitution claims process for a period of five years. Agri SA opposed this, largely because of the many unsolved problems experienced with the current process and because of the uncertainty that will be created by a further term of claims, which in turn could have a negative impact on the sector.

Agri SA sought a legal opinion from a senior advocate, who indicated that the reopening of the process was not unconstitutional. This means there are no legal grounds to oppose it. Agri SA nevertheless tabled economic, production and practical arguments as to why the process should not be reopened. Agri SA adopted the view that other targeted measures should instead be considered, for example helping groups such as the Khoisan descendants and victims of betterment schemes.

As part of the business negotiating team, Agri SA participated in the NEDLAC process relating to the legislation and also made a submission in parliament on the organisation's position on reopening of the process. Despite this, the National Assembly voted in favour of reopening.

The Department of Rural Development and Land Reform also released a draft policy setting out the process that will be followed. Agri SA commented extensively on this policy. Its view in this regard is that if there is to be a new round of claims, the existing claims should be prioritised. Research on claims should be contracted out to the private sector. Land owners who oppose claims should also qualify for legal aid and there should be clear time constraints within which each phase of a claim should be finalised.

Redistribution of land

Agri SA appointed Dr Stuart Ferrer to look into possible alternative models of land reform. Dr Ferrer produced an appropriate report, which was discussed by the Transformation Policy Committee.

Dr Theo de Jager represented Agri SA in a task team of the National Planning Commission, which is implementing a pilot project in Mpumalanga aimed at testing certain alternative land reform models.

The project had to cover the basic principles contained in the land reform model development plan; i.e. driven by inclusive district committees, beneficiary selection by agreed criteria, market value prevail while government pays only 50% and local farmers pay the other 50%, or buy shares in those farms to a maximum of 50%. Twenty percent of farms in each district have to be targeted in this scheme over time, and participating farmers could poosibly be released from BEE requirements and all further land reform obligations.

ningskommissie, wat 'n loodsprojek in Mpumalanga bestuur wat daarop gemik is om sekere alternatiewe grondhervormingsmodelle en meer spesifiek die model soos vervat in die Nasionale Ontwikkelingsplan, te toets.

Die projek moes die basiese beginsels, soos uiteengesit in die grondhervormingsmodel, dek. Dit word dus gerig deur inklusiewe distrikskomitees; begunstigde seleksie volgens ooreengekome kriteria; markwaarde sal steeds geld terwyl die regering slegs 50% betaal en plaaslike boere die ander 50% betaal, of hulle kan aandele koop in daardie plase koop tot 'n maksimum van 50%. Twintig persent van plase in elke distrik moet geteiken word vir hierdie skema oor tyd. In terme van die plan kan deelnemende boere moontlik van SEB-vereistes en alle verdere grondhervormingsverpligtinge vrygestel word.

Die Land Bank het 'n finansieringsmodel voorgestel waarvolgens deelnemende boere die vereiste 50% sal leen en oor 'n tydperk van 40 jaar terugbetaal teen 'n rentekoers van tussen 2% en 3%. Agri SA het met die Land Bank gepraat oor die moontlikheid daarvan om sodanige lenings aan deelnemende boere toe te staan vir die voltooiing van ontwikkelings op hul eie plase, terwyl hulle terselfdertyd permanente werkgeleenthede skep.

'n Uitvoer-sitrusplaas is deur die tegniese komitee as loodsprojek geselekteer en 'n individuele onderneming het die belegging gemaak. Seleksiekriteria vir begunstigdes is ontwikkel, tesame met 'n waardasie-protokol en 'n voorstel oor die samestelling en funksionering van die distrikskomitees. Die projek is binne die beplande tyd voltooi.

Uitstaande kwessies en ooreenkomste wat uit die loodsprojek spruit, is soos volg:

- Besonderhede oor formules vir Land Bank-finansiering;
- Besonderhede oor vrystelling van SEB-vereistes;
- Die impak van heropening van die grondeise-proses en onafgehandelde eise op die skema; en
- Die aard en funksionering van 'n konflikresolusie-meganisme vir distrikskomitees.

Besitreghervorming

Minister Nkwinti het op 2 Augustus 2013 'n nuwe konsepbeleid bekend gestel oor die versterking van die relatiewe regte van plaaswerkers. Die kontroversiële beleid stel voor dat 50% aandele in elke plaas aan plaaswerkers oorgedra moet word, proporsioneel tot die jare diens van die betrokke plaaswerkers.

Agri SA het die voorstelle ten sterkste teengestaan en het skriftelike insette gelewer wat motiveer waarom die voorstel onwerkbaar en ongrondwetlik is. Twee nasionale konsultasies is oor die konsepbeleid gehou. By die laaste konsultasie in Maart 2014 het minister Nkwinti aangedui dat 'n verdere 12 maande vir konsultasie oor die beleidsvoorstelle toegelaat sal word.

Annelize Crosby en Theo Boshoff was ook deel van Besigheid se onderhandelingspan

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Land Bank proposed a financing model by which participating farmers would borrow the required 50% over a period of 40 years at an interest rate of between 2% and 3%. Agri SA engaged Land Bank on the possibility of extending that loan to participating farmers for catching up on development on their own farms, while at the same time creating permanent jobs.

