



LEGAL RESOURCES CENTRE

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Submissions on the Draft Policy and Bill on Preservation and Development of Agricultural Land Framework

The Draft Preservation and Development of Agricultural Land Framework Bill and Policy (“PDALF”) published for comment on 13 March 2015 has reference. The Legal Resources Centre is a non-profit public interest law firm. Much of the work of our organization is devoted to the land reform process in South Africa, including restitution, redistribution and the security of tenure. We also represent small farmers on commonage land and other small holdings as part of our commitment to realizing the transformation of the agricultural sector in South Africa. Our submissions on the PDALF is on behalf of these small farmers and communities.

1. Introduction

The stated goal of the PRESERVATION AND DEVELOPMENT OF AGRICULTURAL LAND FRAMEWORK BILL (PDALF) is to increase profitable production of food and protect agricultural land from being used for non-agricultural purpose in order to 1) eradicate extreme poverty and 2) achieve food security in South Africa. The Bill claims to accomplish this by improving the production of **ALL** categories of producers – subsistence, small holder, and commercial. The bill, we submit, will have the opposite effect, because it is entirely biased towards securing large scale commercial farming units to the extent of entirely crowding out small scale farming.

In its effort to advance food-security, the PDALF Bill may well exacerbate poverty within the class it purportedly seeks to help. The effect of the proposed

bill will be the institutionalization of a preference for large-scale commercial farming to the detriment of small-scale farming (farming on a small plot of land for either commercial or subsistence purposes). Reducing poverty and improving food-security are inherently linked, such that any policy that intentionally or inadvertently advances one to the detriment of the other cannot be successful.

In any event - and key to our rejection of the Bill – the purported mechanism of improving food security through the promotion of ‘economic units’ is based on flawed assumptions. The size of the land does not determine its productivity. Thus, quite apart from the fact that this model will undermine small farmers who are already not receiving nearly the same level of support as large scale farmers, the model for improving food security simply can’t do what it is designed to do.

2. Comments on specific aspects of the PDALF Bill and Policy (“the PDALF”)

1. Specific Recommendation 9.2.2.1 (k) of the PDALF states that “agricultural land must be protected in large and contiguous blocks in order to maintain a ‘critical mass’ of agricultural land”. There is a strong emphasis on protecting commercial farmers on the false premise that commercial farming (on large plots of land) leads to economical and sustainable land use. However, there is no evidence that farm size by itself is a reliable indication of the profitability and sustainability of a farm land. Small-scale farming can be more ‘productive’ than commercial farming depending on the type of activity the farmers are engaged in. The PDALF fails to justify why a restriction on subdivision – consequently a restriction on small-scale farming – will further the goal of a profitable and sustainable agricultural economy.
2. The PDALF is concerned with the lack of protection of the “right to farm” and seeks to protect “farmers against local government laws and non-agricultural policies or programme initiatives which would interfere with normal farming practices”. Ironically, the government will do exactly what it aims to prevent: using a bill to disrupt the farming practice of small-scale farmers and thus obstructing their “right to farm”.
3. While the PDALF states that “care should be taken that consolidations and conversion to non-agricultural uses do not impact negatively on the execution of specifically the agricultural land redistribution programme”, a policy cannot acknowledge the rights of small-scale farmers while simultaneously taking active steps to endanger the land security of small-scale farmers. (p. 25). Although the Minister can approve subdivisions

under the redistribution programmes, experience has shown that this rarely happens in reality.

