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promoting liberal constitutional democracy

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Submission in response to the Department of Agriculture, Forestry and Fisheries' Draft Policy and Bill on the Preservation and Development of Agricultural Land Framework Bill (Notice No. 210 of 2015, Gazette No. 38545)

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Executive Summary

The Helen Suzman Foundation's ("HSF") mandate is to promote and defend South Africa's constitutional democracy. The HSF's interest in *the Draft Policy and Preservation and Development of Agricultural Land Framework Bill* ("DAFF Policy" and "DAFF Bill" respectively) centres on ensuring that those who hold power are always accountable; that liberty is protected; and that intentional and unintentional consequences of policies are considered. Central to our work is the defence of the Rule of Law.

The HSF welcomes the opportunity to make a submission on the Department of Agriculture, Forestry and Fisheries' *DAFF Policy and Bill*. The HSF sees this opportunity as a way of fostering critical, yet constructive, dialogue between civil society and government in terms of the legislative process.

The Shortfalls in the Bill

The HSF submits that the DAFF Policy and Bill needs to address the following:

- The content of "agricultural land";
- The information requirements;
- The capacity requirements;
- Justification of the over burdensome regulation;
- Conflicting overlap with other Departments;
- Market mechanisms be introduced.

Summary of Recommendations

The HSF suggests that the DAFF Bill be withdrawn in its current format.

Conclusion

Our detailed submissions and recommendations are contained in the body of this document. We believe that our submissions suggest a way of addressing the concerns raised by Civil Society as well as the requirements of the Constitution. We trust they will be of assistance to the Portfolio Committee.

We would also like to request that we be invited to address oral submissions to the Committee, in support of this document, at the appropriate time.



Francis Antonie
Director

30 May 2015

Introduction

The Helen Suzman Foundation (“**HSF**”) is aware that a White Paper underpins part of the legislative process and is a broad statement of government policy¹. A poorly formulated policy has the potential to translate into poorly drafted legislation, a process that results in harm to both our democratic society and the public purse.

Bearing this in mind, the DAFF Policy and Bill represent the culmination of the above mentioned process. It is this status that requires even more scrutiny to ensure that bills reflect a progressive constitutional agenda. It is with this in mind that the HSF makes the following submission.

1. What is Agricultural Land?

1.1. The story goes back to the Subdivision of Agricultural Land Act 70 of 1970 (“**SALA**”), as amended. In SALA, agricultural land was defined as a residual category. The following were excluded:

- land situated in the area of jurisdiction of a municipal council, city council, town council, village council, village management board, village management council, local board, health board or health committee;
- land of which the State is the owner or which is held in trust by the State or any Minister for any person;
- land which the Minister after consultation with the executive committee [of a province] concerned and by notice in the Government Gazette excludes from the provisions of the Act;
- a number of other categories of land, often specific to individual provinces.

¹ It is also noted that the process of Green and White Papers is to enable the Legislature to draft Bills which pass constitutional muster.

- 1.2. The introduction of wall-to-wall local authorities threatened to create a situation in which no land was agricultural land, and accordingly a proviso was added. The proviso noted that any land classified as agricultural immediately prior to the first election of the members of a transitional local council would remain classified as such. The issue of what would happen once the new local authority system was finalized was tested in the courts, with the Constitutional Court ruling that the proviso would continue to apply.²
- 1.3. Much, though not all, of the land in the former homelands was, and continues to be, State Trust land.
- 1.4. The draft Preservation and Development of Agricultural Land Framework Bill (“**DAFF Bill**”) proposes to bring the definition in line with the times. Agricultural land is, again, defined as a residual category. This time, however, the exclusions are:
- land in a proclaimed township;
 - land included in an application for declaration as a township before the commencement of the [new] Act, provided that the application is approved;
 - land which, immediately before the commencement of the Act, was formally zoned for non-agricultural purposes by any sphere of government or any public entity;
 - land which the Minister, after consultation with other relevant Ministers and provincial MECs concerned, excludes by notice in the Government Gazette.
- 1.5. The earlier reference to State land or land held by the State in trust is omitted from the DAFF Bill. Applying for a subdivision or rezoning of agricultural land after the commencement of the DAFF Bill will be a lengthy process. First, an application has to go to the Provincial decision makers who have to consult the relevant municipality. If the land is occupied by a traditional community, traditional

