8 November 2016

The Chairperson,

The Portfolio Committee on Rural Development and Land Reform

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Dear Ms Ngwenya-Mabila

**RE: STAKEHOLDERS’ CONSULTATIVE MEETING ON EXTENSION OF SECURITY OF TENURE AMENDMENT BILL [B25 – 2015]**

We refer to your letter dated 7 November 2016, in which an invitation is extended to Agri SA to participate in a two-day workshop on the ESTA Amendment Bill on 15 and 16 November. We would like to thank you for inviting us to participate. Unfortunately, Agri SA will be holding meetings of its policy committees during the week of 14 November. These meetings are scheduled a year in advance and all Agri SA staff and farming leaders are involved in those meetings. We are therefore unable to send a representative to the workshop. However, we deem the Amendment Bill an important piece of legislation, which most certainly will have an impact on the interests of our members. In addition to the comments which we have already submitted on the Bill (a copy of which is included herewith), we would like to share some other perspectives and research with you. We will do so in writing.

The subject matter of tenure reform is complex and often fraught with emotion. It is arguably the most difficult and emotive programme of land reform, as it involves the balancing of competing rights on the same land. Questions of tenure rights of farm workers on commercial farms has been hotly debated many times over the past two decades and there have been several investigations, reports and interventions. Unfortunately, this sensitive issue is often sensationalised and there have also been several attempts to generalize and create the impression that poor treatment and unlawful eviction of farm workers is a general practice on commercial farms countrywide. Some of the reports and interventions that we would like to refer the committee to, include:

* The 2015 ILO report on the living and working conditions of farm workers;
* The 2014 report of the Ministerial fact finding mission into evictions in the Western Cape;
* The Land Tenure Security Policy for Commercial Farming Areas of 2013

All of these are attached for ease of reference.

The ILO report, which was initiated by the Portfolio Committee on Rural Development and Land Reform and had an oversight committee consisting of representatives of all stakeholder groups and where the research was done by a consortium of universities, found amongst other things, that:

* “Recently, it has been alleged that the Western Cape has been hit by a wave of farm evictions, suggesting that the latter has been one of the main causes leading to the expansion of rural towns. During this research, it was difficult to find any objective evidence proving that this is indeed the case. Municipalities, the courts, Department of Rural Development and Land Reform do not keep consistent, reliable information on evictions, and if they do, such information was not made available to the researchers despite numerous requests. Data provided by these sources were mostly conflicting. Moreover, while getting information about legal evictions was still an exercise of the possible, getting any objective information about illegal evictions proved to be virtually impossible. “
* “Legislation and policy aiming to provide farm workers with housing and security of tenure appears to be hugely out of step with a growing, off-farm farm worker population. Extending on-farm tenure security and protection from eviction is no longer the single, biggest need of farm workers. Farm workers are increasingly becoming a diverse group, living in a variety of different situations and with a range of needs of which tenure security is but one. Thus far, state policy has failed to respond to this complexity.”
* “Regarding farm workers’ working conditions, the study found a fairly high rate of compliance in terms of granting of key rights”.

The 2014 Ministerial fact finding mission into evictions in the Western Cape was similarly unable to quantify the number of evictions from farms with any certainty and came up with low numbers of illegal evictions. The interim report stated that “No credible figures can be stated”. The fact-finding mission did make some sensible recommendations including:

* Establishing monitoring systems for eviction at national, provincial and local government spheres;
* Build rapid response structures that shall have standard operation procedures which all stakeholders shall use to deal with evictions within a common district and farm structure;
* Establish an ESTA section 4-based programme to prioritise the improvement of the socio-economic conditions of farmworkers and their integration into the greater District Municipality; and
* Monitor and regularly evaluate the impact and progress of activities to lift farmworkers out poverty, increase their incomes, capacities and opportunities.

It is not clear of any of these recommendations had been implemented.

A policy specifically aimed at farm workers living on commercial farms was developed by DRDLR in 2013. It is called the The Land Tenure Security Policy for commercial Farming Areas. It provides for various interventions, many of which have been captured in the Bill. These include a decentralized system, land rights awareness, redistributive measures, alternative dispute resolution measures and a grant for farm workers.

**3. Agri SA views**

From the perspective of the commercial farmer, ESTA has several shortcomings. These include:

* The eviction process is drawn out and expensive.
* Unemployed, adult children of occupiers who live on farms or move back to live with their parents often cause problems on farms. In such cases or when unemployed families stay on farms, the misuse of alcohol and drugs are more prevalent which often leads to criminal and violent behaviour.
* Farm attacks and theft remain a huge problem and uncontrolled access of visitors to unemployed farm dwellers is a security concern to many farmers.
* There are often conflicts over livestock numbers and grazing rights. In some cases, the number of livestock kept by occupiers far exceed the agreed numbers leading to over grazing. This problem is compounded by unsatisfactory practises with disease control.
* ESTA has had a negative impact on farm values. Farms with large numbers of occupiers living on them are worth far less than farms with few or no occupiers living there.
* Farmers have a limited number of houses for workers and need these houses for people who are working on the farm. Due to ESTA, houses are nowadays often occupied by people who no longer work on the farm, leaving no room for new employees. New black farmers, especially in Gauteng, are experiencing huge problems with occupiers on government land which they are leasing. In many cases these occupiers utilize the whole farm, overgrazing the land to such an extent that the lessee farmers, who are paying rent to government for these farms cannot make a living at all.
* ESTA rights are very easily acquired: a person who resides on a farm one day with permission, qualifies as an occupier.
* There is a strong feeling amongst farmers that this law discriminates against rural landowners and may as such be unconstitutional.

