

MEMORANDUM ON THE OBJECTS OF THE LAND TENURE SECURITY BILL, 2010

1. BACKGROUND

- 1.1 Section 25(6) of the Constitution of the Republic of South Africa, 1996 entitles persons whose land tenure is legally insecure as a result of past racially discriminatory laws and practices, either to legally secure tenure or comparable redress.
- 1.2 The promulgation of the Land Reform (Labour Tenants) Act, 1996 (Act No. 3 of 1996) and the Extension of Security of Tenure Act, 1997 (Act No. 62 of 1997) sought to achieve this Constitutional imperative in relation to persons residing on farms.
- 1.3 Subsequent internal reviews of both pieces of legislation have shown some weakness at interpretation, enforcement and general implementation levels.
- 1.4 The National Land Tenure Conference in 2001 and the National Land Summit in 2005 also reached some consensus on the perceived constraints and unintended consequences of the two post-apartheid tenure legislation.
- 1.5 Whilst stakeholders have generally criticized existing tenure laws from their sectoral points of view, there appears to be general consensus on the points listed below, which this Bill seeks to respond to:
 - 1.5.1 Evictions and other forms of unilateral deprivation of rights on farms continue despite the existence of tenure legislation since there are loopholes that are exploited by land owners;
 - 1.5.2 Persons residing on farms' access to justice in appropriate circumstances is constrained by their lack of financial resources whilst the state has no deliberate mechanism for assistance;
 - 1.5.3 Current legislation inadvertently encourage settlements on farms which complicates access to social and economic infrastructure due to the sparseness of existing settlements.
 - 1.5.4 Uncontrolled growth of settlements on farms carries a long term threat to agricultural production and safety.
 - 1.5.5 The provision of accommodation that is linked to employment is discouraged by uncertainty regarding potential assertion of tenure rights.
- 1.6 In view of the challenges outlined above, new legislation is required in order to:

- 1.6.1 Tighten up legislation by, amongst other things, creating substantive rights in land for occupiers;
- 1.6.2 Implement a well-resourced programme of information dissemination, support to farm dwellers and enforcement of the tenure laws;
- 1.6.3 Proactively create new, sustainable settlements in farming areas; and
- 1.6.4 more effective system for the monitoring of arbitrary evictions, in particular a rapid response system for evictions, eviction threats or retrogressive measures with significant consequences.

2. OBJECTS OF THE BILL

The Bill seeks to give effect to sections 25(5) and (6), and 26 of the Constitution by making provisions for the following:

- 2.1 to promote and protect the relative rights of persons working on farm, person residing on farms, and farm owners;
- 2.2 to enhance the security of tenure of person residing on farms;
- 2.3 to create conditions conducive to peaceful and harmonious relationships on farms and in farming communities; and
- 2.4 to sustain production discipline on land in the interest of food security.

3. STRUCTURE OF THE BILL

- 3.1 Chapter 1 contains the definition of keys terms used in the Bill and the objects behind the legislative proposals.
- 3.2 Chapter 2 describes the application of the Bill as being only to agricultural land, excludes those covered by the Act from the operation of the Prevention of Illegal Eviction from and Unlawful Occupation of Land Act, No. 19 of 1998 and also that persons covered by the Interim Protection of Informal Land Rights Act, 1996 (Act No. 31 of 1996) are excluded from the its application. It enables pending applications for land rights in terms of the Labour Tenants Act from being continued despite its proposed repeal.
- 3.3 Chapter 3 of the Bill describes the persons covered as those residing on farms, those working on farms, those associated with persons residing or working on farms, farm-owners and their authorised agents.
- 3.4 Chapter 4 deals with the relative rights duties and obligations of those residing on farms, those working on farms, those associated with

persons residing or working on farms, farm-owners and their authorised agents.

- 3.5 Chapter 5 describes the environment for the management of evictions including the scope of evictions, conditions and circumstances under which evictions may be lawful, prohibition of arbitrary eviction, eviction proceedings and general limitations on evictions.
- 3.6 Chapter 6 offers the environment for the provision of land and development support to persons covered by the Bill, including the creation of agri-villages. It also provides the space for resettlement for human settlements and agricultural purposes, authorises acquisition of land on temporary or permanent basis for the purpose of resettlement and makes provision for financial aid to vulnerable persons on farms whose rights to land are threatened.
- 3.7 Chapter 7 provides for the establishment of committees for resettled communities or agri-villages, duties and responsibilities of such committees as well as community rules that would guide the operation of the said committees.
- 3.8 Chapter 8 establishes the Land Rights Management Board, describes the functions, powers, appointment of the board, its composition and membership and related matters.
- 3.9 Chapter 9 deals with dispute resolution and the powers of the courts in relation to the issues covered in the Bill. It authorises the Minister to offer support in terms of legal representation to those threatened or affected by evictions.
- 3.10 Chapter 10 creates offences in the event of breach of the provisions of the Bill, authorises the Minister to make regulations required for the better implementation of the provisions of the Bill, and miscellaneous matters such as amendment and repeal of laws and short title.

4. DEPARTMENTS OR BODIES CONSULTED

- 4.1 The following cluster departments were consulted: Science and Technology; Trade and Industry; Higher Education and Training; Arts and Culture; Economic Development; Communication; Tourism; Agriculture Forestry and Fisheries; National Treasury; and Cooperative Governance.
- 4.2 Substantive written comments were received from National Treasury and have generally been accommodated.
- 4.3 Verbal comments were received in meetings with officials from the Departments of Labour, of Public Works and of Human Settlements.

4.4 The Bill was also processed through the Economic Sectors and Employment Ministerial Cluster and was supported.

5. FINANCIAL IMPLICATIONS FOR THE STATE

5.1 There will be additional financial implications as a consequence of the creation of the proposed Land Rights Management Board. The real estimates in financial terms will emerge from the Regulatory Impact Assessment study that is being conducted on the Bill.

5.2 The other financial implications in relation to land acquisition will be accommodated within the current Medium Term Expenditure Framework as reviewed at relevant times.

6. PARLIAMENTARY PROCEDURE

The Department of Rural development and Land Reform proposes that this Bill must be dealt with in accordance with the procedures established by section 76 of the constitution, since it contains provisions which affect the provinces.