² *Wary Holdings (PTY) Ltd v Stalwo (PTY) Ltd and Another* 2009 (1) SA 337 (CC).

authorities have to be consulted by the municipality. The application then goes back to the Provincial decision makers and then on to the National Department responsible for agriculture, forestry and fishing, where it has to be considered by a committee and then by the Minister, who makes the decision. At every stage, the application must be considered in the light of several criteria and recommendations made.³ This means that there can be no new development without the approval of the Minister of Agriculture.

1.6. The DAFF Policy document contains quite a different definition of agricultural land:

any land which is or may be used for the production of biomass that provides food, fodder, fibre, fuel, timber and other biotic material for human use, either directly or through animal husbandry including aquaculture and inland and coastal fisheries or any other agricultural purpose, excluding land which the Minister, after consultation with other relevant Ministers and MEC's concerned, excludes by means of a notice in the Gazette.⁴

1.7. The DAFF Bill innovates by defining eight classes of land⁵, ranging from Class I, which has very high potential for intensive crop production to Class VIII, which has permanent limitations that preclude its use for commercial agricultural production and restrict its use to recreation, wildlife, water supply or aesthetic purposes. Classes I and II are suitable for intensive crop production, class III has a moderate and Class IV has a marginal potential for crop production. Classes V-VII are suitable for grazing and forestry while Class VIII normally includes very steep areas that are not suitable for agricultural purposes.

1.8. Classes are grouped into high potential cropping land (Classes I to III plus irrigated or potentially irrigated land plus other land capable of producing high quality and high yields of a specific crop) and medium potential land (all other agricultural land).⁶

³ DAFF Bill Chapter 2 – Agricultural Regulation.

⁴ DAFF Policy at p6.

⁵ DAFF Bill Chapter 1 – Definitions at p16-18.

⁶ DAFF Bill Chapter 1 – Definitions at p 14-15, 19.

1.9. This classification is meaningful as the DAFF Bill:

- states that agricultural land is the common heritage of all the people of South Africa and the Department of Agriculture, Forestry and Fisheries (“**DAFF**”) is the custodian thereof for the benefit of all South Africans;⁷
- requires that a farmer actively uses and develops the agricultural land concerned to its optimal agricultural potential, with due regard to the farming enterprise concerned; and protect the agricultural land concerned from non-sustainable agricultural activities and non-agricultural activities. Failure to do so may result in expropriation at a lower price than would be paid for similar land in the same geographical area which is used optimally for agricultural purposes.⁸

1.10. Furthermore, the DAFF Bill:

- prohibits the conversion of high potential cropping land to eco-tourism game farming or other agricultural production activities, where such conversion will result in a decrease in, or cessation of, the production of food and food crops;⁹
- requires that lease agreements of longer than ten years on high potential cropping land be approved by the Minister;¹⁰
- requires written consent, by the Minister in the case of high potential cropping land or the provincial MEC in the case of medium potential land before any portion of agricultural land, whether surveyed or not, is sold or advertised for sale for non-agricultural purposes;¹¹
- requires Ministerial consent to consolidation of high potential cropping land;¹²
- requires Ministerial consent to the acquisition of agricultural land by a foreigner;¹³

⁷ Section 3 – Custodianship.

⁸ Section 2 – Objects of the Act.

⁹ Section 55 – Use of high potential cropping land contrary to objects of Act.

¹⁰ Section 57 – Lease Agreements.

¹¹ Section 58 – Selling or advertising for sale of portion of agricultural land.

¹² Section 61 – Consolidation of agricultural land.

- permits the Minister to intervene in matters of succession to agricultural land, possibly requiring the realization of the land as part of winding up an estate.¹⁴

1.11. This provision of the DAFF Bill, as it stands, would introduce much heavier regulation than existing legislation requires. In turn this requires considerable information and capacity, at all three levels of government.