Even so, Agri SA strongly feels that laws are there for a reason and should be complied with by all. The organisation has always encouraged and trained its members to comply with the provisions of ESTA and has a strong stance against illegal evictions.

**4. Concern regarding unintended consequences of the Act and the Bill**

Agri SA has two concerns regarding the proposed amendments: Although we are very much in favour of mediation, mediation processes cannot carry on forever, there must be a reasonable time limit placed on mediation, otherwise it may become a delaying tactic and lead to conflict escalating rather than being dealt with.

The functions of Land Rights Management Committees need to be spelt out more clearly. Complex disputes should be referred to experienced mediators and not be dealt with by the LRMC’s

Secondly, arbitration can never take away a person’s right of access to the courts. We deem a system of compulsory arbitration very problematic. Also, we fear that such a system will be very costly.

We regard the new clause 4 attempting to amend section 9 of the Act, as hugely problematic and very likely unconstitutional. Agri SA strongly objects to the clause which treats occupiers differently from any other category of persons that qualify for legal representation, even those who are charged in criminal courts. It may seriously delay proceedings or even prevent an eviction order altogether, if for instance the Department does not have funding for all occupiers. Whilst we fully support the right of occupiers to have legal representation, the way in which this clause is worded, may prevent the court from going ahead with a civil case where the state fails to provide legal assistance. That will seriously prejudice landowners who are exercising their right of access to the courts and protecting their property rights.

There is little doubt that ESTA provisions have contributed to the accelerated depopulation of farm dwellers living on commercial farms, as well as a rapid casualization of the workforce. Most of this has been brought about not through evictions, but simply by employers not replacing employees who have left farms, whether voluntarily, or because of death or retirement. Perhaps the most onerous provision is the requirement that alternative accommodation be available before an eviction can be enforced.  This has been the subject of widespread abuse by occupiers, who delay the eviction process indefinitely simply by claiming that they have no alternative accommodation – even if this is not true. Thus, eviction proceedings become too lengthy and expensive to pursue, and because the State makes no provision for alternative accommodation in such cases, it has become the practice to expect the farmer to do so – even though this legal duty is on the State, and not to the farmer. No such legal encumbrance applies to urban owners, and this is therefore discriminatory against farm owners. A much more equitable and less invasive result would be achieved simply by placing a reasonable time limit on the alternative accommodation requirement, after which it should no longer apply.

**5. Final remarks**

The main failure of ESTA has been one of lack of implementation. There is little need for amendments of the provisions of the Act, rather a renewed focus on the implementation of ESTA is required. Municipalities should play a much bigger role in pro-actively making land available to people who stand to be evicted.

Note should be taken of the findings of the ILO report specifically regarding the difficult position that commercial farmers find themselves in and the changing needs and aspirations of farmworkers. Two final quotes from the report that we would like to emphasize:

* “Government’s failure to take a value chain perspective of the industry’s woes has resulted in macroeconomic policy that is increasingly weakening producers bargaining power in the market. Supporting farm workers without simultaneously supporting producers will be an exercise in futility. It is necessary to strengthen the bargaining power of both producers and workers to ensure that profit is distributed more equitably along the value chain.”
* “During this research both workers and producers raised lack of housing support as a key issue. It is recommended that the state revisit its existing housing policy in relation to farm workers. More specifically, the state should:

 Provide more support for on-farm housing (conditions for housing subsidies should be less onerous) to alleviate the burden on the state to provide housing to an ever-growing pool of off-farm workers. One of the unintended consequences of ESTA has been increased casualization of farm work and the accompanying trend of sourcing farm workers from local towns;

 Enter public/private partnerships with producer communities to build more off-farm worker housing;

 Increase the housing budget of rural municipalities to accommodate housing for seasonal farm workers;

 Improve infrastructure provision to rural towns, especially to improve water and sewerage provision; and

 Improve public transport in rural areas to decrease the isolation of on-farm workers.”

* “There is an emerging consensus in the literature that solutions to the problems of farm evictions need to be sought both on and off farm. Tenure security is not sufficient alone, without a livelihood. It is clear that the State’s approach of using litigation to preventing evictions is misplaced. Movement off farms is the inevitable result of a number of factors notably the modernisation of agriculture and the economic climate nationally and globally. At the same time, post 1994 government policies and laws have served to exacerbate rather than stem the tide, and there are serious shortcomings in the State’s provision of alternatives for displaced farm dwellers.”

Therefore, despite the proposed legislative changes Agri SA would want to urge the Department to engage in a conversation with Agri SA and other stakeholders to develop appropriate models that incentives farmers to participate in programmes that lead to tenure security and simultaneously improves the living conditions of farm workers, whilst not impacting negatively of the farming enterprise. There is potential in the concept of ‘smart villages’ to provide solutions complementary to on farm housing, however an in-depth discussion will need to take place to ascertain the relative contributions and commitments from the Departments of Rural Development and Land Reform and Human Settlements, District municipalities, Organised Labour and Agri SA.