



Southern African Catholic Bishops' Conference
PARLIAMENTARY LIAISON OFFICE



Submission

to

**The Department of Rural Development
and Land Reform**

on

**The Regulation of
Agricultural Land Holdings Bill**

15 June 2017

1. Introduction

The Catholic Parliamentary Liaison Office (CPLO) welcomes the opportunity to comment on the question of regulating agricultural land holdings in South Africa.

The CPLO is an office of the Southern African Catholic Bishops' Conference. It is tasked with liaising between the Church and Parliament/Government, commenting on issues of public policy, and making submissions on legislation.

2. True and Proper Land Statistics

One of the biggest challenges that both the state and civil society has faced in arguing for changes in land ownership patterns in South Africa has been the continual inability of everyone to deal with claims and counter claims about who owns what land. Various statements have been made about whether more or less land is in the hands of white people, or in the hands of foreigners, or whether the restitution processes and ordinary market forces have reformed land ownership in South Africa to the point where we can as a country, really assert – as the Constitution demands – that indeed South Africa belongs to all who live in it.

3. Land Commission

We support the formation of the envisaged Land Commission and the process of continuous registration and monitoring of agricultural land holdings. Maybe in the future, all land holdings will be registered and such information will be easily accessible in the promotion of transparent governance. However, as in all governance, the Land Commission should be subject to rigorous oversight such that it does not become an incompetent, narrowly politically-aligned and bureaucratic institution that fails to fulfil its mandate. The presumption here also is that like other state institutions, final oversight will rest with Parliament.

4. Value of Land

It is always good to remember that major agricultural land is not simply a matter of private property for the individual to own and do with as one wishes. It might be worth recalling that in the Catholic tradition there is always recourse to the Principle of the Universal Destination of Goods, which states that land can only be privatised if the basic needs of the community are met.

“The principle of the universal destination of goods requires that the poor, the marginalized and in all cases those whose living conditions interfere with their proper growth, should be the focus of particular concern. To this end, the preferential option for the poor should be reaffirmed in all its force.” [#182 - COMPENDIUM OF THE SOCIAL DOCTRINE OF THE CHURCH]

Agricultural land forms the backbone of society's food security, and thus society as a whole must ensure that such land is indeed used for securing wider food supply. Such demand for food security might sometimes require ensuring that foreign ownership be limited, to ensure that the security of the state is not left in the hands of foreign interests who might well act against the interests of South Africa and its people. History has shown that many foreign entities and governments have bought

land in other countries, especially in Africa, to ensure not domestic food security but the security of the foreign interests invested in the country where the land is located.

5. Politics of Land

This matter of foreign entities and governments owning huge tracts of prime agricultural land in other countries is a source of huge controversy around the world. The case of Madagascar in March of 2009, where the fall of the government of then president Ravalomanana, attributed to the sale by the state of one million hectares of agricultural land to South Korean company, Daewoo Logistics, shows that the ownership of agricultural land by foreign interests has profound social and political consequences which in a country with south Africa's history and politics, cannot simply be ignored.

Two more factors have also tended to seriously destabilise the reform process: firstly, a scandalous series of forms of corruption, political subservience and collusion, leading to the granting of huge tracts of land to members of the ruling classes; and secondly, the presence of important foreign interests, concerned about the effects of any reform on their economic activities. [#8 - PONTIFICAL COUNCIL FOR JUSTICE AND PEACE: *TOWARDS A BETTER DISTRIBUTION OF LAND: The Challenge of Agrarian Reform*]

6. Guiding Principles

Whether parliament decides to limit the sizes of agricultural land holdings or not, and whether foreign ownership is limited to leasehold or not, three fundamental principles should guide the decisions.