2. The Informational Requirements

2.1. As noted above, the DAFF Bill proposes heavy regulation of agricultural land, which in turn imposes substantial information requirements. Can these requirements be met?

2.2. The DAFF Bill provides for the establishment of an electronic geo-referenced land register which will:¹⁵

- store data and information for the development, protection, sustainable use and management of natural agricultural resources and agricultural land. This includes demarcation of high potential cropping areas and potential agricultural land. For each piece of agricultural land there must be a record of its ownership, including the nationality and gender of the landowner, and any other information as may be prescribed by the Minister from time to time, and the characteristics of agricultural land, including land cover and land capability class. Information on current agricultural or other land use, environmental encumbrances, water licences and other natural resource-related information is also required;
- lodge and track applications.

¹³ Section 60 – Acquisition and registration of agricultural land by foreigner.

¹⁴ Section 62 – Succession.

¹⁵ Chapter 4 – National Agricultural Land Register and Other Systems.

2.3. Every Provincial Department must provide information on relevant spatial datasets, show the extent of agricultural land lost to mining, formal urban residential developments, informal urban residential developments, and industrial developments, and integrate datasets from different sources, including municipal and farm level.¹⁶

2.4. What resources do we currently have to help meet these requirements?

2.4.1. The State Land Audit¹⁷, completed in 2014, was conducted to determine how much land was owned by the state, what it was used for, and who were the occupants or users. The audit was conducted for all spheres of government, and the former homelands, public land held by the *Ingonyama Trust* and land of state owned enterprises. It excluded land not registered at the Deeds Office. There were site visits to registered state land, while a desk top study was made of private land.

2.4.2. The audit provided statistical information pertaining to land ownership, specifying gender, and the nationality or citizenship and identity of the owner. The audit found that of the 121 973 200 hectares of land in South Africa, 79% was privately owned, 14% was state land and 7% could not be accounted for. Of the private land, 48% was owned by individuals, 22% by companies, 27% by trusts and 3% by private organizations. The 17 061 882 hectares of state land was divided into 1 155 508 land parcels. 40% of this land was held by national departments, including tribal trust land, 22% was held by parastatals, 19% by provinces and 12% by municipalities, with the remainder not classified.

2.4.3. The Surveyor-General also reported to Parliament that 95% of unsurveyed land in the former homelands in 2011 had been surveyed by 2013. The Land Audit reported that 16 035 593 hectares of land were situated in the former

¹⁶ Section 73(4)

¹⁷ <http://www.ruraldevelopment.gov.za/phocadownload/Cadastral-Survey-management/Booklet/land%20audit%20booklet.pdf>

homelands. Some of this would have been private and some held in trust by the state.

2.4.4. The extent of electronic geo-referencing of land is unclear.

2.5. On the basis of national spatial data in its possession¹⁸, the Department estimates that the distribution of land capability by class and land by use is:

Class I	0.0%	Inland water	0.2%
Class II	1.5%	Irrevocably transformed from	
Class III	11.5%	agricultural use	2.6%
Class IV	13.5%	Formally protected (e.g.	
Class V	11.2%	game reserves)	4.6%
Class VI	14.9%	Forestry	1.3%
Class VII	37.3%	Cultivation	11.4%
Class VIII	10.3%	Range land	80.0%

2.6. Again, the extent and precision of geo-referencing is unclear, especially since the class of land can vary over short distances. The 2002 land type data set has a resolution of 25 hectares and there must be close to five million such squares across the country. Each square is classified by majority land use, so all irrevocably transformed areas smaller than 12.5 hectares per square were excluded in the results. Permanently transformed areas smaller than 12.5 hectares per square include features such as roads, rural dwellings, open cast mining, small residential and industrial developments. So the irrevocably transformed area

¹⁸ These include:

- National Land capability classification derived from the 1:250 000 land type data set - 2002
 - Former homelands and TBVC states – spatial demarcation
 - Protected areas - national and provincial as derived by the Department of Environmental Affairs - 2009
 - Cultivation – National Field crop boundaries, KZN Landcover 2009 and Inkomati Catchment Management Area Landcover 2010
 - Forestry plantations – DAFF 2010; Landcover 2000
 - Permanently transformed areas – SPOT Building Count (ESKOM) 2009; Roads 2006; Landcover 2010.
-

estimate is below what is in fact on the ground. Further studies, the Department concludes, are needed to quantify the extent of these areas.