4. The policy uses comparative studies from different countries to support the idea that consolidation is the best way to achieve optimal agricultural production. However to say that large plots of land are conducive to large economical production does not mean that subdivision inherently endangers economical farming. Rather it is arguable that farmers will choose to subdivide their land in a manner that facilitates optimal agricultural production. Hence the conclusion from the comparative study is unwarranted and does not support curtailing subdivision.
5. Under section 7(g), the policy mandates “just administrative action” which requires “ensuring lawfulness, reasonableness and procedural fairness (and impartiality) with regard to all decisions impacting on agricultural land”. Advancing a subdivision restriction that disproportionately harms small-scale farmers in pursuit of combating poverty and food-scarcity is neither reasonable nor impartial, especially since small-scale farmers are highly impacted by poverty and food scarcity. Subdivision will restrict poor people’s access to land by diminishing the supply of small parcels of land and thus increasing the price of the few small parcels available.
6. Since the goal of PDALF Bill is to increase profitable production of food categories for **ALL** producers, it is concerning that the policy singles out small-scale farmers by encumbering a process that facilitates their livelihoods, namely the subdivision of land. According to the policy, “subdivision of rural lots may lead to the loss of prime agricultural opportunities and the ‘economies of scale’ that sustain some forms of agricultural production (e.g. sugarcane) (Page 23). This takes for granted the contribution that small-scale farmers make to the goal of food security. The policy states, in conflict with decades of research in South Africa, that many small farming units are not economically viable and that production is not sustainable. These unsubstantiated claims are backed by crude generalisations such as that small-farmers have “insufficient knowledge, mentorship and support or... [lack of] aptitude to farm”. While this may be the case in some instances – and the lack of government support to small farmers is a critical issue – the assumption that small farmers lack skills and aptitude is plainly false.
7. The proposed Bill is problematic because it grants too much discretionary power to the DAFF Minister without adequate guidelines on the consolidation of land and based on flawed assumptions.

- a. Under section 65, the Minister has the power to “acquire, expropriate and alienate property for purposes of agricultural production...if that purpose is a public purpose or is in the public interest” and section 54 (3)(c) give the minister the power to expropriate land that is used significantly below the land’s optimal production potential. This provides inadequate protection for owners of small farming units who are especially vulnerable to consolidation in particular because neither the existing Expropriation Act of 1975, nor the newly proposed Expropriation Bill requires land rights enquiries and currently adequately protect communities and small scale farmers. It should be said that expropriation in the interest of land reform is strongly supported, subject to adequate protections for rural communities.
- b. There needs be further safeguards for individuals who are at risk of losing land because their land does not meet the requirement of “optimal agricultural” use. In particular, the clear large-scale commercial bias underlying the PDALF creates the concern that “optimal agricultural use” will be measured in terms of the discredited notions of “economic units”. This concern is exacerbated by the fact that the current Expropriation Act of 1975 is an apartheid-era piece of legislation that provides for no protection for rural communities and small farmers. The Expropriation Bill currently in parliament also do not yet provide adequate protection in this regard. The LRC has called for the Expropriation Bill to include at least a requirement for a land rights enquiry.
- c. Additionally, due to the flawed assumption that small plots of land lead to uneconomical farming, policy-makers are encouraged to rather opt for diversification in the sector and to base this policy direction on empirical research and findings rather than common (and flawed) assumptions.

8. Inadequate Specification on effect of taxation strategies on all parties under section 152

Without a clear directive on what connotes “optimal utilization of agricultural land for agricultural purposes”, taxing strategies that are promulgated may harm small-scale farmers. The significant terms in this Bill need to be clarified so that all parties involved are aware of how this Bill is likely to impact them. Also, the idea of taxing as a disincentive may well fall on the poor and create a situation where the poor are subsidizing the rich.

9. Inadequate Specification with respect to scope of governmental assistance under section 56

This incentive provision will disproportionately reward commercial farmers and further increase the gap in bargaining power between commercial farmers and small-scale farmers. Section 56(2)(c) rewarding “optimal utilization” of high potential cropping land for the purposed of food production is arbitrary: the meaning of “optimal utilization” is unclear, Section 56(2)(d) contemplates rewarding the performance or non-performance of an

activity requested by the Minister. Given the clear bias of this Bill in favour of commercial farmers, there is a concern that these rewards will be distributed to large-scale farmers who already get far more support than equally productive small-scale farmers.

10. Undue hardship in gaining permission to subdivide land.

The process for gaining permission to subdivide land is lengthy and arduous and likely to put both small-scale farmers and people that can only afford to purchase small plots of land at an economic disadvantage. The lengthy process is also likely to disincentive people from seeking to subdivide their land. The government cannot use procedure to discourage people from subdividing their land without a valid justification for the restriction on subdivision.

We would welcome the opportunity to further enlighten these submissions by way of oral submissions when appropriate.

Yours sincerely

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Per:



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