An export citrus farm was selected by the technical committee as pilot project, and an individual enterprise made the investment. Selection criteria for beneficiaries have been developed, together with a valuation protocol, and a proposal on the composition and functioning of the district committees. The project was completed well within the limited time span.

Outstanding issues and agreements emanating from the pilot project are:

- Detail on the financing formulas with Land Bank;
- Details on the exemption from BEE requirements;
- The impact of the reopening of land claims and even outstanding claims from the first round on the scheme; and
- The nature and functioning of a conflict resolution mechanism for district committees.

Tenure reform

Minister Nkwinti on 2 August 2013 published a new draft policy on strengthening of the relative rights of farm workers. This controversial policy proposes that a 50% share in each farm should be transferred to farm workers proportionate to their years of service.

Agri SA strongly opposed these proposals and provided written input motivating why the proposal was impractical and unconstitutional. During the last consultation meeting in March 2014, Minister Nkwinti indicated that a further 12 months would be allowed for consultation on the policy proposals.

Annelize Crosby and Theo Boshoff also formed part of the business team within the NEDLAC negotiating process around the Extension of Security of Tenure Amendment Bill.

Inquiry into conditions on farms

The International Labour Organisation (ILO) inquiry into conditions on farms focuses on various challenges affecting the labour force in agriculture and highlighted issues such as evictions, conditions of farms, compliance with labour legislation etc. Read more about this under the heading 'Labour and Social Policy Committee'.

Memoranda on grazing rights, burials on farms and access to graves

Agri SA has set out the legal position on the respective issues in memoranda, which will be made available to the organisation's members.

binne die NEDLAC-onderhandelingsproses oor die Wysigingswetsontwerp op die Uitbreiding van Sekerheid van Verblyfreg.

Ondersoek na toestande op plase

Die International Labour Organisation-ondersoek na toestande op plase fokus op verskeie uitdagings ten opsigte van die arbeidsmag in landbou, waaronder uitsettings, toestande op plase, nakoming van arbeidswetgewing en ander wat onder die vergrootglas is. Lees meer hieroor onder die Beleidskomitee Arbeid en Maatskaplik.

Memorandums oor weidingsregte, begrafnisse op plase en toegang tot grafte

Agri SA het die regsposisie oor die onderskeie onderwerpe in memorandums uiteengesit en sal die memorandums aan die organisasie se lede beskikbaar stel.

Beleid oor kommunale grondbesitreg

Agri SA het weer voorspraak gemaak vir die markgedrewe benadering tydens formulering van die kommunale grondbesitregbeleid, met gemandateerde insette oor die handhawing van produksiedissipline en bevordering van volhoubare boerderyeenhede in kommunale gebiede. Die beleid was deel van die Groenskrif oor Grondhervorming van die Departement van Landelike Ontwikkeling en Grondhervorming. Die beleid is nou in finale konsepvorm voordat die minister daarop afteken en die wetgewingsproses kan begin. Die finale weergawe is aan die Transformasie Beleidskomitee en die Geïntegreerde Boereforum voorgelê.

Communal Land Tenure Policy

Agri SA continued to represent the market driven approach in the drafting of the Communal Land Tenure Policy legislation with mandated inputs of maintaining production discipline and promoting sustainability of farming enterprises in communal areas. The policy was part of the Green Paper on Land Reform of the Department of Rural Development and Land Reform. The policy is now in the final draft phase before the minister signs it off to begin the legislative process. The final draft was presented to the Transformation Policy Committee and the Integrated Farmer's Forum.

AgriBEE

After the gazetting of the AgriBEE Sector Code under section 9(1) of the B-BBEE Act was

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AgriBEE

Nadat die AgriSEB-sektorkode onder artikel 9(1) van die Wet op Breë-basis Swart Ekonomiese Bemagtiging gepubliseer is, het die Minister van Handel en Nywerheid, Rob Davis, die gewysigde Kodes vir Goeie Praktyk (generiese kodes) in Oktober 2013 uitgevaardig, wat impliseer dat alle kodes moet ooreenstem met die nuwe generiese kodes. Die gewysigde generiese kodes het slegs vyf elemente in plaas van sewe, soos in die AgriSEB-sektorkode.

Dit is interessant dat die gewysigde kodes hoër maatstawwe het as die vorige kodes, met dié vir kwalifiserende klein ondernemings (QSE's) wat begin by 'n jaarlikse omset van R10 miljoen. Agri SA gaan voort om voorbrand te maak vir hoër maatstawwe in die AgriSEB-sektorkode, wat tans gestel word op R5 miljoen. Die saak is steeds hangend.

Dankwoord

Die Komitee wil affiliasies van Agri SA graag bedank vir hul entoesiastiese deelname aan die Komitee se aktiwiteite.

published, the Minister of Trade and Industries Rob Davies released the amended Codes of Good Practice (generic codes) in October 2013, implying that all sector codes need to align to the new generic codes. The amended generic codes only have five elements instead of seven that are contained in the AgriBEE Sector Code.

Interestingly, the amended codes have higher benchmarks than previous codes, with the benchmarks for Qualifying Small Enterprises (QSE's) starting at R10 million annual turnover. Agri SA continues to advocate for raised benchmarks in the AgriBEE Sector Code, which are currently set at R5 million, and the issue is still pending.

Acknowledgements

The Committee wishes to thank the affiliates of Agri SA for their enthusiastic participation in the Committee's activities.