- 2.7. Another aspect of the information required notes that every application for subdivision, rezoning, land consolidation, long leases and acquisition by foreigners will require an agro-ecosystem report.¹⁹ This report must contain the proposed use of the land, municipal and provincial land use frameworks, information on soil, terrain, natural vegetation, climate and water sources, agricultural land capability, on and off farm infrastructure, current agricultural enterprises and uses and an agro-system impact assessment of the change. Only a South African Council for Natural Scientific Professions registered agricultural scientists can do the work.²⁰
- 2.8. The preparation of such a report will be expensive, to the point of being unworkable for many small farmers and all micro farmers. If incorporated into the land register these reports will build up more detailed knowledge of agricultural land in a piecemeal fashion and some land will not be the subject of reports for a very long time.
- 2.9. Developing a geo-referenced information system will involve a massive amount of work. In the process, inconsistencies in the Deeds Office records will be uncovered and will have to be dealt with. Unregistered land will have to be dealt with. There is a great deal of potential for land to be assigned to the wrong capability class and extensive applications for changes can be expected. Moreover, there are rights to the occupation of land not recorded in the Deeds Office: the right to occupy land on privately owned farms, on state land and in tribal areas. The DAFF Bill envisages that these rights must be registered as servitudes, and that the Minister or MEC must approve them, except in some specified cases.

¹⁹ Section 81 – Contents of Agro-ecosystem Report.

²⁰ Chapter 1 – Definitions as it relates to an “agricultural specialist”.

3. State Capacity Requirements

3.1. All three levels of government will be involved. Let us start from the bottom up.

3.2. Municipalities.²¹

3.2.1. Every municipality must incorporate all agricultural land in their municipal spatial development plans. In the process, they must incorporate the classification of land formulated by the national and provincial departments. Each municipality must establish a Municipal Internal Technical Committee to deal with the province, monitor changes in land use, evaluate policies and strategies for sustainable agriculture and consider and make recommendations regarding for the rezoning and subdivision of agricultural land. The recommendations must be made in the light of the municipality's integrated development plan, the local economic development plan, the land use management scheme and any other local planning framework. A municipality must also consult with traditional authorities if traditional land is involved. Applications must be dealt with quickly. If an application is not dealt with in twenty days from receipt of an application from the province, the province is entitled to disregard its inputs and execute the municipal functions.

3.3. Provinces.²²

3.3.1. Every province must, with the assistance of the national department, implement a coherent approach to planning and development of agricultural land and its optimal use. In so doing, it must establish systems for agricultural land use planning and zoning, regulating agricultural land conversions and processing applications for farmers. In formulating strategic plans, the

²¹ CHAPTER 8 – Provincial and Municipal Responsibilities, Guiding Principles, Minimum Provincial Norms and Standards, and Coordinated Planning and Development – sections 142-143.

²² CHAPTER 8 – Provincial and Municipal Responsibilities, Guiding Principles, Minimum Provincial Norms and Standards, and Coordinated Planning and Development – sections 140-141.

province must include evaluations of alternative forms of development, give weight to strategies which minimize the impact on high cropping agricultural land and promote urban agriculture. Every province must establish a Provincial Internal Technical Committee to make recommendations regarding applications for subdivision or rezoning, and to make suggestions to municipalities on the use of agricultural land.