1. First of all, Parliament must ensure that these decisions do not exacerbate the already unjust patterns of land ownership in the country. This means that the legislation should enable the constitutional imperative for land restitution and reform and not impede it.
2. Secondly, Parliament must ensure that the food security of the country is protected and not endangered. It is not clear, for example, that studies have been done to assess whether foreign ownership of agricultural land actually endangers food security; it may even enhance it.
3. Finally, Parliament must not treat land as simply a business commodity to be bought and sold, but rather give the land its value as the primary underpinning of the dignity, survival, and sovereignty of the people of South Africa and their future heritage.

“In some countries a redistribution of land as part of sound policies of agrarian reform is indispensable, in order to overcome the obstacles that an unproductive system of latifundium — condemned by the Church's social doctrine — places on the path of genuine economic development. “Developing countries can effectively counter the present process under which land ownership is being concentrated in a few hands if they face up to certain situations that constitute real structural problems, for example legislative deficiencies and delays regarding both recognition of land titles and in relation to the credit market, a lack of concern over agricultural research and training, and neglect of social services and infrastructures in rural areas”. Agrarian reform therefore becomes a moral obligation more than a political necessity, since the failure to enact such reform is a hindrance in these countries to the benefits arising from the opening of markets and, generally, from the abundant growth opportunities offered by the current process of globalization.” [#300 - COMPENDIUM OF THE SOCIAL DOCTRINE OF THE CHURCH]

7. What is Missing?

7.1. Institutional co-ordination

What seems to be missing from the proposed Bill is the relationship between the Deeds Office, the Surveyor General's Office, as they exist at present, and the proposed Land Commission. Nothing in the Bill seems to clearly set out how the three institutions will co-operate, co-ordinate, and share information. If such collaboration is implicit, it should be nonetheless made explicit, and the nature of the collaboration clearly spelt out. This will avoid duplication, tensions, and fragmentation of interconnected responsibilities.

7.2. Leasehold

It is not clear why foreigners should be allowed to lease land for up to 50 years (or longer if the lessee's natural life happens to extend beyond 50 years) but not to own it – see section 1: **Definitions**. If part of the problem the Bill seeks to remedy is that foreigners control (too much) land that is needed for redistribution, then how does it remedy the problem to say that they can carry on controlling it for the next 30 or more years, up to 50? Putting land into the hands of a foreign lessee for half a century or more does not seem to change anything. We propose that this question of “Long Term Lease” be clarified.

7.3. Land Size Ceilings

Section 25 deals with the setting of ceilings for the size of agricultural land holdings. It provides that the Minister must consult with the Minister of Agriculture and with the envisaged Land Commission. However, it makes no provision for consultation with the people who are most directly affected and who probably know most about the viability of different sized farms – ie, those who own and work on the farms themselves. We suggest that a clause be added to the effect that the Minister should consult with “*representative bodies in organised agriculture, including farm owners and farmworkers, and others who will be affected by limitations on the size of the land holdings*” or words to that effect. The fact that people affected by such ceiling determinations are given 30 days to comment on any proposed determination (itself a paltry time period, especially for ill-resourced farmers) does not mean that there is no reason to consult them beforehand.

7.4. Definition of ‘Agricultural Land’

There seems to be a problem with the definition of ‘agricultural land’ in section 1(a). On a plain reading, it would exclude all existing agricultural land: “provided that all land which, immediately prior to the date of commencement of this Act, was formally zoned for agricultural purposes by any sphere of government or public entity, is excluded from the provisions of this paragraph.”

This implies that an existing farm, for example, which has been zoned as such by a municipality (a ‘sphere of government’), would be excluded from the definition of ‘agricultural land’. Such an interpretation would clearly contradict the whole purpose of the Bill. If what is meant by this definition is “zoned for agricultural purposes *to be conducted/performed by/on behalf of* any sphere of government...” then this should be stated explicitly. The same considerations apply to 1(c).

8. Conclusion

The Catholic Church supports any legislation that seeks to make South Africa a more just, equitable, prosperous, and efficient society, that always strives for the achievement of the common good. While we have some reservations about the present Bill, as set out above, we strongly support the overall goals of land reform in our country, and we look forward to engaging further with the Department of Land Reform and with the Portfolio Committee in this regard.

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