

ANNUAL REPORT

2017/2018



We develop the South African Agricultural Industry.
Ons ontwikkel die Suid-Afrikaanse Landbou Industrie.



CENTRE OF EXCELLENCE

Land



Ernest Pringle

Ernest Pringle served as chair of the committee, Sandy La Marque as deputy chair supported by Annelize Crosby and Yolisa Mfaise.

During the period under review, namely May 2017 to June 2018, this Centre of Excellence was involved in the following activities:

Land expropriation without compensation

In December 2017, the African National Congress (ANC) resolved at its annual policy conference to pursue expropriation of land without compensation. This should be pursued without destabilising the agricultural sector, without endangering food security in our country and without undermining economic growth and job creation.

In March 2018, the EFF brought a motion before parliament calling on parliament to appoint an ad hoc to amend the Constitution. The ANC voted in support of the EFF's motion but incorporated some amendments to the original motion. These included that the matter should be referred to the Constitutional Review Committee, rather than an ad hoc committee, that the impact on food security and the economy should be considered and deleted any mention of state custodianship of land.

Parliament then tasked the Constitutional Review Committee (CRC) to hold public consultations and receive submissions on whether it will be necessary to amend section 25 of the Constitution and report its findings to parliament by the end of August 2018. This date was later extended to 15 September 2018.

Agri SA issued a number of media statements on the matter and participated in many TV and radio interviews on this matter. Staff members of Agri SA also published articles on the issue with a focus on the impact expropriation without compensation will have on the economy, the agricultural sector and the legal implications of amending section 25 of the Constitution. The organisation has also contributed in forums and discussions on EWC¹.

“Agri SA put together a comprehensive written submission to the CRC opposing the amendment of section 25.”

At the March CoE meeting, Agri SA presented its strategy on expropriation without compensation (EWC) and invited Prof Elmien du Plessis to do an in-depth presentation on EWC.

Agri SA put together a comprehensive written submission to the CRC opposing the amendment of section 25. Agri SA consulted with senior counsel on the legal implications of the matter and also consulted many other experts and interacted with various stakeholders in the ruling party, opposition parties, international institutions and many other stakeholders. Agri SA has also requested an opportunity to address the CRC on its submission.

Much of the Land Centre of Excellence work for 2018 will undoubtedly be centred around the expropriation without compensation question to the land reform debate.

¹ These include the Land Reform Task Team, which includes Agbiz, Basa and Afasa. However, Afasa pulled out of the grouping. In April 2018, Agri SA made presentations at a Land Reform Conference hosted at the Gordon Institute Business School.

Land audit

The results of the land audit were made public on the 1st of November 2017. The Agri SA/ ADS/Landbouweekblad land audit report received wide media coverage in South Africa as well as overseas media. In March 2018 the government finally produced its own, long-awaited land audit.

“The state’s audit has drawn criticism from various quarters. The report contains numerous errors in its texts and tables and the audit does not support many of the claims that have been made.”

The state’s audit has drawn criticism from various quarters. The report contains numerous errors in its texts and tables and the audit does not support many of the claims that have been made. The Agri SA audit was criticised by Prof Ben Cousins and Prof Ruth Hall from the University of the Western Cape for grouping together government owned land and land bought by previously disadvantaged individuals. Agri SA engaged with the two professors and subsequently disaggregated the two types of ownership. Further work is being done on the Agri SA land audit to refine it.

LEGISLATION

Regulation of Agricultural Land Holdings Bill

In March 2017 the minister of rural development and land reform published a Bill aimed at prohibiting foreign ownership of agricultural land and limiting the amount of agricultural land that any individual or legal entity may own. Agri SA lodged a written submission expressing concern about the implications of this Bill, as well as a submission on the socio-economic impact assessment report; and participated in the National Economic, Development and Labour Council (Nedlac) process on the Bill. Half way through the Nedlac process, in January 2018, government decided to withdraw the Bill from the Nedlac process, to do a complete redraft of the Bill.

Communal Land Tenure Bill

In July 2017 the department of rural development and land reform published a Bill aimed at providing for the transfer of communal land, conversion into ownership of land rights, transfer of ownership, titling and registration of communal land. Agri SA made a submission on the Bill raising concerns on emphasising the need to unlock the potential for agricultural activity in communal areas.