3.4. National.

3.4.1. The DAFF Bill provides for the establishment of institutions²³:

- A *National Internal Technical Committee*²⁴, designed to make recommendations to the Minister on applications, including for long leases, sales of portions of agricultural land, acquisition of land by foreigners and consolidation of land. It will also make recommendations on expropriation and monitor trends and compliance.
- An *Agricultural Land National Advisory Committee*²⁵, whose functions will include the evaluation of provincial agricultural sector plans and to make recommendations to the Minister, and assessing the desirability of establishing incentive schemes to promote optimal land use. There is also considerable overlap between the functions of this committee and the National Internal Technical Committee.
- An *Intergovernmental Committee on the Preservation and Development of Agricultural Land*²⁶. On this Committee will be the Minister and Deputy Minister of Agriculture, Forestry and Fisheries, the Minister and Deputy Minister responsible for land reform, the Ministers responsible for trade and industry, environmental affairs, mineral resources and water affairs,

²³ Chapter 6 deals with the Institutional Framework comprising 6 institutions. Of importance, however, are the institutions mentioned.

²⁴ Chapter 6 Part III: Preservation and Development of Agricultural Land Framework Act National Internal Technical Committee

²⁵ Chapter 6 Part II: Agricultural Land National Advisory Commission.

²⁶ Chapter 6 Part I: Intergovernmental Committee on the Preservation and Development of Agricultural Land.

and the Chair of the National Planning Commission. This will act on recommendations by the Ministers responsible for agriculture and land reform. Where matters concerning a specific province are concerned, the MEC will attend committee meetings.

The purpose of the Committee will be to ensure high level discussion and departmental co-operation in the preservation, development and sustainable use of agricultural land. It will also deal with applications for rezoning of high potential cropping land and protected agricultural land in medium potential land.

- An *Agricultural Review Board*²⁷, whose function is to review decisions on applications made to the Minister, the MEC or the Intergovernmental Committee, and any conditions on applications. The decision is final and must be communicated, with reasons, to all affected parties. However, an appeal against the decision may be lodged in a High Court.

3.5. The Minister may authorise a suitable person to inspect agricultural properties. Inspectors may enter properties at any time to carry out routine inspections, to collect specimens and to investigate whether conditions attached to the authorized use of the land are being complied with. Inspectors may issue directives to non-compliant persons, which specify steps to be taken within a specified period. Directives can be appealed against to the Director-General. Failure to comply with a directive may result in any conditional approval being cancelled, a final notice of expropriation being issued or referral of the matter to the National Prosecuting Authority if an offence has been committed. The DAFF Bill defines the following as offences²⁸: committing or omitting an act which results in a contravention or

²⁷ Chapter 6 Part VI: Agricultural Land Review Board.

²⁸ Section 158 deals with offences in terms of the DAFF Bill.

failure to comply with any provision, aiding and abetting such a commission or omission, making a false disclosure, or avoiding the provisions of the DAFF Bill.

3.6. As indicated in the previous above, the new system will entail great pressure on the Surveyor-General and the Deeds Office.

3.7. Financial and skills constraints on implementation of a new system will exist and may be severe enough to cause serious congestion at all levels, to the point where the system functions badly and, in places, not at all. This creates incentives for avoidance, and for bribery and corruption designed to grease the wheels. In any event, the new system will be costly and so the question must be considered of whether heavy regulation justifies the cost and produced desirable outcomes.

4. Is Heavy Regulation Justified?

4.1. The DAFF Policy document maintains that the proposed system is necessary²⁹:

- for food security;
- to ensure that agricultural land remains available and viable for agricultural development through sustainable use of natural resources;
- to limit to the minimum the loss of high potential cropping land to non-agricultural uses;
- to prevent fragmentation of farming units into uneconomical farms;
- to ensure that land is used optimally;
- to maintain and increase agricultural output and employment, to promote rural development and to reduce poverty.

4.2. The DAFF Policy neither raises nor addresses the issue of why agricultural markets cannot achieve the desired results with a much lighter system of

²⁹ Section 7 – Draft Policy Document Principles – DAFF Policy at p30-32.

regulation? In other words, what are the market failures that the proposed system is designed to overcome?

4.3. Well-functioning markets put assets into the hands of the people who can use them and get the highest returns from them. The price of land is determined by the net present value of returns to it. This means that someone who can make higher returns than the current owner can bid for the land at a higher price than the net present value of the current owner's returns, and the current owner would gain by selling at that price. Moreover, there are incentives not to mine farm land, i.e. use it for higher returns in the short run in a way that reduces its potential to produce in the longer run. A short term income gain would have to be balanced off against a capital loss.

