



The FW de Klerk Foundation
CENTRE FOR CONSTITUTIONAL RIGHTS

Upholding South Africa's Constitutional Accord

The Hon R Mohlaloga, MP

Chairperson

Portfolio Committee on Agriculture and Land Affairs

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15 July 2008

Dear Sirs

Re Land Use Management Bill [B27-2008]

1. The Centre for Constitutional Rights records its full support of any land reform initiative that is constitutionally compliant and that will help expedite much needed redistribution and more equitable access to land and natural resources in a sustainable and efficient manner. The Centre is deeply concerned that land and agrarian reform has not taken place at sufficient pace and that much of the redistribution that has taken place has not been sustainable. The Centre is also concerned that land development has not been managed in a uniform manner that encourages investment, addresses the unequal and segregated spatial patterns which have resulted from our shameful history and conserves the environment.

2. For that reason the Centre welcomes the Department's initiative in providing a standard, effective regulatory framework for land use and land management which both protects the land and promotes the public good. Any criticism of the Bill is thus not to be construed as criticism of land reform

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initiatives. However, the Centre is concerned that the Bill in its present form will not necessarily promote efficient use or management. More importantly, the Centre believes that the over-emphasis that is given to socio-economic rights creates the false impression of a hierarchical ranking of rights to the detriment of other rights, in particular environmental rights. To this extent, the Centre believes that the objects of the Bill should be broadened to include balancing social and economic needs with environmental needs.

3. The Centre accordingly values the opportunity to submit comments to your committee. Referencing will be made to the clause reference in the Bill.

4. As stated above, it is believed that the objects should be broadened to ensure that all rights in the Constitution enjoy equal protection. To this end clause 3 should be amended to include promoting sustainable use of agricultural land, the sustainable use and management of resources, including natural and environmental resources, the protection of natural and environmental resources and economic growth.

5. The term “public interest” is not defined in the Bill. In its broadest sense it would include notions of human health and development. In the context within which it is used in clause 4(2), read in conjunction with the objects of the Bill, it would however appear to be used in respect of land reform only. As urgent as expedited land reform may be, it cannot be done at the expense of the environment, and *ipso facto* the nations well-being. Clause 4(2) should accordingly be amended to allow for reconciling land reform needs with environmental conservation.

6. Clause 5 prescribes that the Minister alone shall determine norms and standards applicable to land use management. Since land use management affects all land and natural resources and impacts on the economy, trade and industry and the agricultural industry, specialized input of the respective departments should inform the norms and standards. This clause should thus be

amended to provide for the determination of norms and standards in consultation with the Minister of Trade & Industry, the Minister of Finance and the Minister of Water Affairs and Forestry, the Minister of Minerals and Energy and the Minister of Environmental Affairs.

7. The Centre is concerned that given the complexities involved in determining questions of land development and land use management, Land Use Regulators, particular at Municipal level, will not possess the skills necessary to determine applications. The Centre therefore welcomes the intergovernmental support proposed in Chapter 2.

8. The Centre supports the delegation of powers to Municipal level in accordance with the principle of subsidiarity, since management of certain land usage is often better handled at Municipal level. However, the Centre is concerned that many municipalities will not have the requisite skills or capacity to effectively and efficiently perform the functions of Land Use Regulators. In this regard, the Centre notes that Government itself has identified the dysfunctional nature of many municipalities as an area of concern. As a result of the dysfunctional nature, and as reported in Business Day, 3 August 2005, the Government deemed it necessary to introduce Project Consolidate to remedy the situation in 136 dysfunctional municipalities out of 280 throughout the country. The Centre is accordingly particularly concerned that the members of the Municipal Land Use Committee do not have to possess appropriate qualifications or experience in land use and land use management. The Centre accordingly proposes that clause 9 (1)(b) be amended to provide that all the members should possess appropriate qualifications or experience in land use and land use management, as is required by members of the Provincial Land Use Tribunal.

9. In light of the current global food price crisis, it is critical that sufficient land be kept for food production purposes and that all agricultural land be used in a sustainable and efficient manner. The protection and management of

agricultural land currently rightly falls within the domain of the Department of Agriculture. Given the broad definitions of land use management and land development, this responsibility can conceivably now be shouldered by municipal land use committees. The Centre believes that the responsibility should remain with the Department of Agriculture. Moreover, the Centre is concerned with the vagueness of the term “land use scheme”, which will lead to confusion and uncertainty regarding the scope to which use can be regulated. The Centre accordingly proposes that clause 32 (3) be amended to provide that a change of land use either from or to agricultural use will only be permitted in consultation with the Department of Agriculture. In addition, the Centre proposes that the extent to which use can be regulated should be contained to broad use.

10. The Centre welcomes the application of section 25 of the Constitution in clause 35.

11. In view of the Centre’s concerns regarding the protection of agricultural land, the Centre would propose that clause 39 be likewise amended to allow for consideration of all applications affecting agricultural land to be done in consultation with the Agricultural Ministry.

12. The Centre welcomes the provisions of clause 40 read in conjunction with clause 70 as applications for land use change are invariably economically driven, and undue delays can negatively impact on potential investor confidence.

13. Lastly, the Centre notes with concern the figures recently released by the Labour Department which reflect a shortage of more than 400 000 farmers and farm workers within the commercial farming sector. More specifically, there is an alleged shortage of 102 670 crop farmers in the country, 150 000 crop and livestock farmers and almost 220 000 farm workers. (N Tolsi “Where are all the farmers?” *Mail & Guardian* 16 to 22 2008). The scale of these missing skills

poses a serious threat to South Africa's food security. In order to not further exacerbate the situation, where land use is altered to agricultural use, the Bill should specifically provide that the extent of land is sufficient to be a sustainable and viable agricultural entity.

Yours faithfully,

A handwritten signature in cursive script that reads "Nichola de Havilland". A horizontal line is drawn underneath the signature, extending from the start of the first word to the end of the last word.

Adv N de Havilland
Deputy Director
Centre for Constitutional Rights