Land valuation regulations

The Office of the Valuer General (OVG) published regulations that seek to provide clarity on the

interpretation of section 25(3) of the Constitution. Section 25(3) requires that just and equitable compensation be paid upon expropriation. This concept of just and equitable was incorporated into the Property Valuation Act, which stipulates that the state must pay the just and equitable value of property when such property is acquired by the state for land reform purposes. The draft regulations proposed that the current use value of the land be utilised together with the market value to arrive at a just and equitable value.

The OVG, at the request of Agri SA, held workshops across the provinces to explain the content of the regulations to Agri SA members. Agri SA submitted written comments on the regulations, cautioning that whilst it is critical to prevent corruption and inflated values on land, it is important to ensure that landowners are not unfairly prejudiced by requiring of them to fund what is in the public interest. The cost of land reform should therefore not be unfairly imposed on landowners whose land is required for land reform.

Restitution Amendment Bill

After the previous Restitution Amendment Bill, which re-opened the claims process in 2014, was declared unconstitutional in 2016 and the further lodgement of claims suspended, an ANC member of parliament drafted a private member’s Bill that was

tabled in parliament in 2017. This Bill proposes to once again re-open the land claims process. The portfolio committee on rural development and land reform has called for submissions on the Bill. Agri SA has lodged a submission cautioning against the unintended consequences of re-opening the claims process. Agri SA has also requested an opportunity to address the committee in the public hearings that will follow.

Extension of Security of Tenure Amendment Bill

An amendment Bill was tabled in Parliament in 2017. The Bill will create land rights management committees and a Land Rights Management Board will make mediation in eviction matters compulsory and amend certain definitions in the Act. It also contains a clause, which Agri SA has objected to, that will prevent the court from ordering an eviction in cases where occupiers had no legal representation. Agri SA made submissions to both the portfolio committee on rural development and land reform and the select committee on land and mineral resources.

LITIGATION

Msiza case

The case dealt with the calculation of just and equitable compensation to owner for land awarded to a labour tenant. Agri SA made submissions to the Supreme Court of Appeal as amicus curiae regarding the

proper consideration of market value in the assessment of just and equitable compensation as contemplated in section 25 of the Constitution.

In September 2017, the Supreme Court of Appeal granted an order in favour of the applicants to increase the amount of compensation ordered by the Land Claims Court (LCC) to landowners. The Supreme Court held that no arbitrary deductions from market value were allowed. The court found that there were no facts justifying the deduction of the amount of R300 000 (which is the arbitrary amount that LCC deducted from the market value for land reform purposes). The LCC arbitrarily decided on this amount with no rational foundation. The computation was accordingly unfounded and did not stand.

INTERACTION WITH EXTERNAL STAKEHOLDERS

Land restitution

The Restitution Commission invited Agri SA to participate in a workshop on sustainable restitution settlement models in East London during August 2017. Agri SA submitted a written input to the workshop. The office of the Chief Land Claims Commissioner was invited to the November 2017 Centre of Excellence meeting to discuss this matter further with the affiliates. Having an official from the Chief Land Claims Commissioner's office proved valuable for affiliates as they were

able to raise specific challenges they are faced with on the ground with regard to restitution matters in their provinces.

Access to graves on farms

In April 2018, Agri SA was invited to make submission to the Commission for the Promotion and Protection of the Rights of Cultural and Linguistic Commission (CRL Commission) public hearings on access to graves on farms. The hearings were a result of the Commission being inundated with complaints by communities who are often allegedly denied access to graves on farms where their relatives are buried. The Agri SA presentation included recommendations that were well received by the Commission.

Nelson Mandela Foundation project

Realising that additional initiatives to those pursued by government are needed to eliminate the scourge of hunger in South Africa, Agri SA along with other founding partners to this initiative²; have a vision for stable, vibrant and inclusive rural communities who live in harmony and where poverty and hunger is eliminated. The partners further acknowledge that small scale community farming plays a vital role in advancing sustainable land reform and building sustainable rural livelihoods.

² Founding partners include Earthrise Trust, Agri SA, Afrigrow NPC and the Seriti Institute. The Nelson Mandela Foundation hosts the initiative under the stewardship of former president Kgalema Motlanthe. Together the partners form the JOTT.

Following a call for proposals from Agri SA to interested parties, nine proposals were submitted, from which four projects were selected. After the shortlisting process, the founding partners took a decision to conduct an on-site visit to the KwaZulu-Natal projects headed by

Kwanalu. The purpose of the visit was to get a better understanding of the three projects under the Kwanalu proposal and what interventions are necessary for them. The visits were conducted in July 2018.

The complete lack of budget both for operations of the task team and implementing the interventions identified, have been a huge problem.