4.4. Market failures in agriculture generally take one or four forms:

- *Externalities*, both within the farming system, and between the farming system and other aspects of the economy. An example of the first kind would be a river that runs through several farms. Upstream farmers can, at no cost to themselves, pollute rivers which then disadvantage downstream farmers. Or forest burning in Indonesia which causes smog in Malaysia. An example of the second kind would be pollutants emitted by, say, power stations which result in acid rain. Externalities can be reduced by state regulation, but they can also be reduced by the application of polluter pays principles.
 - *Missing markets*. These may vary from land which does not have a market price, e.g. land allocated under tribal tenure, to imperfect credit and insurance markets. Farming is risky, and imperfect credit markets mean that farmers have to have a considerable amount of equity capital to weather adverse circumstances.
 - *Contractual arrangements*. It can be shown that a system of fixed rentals for land lead to economically more efficient outcomes than sharecropping. In the former case, the farmer bears the full implications of his decisions. In the latter
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case, he does not. On the other hand, sharecropping offers some insurance to farmers.

- *Desperation*. This occurs when the necessities of short term survival lead to mining of land at whatever cost in the future.

4.5. The proposed Framework addresses only some of these market failures. A well conducted agro-ecosystem assessment can identify some externalities, but air and water pollution monitoring is very limited in South Africa. The framework does not deal with missing markets, not does it offer remedies for desperation. And it can have only marginal effects on contractual arrangements.

4.6. Moreover, the term “optimal” needs careful consideration. The proposed Framework focuses on the physical properties of land and the climate in which it is situated. From an economic point of view, three other factors play a key role:

- *World prices*. Optimal (in the sense of profit maximizing) production this year may not be optimal next year, because world prices can and do fluctuate, sometimes wildly. Land and climate characteristics are not sufficient to determine optimal production.
 - *Food security*. Properly speaking, food security is a global concern, not a national concern. Nationally, it may make perfect sense to sacrifice some agricultural production for more production in other sectors and trade these other goods for agricultural products. Of course, it does not help that world agricultural trade is heavily distorted, principally by special interests in developing countries. Even so, there are opportunities for gains from trade.
 - *The nature of the farming community*. Here we are at the heart of a paradox in South African land policy. On the one hand, a history of colonial conquest, apartheid and segregation have made land a highly salient political issue. On the other, there are indications that interest in farming is limited. Accurate, comprehensive and appropriately interpretable statistics on land restitution are hard to come by, but a Policy Brief published by the Institute for Poverty, Land
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and Agrarian Studies (“**PLAAS**”) in 2014 made a number of points.³⁰ 79 696 claims were lodged during the first window from 1994 to 1998. Of these, the government claimed that 97% had been settled by 2014, but that many claims had yet to be finalized and fully implemented, or had not been gazetted or not settled, amounting to 37% of all claims. The great majority (87%) of settled claims have been urban, with cash settlements in most cases. Most of the claims lodged since the opening of the second window in 2014 have requested cash compensation rather than restoration of land. When the market research firm IPSOS³¹ conducted a nationally representative survey of perceptions of issues the government should tackle, figures of 18% showed favour toward landlessness and land claims. When asked which issues were most important to respondents personally, one per cent – yes, one – referred to land.

- 4.7. It is worth noting that the policy document is ambivalent about small and micro farmers. The DAFF Policy states³²:

The land reform process, in its current form, is dividing many large farms into smaller, less efficient units and thus reduces agricultural output. The emerging agricultural sector is then characterized by low productivity and a lack of access to markets due to inadequate infrastructure. The failure of a number of land reform projects due to insufficient knowledge, mentorship and support or without the aptitude to farm is leading to increased land degradation and continuing food security and poverty.

- 4.8. It is far from clear how the proposed policy and legislation will relate to small and micro farmers.
- 4.9. The State has a marked tendency to propose Rolls Royce policies when financial and skills constraints support no more than a battered bakkie. The DAFF Policy and Bill are a case in point. The DAFF Policy and Bill should be returned to the

³⁰ <http://www.plaas.org.za/sites/default/files/publications-pdf/Policy%20Brief%2034%20Web.pdf>.

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<http://www.ipsos.co.za/SitePages/South%20Africans%20expect%20job%20creation%20and%20moral%20leadership%20in%20the%20next%20five%20years.aspx>.

³² DAFF Policy at p24.

drawing board to be made simpler, better, and adapted to South African conditions and such that the benefits clearly exceed the costs.

5. Overlapping and the Coherence of Legislative Proposals

5.1. The Department of Rural Development and Land Reform (“**DRDLR**”) is another participant in the development and distribution of South Africa’s land. Both the DAFF and DRDLR have purposes and programmes which overlap. The purposes and programmes specified in Budget 2015: Estimates of National Expenditure are as follows:³³

	Agriculture, Forestry and Fisheries	Rural Development and Land Reform
Purpose	Lead, support and promote agricultural, forestry and fisheries resources management through policies, strategies and programmes to enhance sustainable use, and achieve economic growth, job creation, food security, rural development and transformation.	Create and maintain an equitable and sustainable land dispensation and act as a catalyst in rural development to ensure sustainable rural livelihoods, decent work and continued social and economic advancement for all South Africans.
Programmes	<ol style="list-style-type: none"> 1. Administration 2. Agricultural Production, Health and Food Safety 3. Food Security and Agrarian Reform 4. Trade Promotion and Market Access 5. Forestry and Natural Resources Management 6. Fisheries 	<ol style="list-style-type: none"> 1. Administration 2. National Geomatics Management Services 3. Rural Development 4. Restitution 5. Land Reform

5.2. The DRDLR intends to introduce five Bills to Parliament by the end of the year. None has been published yet, but their names and purposes are set out in the Department’s Strategic Plan for 2015 to 2020 as follows³⁴:

5.2.1. The *Communal Land Bill*, designed to transfer communal land to communities and to members of communities and to provide for the administration of communal land.

³³ DAFF: <http://www.daff.gov.za/daffweb3/News-Room/Speeches> and DRDLR: <http://www.ruraldevelopment.gov.za/component/content/article/77-news/1042-budget-and-policy-speech-08-may-2015#.VWcQ7c-qgko>.

³⁴ <http://www.ruraldevelopment.gov.za/publications/strategic-plans/file/3353>.

- 5.2.2. The *Regulation of Land Holdings Bill*, which will require disclosure by land owners of their nationality, race and gender, the circumstances under which foreigners may own or have access to land, the establishment of a register of land ownership and the resolution over conflicts when two or more deeds have been issued in respect of the same land.
 - 5.2.3. The *Communal Property Associations Amendment Bill*, designed to redefine the communities to whom the provision of the Act apply.
 - 5.2.4. The *Extension of Security Tenure Amendment Bill*, which aims to find lasting solutions to tenure insecurity on commercial farms by combining land redistribution measures within effective legal protection and dispute mechanisms.
 - 5.2.5. The *Electronic Deeds Registration Bill*, which will provide for an electronic deeds registration system.
- 5.3. Also relevant is the *Spatial Planning and Land Use Management Act*, passed last year.
- 5.4. While detailed comment must await publication of the Bills, some questions are already apparent.
- 5.4.1. How will existing deeds and the Deeds Office relate to the electronic deeds registration system, the DRDLR's proposed Land Register and DAFF's Land Register? The DRDLR Land Register relates to ownership, whereas the DAFF Register deals with agricultural land and is to contain material on land capacity, land use, environmental encumbrances, water licences and other natural resource information.
 - 5.4.2. How will the land redistribution measures in the Extension of Security Bill relate to provisions about subdivision in the DAFF Bill?
 - 5.4.3. How consistent will be the treatment of foreigners between the Regulation of Land Holdings Bill and the DAFF Bill? The State of the Nation address 2015 promised that no new purchase of agricultural land by foreigners will be
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allowed, yet the DAFF Bill provides for applications by foreigners for purchase.

- 5.4.4. Will household rights to land in communal areas be registered anywhere? If so, where and how?
- 5.4.5. Given that more than half privately agricultural land is owned by companies and trusts, what is the point of disclosure of race and gender by individual owners?
- 5.4.6. Under which legislation are limits on maximum farm sizes to be specified? And what exactly is to be the form of these maxima?

5.5. Current statements on this issue are confusing. The 2015 State of the Nation address announced the policy of a limiting all farms to a maximum of 12 000 hectares. The Minister of RDLR said the following in his 2015 budget speech:

We have come up with the following policy proposals on the ceilings, for both natural and juristic persons:

- a) SMALL SCALE FARMS. The ceiling for a viable commercial small scale farm should be 1 000 hectares;
- b) MEDIUM SCALE FARMS. The ceiling for a medium scale viable commercial farm should be 2 500 hectares; and,
- c) LARGE SCALE FARMS. The ceiling for a large scale viable commercial farm should be 5 000 hectares.

We have come up with a SPECIAL CATEGORY to address the 12 000ha maximum announced by the President. We are proposing that this maximum applies only to three categories of land use: forestry, game farms and renewable energy farms, especially wind energy.

Any excess land portions shall be expropriated and redistributed, and compensation will be on the basis of the 'just and equitable' principle enshrined in section 25(3) of our Constitution.

5.6. This raises the following questions:

- 5.6.1. What are small scale, medium scale and large scale farms? The term "scale" suggests classification by size, but then the policy proposals become logically circular and therefore useless.
- 5.6.2. Should the type of land and the local climate not be considered in determining maxima? The DAFF Policy reveals huge differences in average

farm size. In 2007, the Free State had the smallest average commercial farm size at 439 hectares, and the Northern Cape the largest at 4 907 hectares, more than eleven times larger than Free State. Why? Much of the Free State land is under crops, whereas most of the land in the Northern Cape is arid range land. One law for the lion and the ox is oppression.

5.6.3. Can the country afford expropriation of excess land from farmers? Might not the excess portions form sub economic farming units?

5.7. Optimal land use, food security, land redistribution, modernising communal land tenure, and rural development and reduction of rural poverty are all government goals. But there are trade-offs between them. There is, as yet, no sign of acknowledgement of these trade-offs, much less an indication of how they are to be approached.

5.8. The cover of the DLRD strategic plan has a photograph of people marching towards the future in departmental uniform, with arms swinging high. The march will be long and circuitous over difficult terrain, with battles on the way. Soldiers leaving for war in August 1914 thought they would be back for Christmas. They weren't.

Conclusion

1. We trust that our submission has been presented lucidly and comprehensively and is of assistance to the Portfolio Committee.
2. We wish to request that the HSF be invited to make further oral submissions to the Portfolio Committee at the appropriate stage.

Charles Simkins – Senior Researcher

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Francis Antonie – Director

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30 May 2015

PART A

RESPONDENT ORGANISATION & CONTACT DETAILS	AREAS OF CONSIDERATION				GENERAL RECOMMENDATIONS
	AIM of PD-ALF	PRINCIPLES of PD-ALFA	TECHNICAL RECOMMENDATIONS	GOVERNANCE RECOMMENDATIONS	
					1.11, 2.4, 2.5, 2.6, 2.8, 2.9, 3.6, 3.7, 4 and 5

RESPONDENT ORGANISATION & CONTACT DETAILS	AREAS OF CONSIDERATION				GENERAL RECOMMENDATIONS
	AIM of PD-ALF	PRINCIPLES of PD-ALFA	TECHNICAL RECOMMENDATIONS	GOVERNANCE RECOMMENDATIONS	

PART B

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RESPONDENT ORGANISATION & CONTACT DETAILS	SPECIFIC CHAPTERS AND SECTIONS OF CONSIDERATION		
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RESPONDENT ORGANISATION & CONTACT DETAILS	SPECIFIC CHAPTERS AND SECTIONS OF CONSIDERATION		
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RESPONDENT ORGANISATION & CONTACT DETAILS	SPECIFIC CHAPTERS AND SECTIONS OF CONSIDERATION		
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