



Submission to the Department of Agriculture, Forestry and Fisheries on

Draft Preservation and Development of Agricultural Land Framework Bill and Policy

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From the
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*PLAAS submission on the
Preservation and Development of Agricultural Land Framework Policy and Bill (PDALF)*

1. Introduction

- 1.1. The Institute for Poverty, Land and Agrarian Studies (PLAAS) is a constituent unit of the School of Government at the University of the Western Cape.
- 1.2. PLAAS engages in research, training, policy development and advocacy in relation to land and agrarian reform, rural governance and natural resource management. PLAAS aims for rigour in its scholarship, excellence in its training, and effectiveness in its policy support and advocacy. It strives to play a critical yet constructive role in processes of social, economic and political transformation.
- 1.3. PLAAS has read and considered the implications of the Preservation and Development of Agricultural Land Framework Bill and Policy, and submits the following comments and recommendations to the Department of Agriculture, Forestry and Fisheries.
- 1.4. We wish to place on record that **we request further involvement in discussion of the Bill** and Policy and to provide **further written and oral submission** where there is opportunity to do so, to substantiate the points made in this submission.

2. What is PDALF?

- 2.1. DAFF's PDALF Policy and Bill create a process for subdividing and rezoning agricultural land to ensure its protection from non-agricultural and 'unsustainable and non-economical' uses. Most significantly, the bill:
 - a. supports the consolidation and expropriation of agricultural lands when the 'optimal potential for maximum productivity' is not achieved
 - b. proposes a minimum threshold of high value agricultural land, 'rights to farm' and permission for foreign agricultural land ownership
 - c. mandates a National Agricultural Land Register and its oversight by governmental bodies at the municipal, provincial and national level
 - d. repeals the Subdivision of Agricultural Land Act 70 of 1970 (SALA) – an apartheid era anti-competition act that was repealed in 1998 but never signed into law by the president.

2.2. The bill says its proposed streamlined process for subdividing and rezoning agricultural would be important for protecting South Africa's declining agricultural lands from non-agricultural development. However, the bill maintains the thrust of Act 70 of 1970 to protect commercial farmers at the expense of small-scale and subsistence producers' access to land and raises concerns that these anti-poor effects of regulating subdivision will be perpetuated.

3. Background to the Bill

3.1. The Policy and Bill provide for the subdividing and rezoning of agricultural land, ostensibly to protect it from unsustainable and non-economical uses. It repeals the Subdivision of Agricultural Land Act 70 of 1970.

3.2. The Subdivision of Agricultural Land Act of 1970 is an apartheid-era law that has been used to protect and benefit wealthy commercial producers, and has survived to today. It curtailed competition from and land access for smallholders by limiting agricultural land to the farm size distribution in the 1970s. This has created a shortage of – and consequently has inflated the price of - small and medium sized farms relative to large farms.

3.2. The repeal of this apartheid law was passed by Parliament in 1998, was never signed into law. This constitutes a failure of the executive to heed the powers of the legislature, over a period of 17 years – surely a violation of the separation of powers.

3.3. The eventual agreement was that the president would not sign the repeal until a replacement bill (CARA - Conservation of Agricultural Resources Act) was developed by the Dept of Agriculture. There have been a number of draft bills (SUPAR & SUAR) which have floundered. Is this bill overkill and over-regulation by the dept?

4. Based on a flawed notion of 'economic units'

4.1. **Just like the apartheid Subdivision of Agricultural Land Act 70 of 1970, this draft Bill and Policy is based on a flawed and discredited notion of 'economic units' in agriculture.** They highlight the importance of "a strong commercial 'core'" (9.2.2.4) and the maintenance of a 'critical mass' of agricultural land held in 'large and contiguous blocks' (9.2.2.1). It states small farming units are often unproductive and the 'fragmentation of agricultural land into small uneconomic units' threatens food security (8.3.1). No evidence is provided for these claims. Indeed, the Bill and Policy fly in the face of decades of research in South Africa and globally that demonstrate no necessary relation between farm size and productivity. Indeed, there is vast body of established research to indicate the opposite: that, with the same production technologies and inputs, small-scale farming can be more efficient than large-scale farming, due to the use of family rather than hired labour. Here, the two are conflated: farm size and productivity.

- 4.2. The policy does not distinguish between farm size (area of land) and farm scale, which is the more useful measure of differences between farming systems. Ellis (1993:202-203) defines farm scale as economic size, measured by the 'joint volume of resources used in production, by gross farm output, or by the quantity of capital (fixed and working) tied up in farm production'. Thus a strawberry farm on 10 hectares is be a lucrative and large-scale enterprise, whereas a livestock farm in the Karoo of 5,000 hectares is a small-scale enterprise. However, whether on a small, medium or large scale, farming productivity can be measured in relation to output (eg. crop yields or value of livestock production) *per hectare of land*. Different scales of farming can be productive and profitable, even when levels of output per labourer or per unit of capital vary considerably, and their farming systems are of very different types. It is argued by many scholars that in countries with a high rate of unemployment and a scarcity of capital (as in South Africa today), labour-intensive small-scale farming is likely to result in more beneficial social outcomes than large-scale, capital-intensive farming.
- 4.3. Substantial bodies of research attest to the vital role in the livelihood strategies of poor, marginalized and black South Africans of practices of part-time and small-scale farming that do not conform to the normative models of large-scale, capital-intensive industrial farming typically practiced by white commercial farmers. These farming styles typically involve part-time, small-scale agricultural production that forms part of a portfolio of livelihood activities. While they do not conform to the 'farming business' styles typical of white, settler agriculture, they have been shown to be economically rational, highly efficient in their use of scarce resources (in particular labour), and highly adaptive to the strategic requirements of dealing with vulnerability and poverty. The South African state has made a strong policy commitment to supporting smallholder farming, and the subdivision of agricultural land could make a powerful contribution to making land available for this purpose.
- 4.4. Instead of learning from history, and especially the history of South Africa, the Bill proposes that DAFF will determine a 'minimum threshold' of high-potential cropping land to maintain and increase food production and land productivity. No details are provided on what this threshold would be and how it would be determined.
- 4.5. There should be no minimum threshold on landholdings in any part of the country.** Any such threshold would constitute an attempt by the state to prevent poor people from accessing land, which would likely violate Section 25(5) of the Bill of Rights, which contains the right of 'equitable access to land'.

5. The anti-poor and anti-competitive effects of regulating subdivision

- 5.1. The distortions on land prices coming from limits on subdivision just push up land prices. The failure to repeal the old apartheid Act of 1970 means that land prices are still distorted. The new bill would perpetuate this situation. Subdivision restrictions limit equal access to land and cuts off the supply of small parcels of land.

6. Regulating subdivision is discriminatory

- 6.1. Preventing subdivision has no basis - it is discriminatory and based on fallacies about inefficient smallholder farming. There is an inadequate supply of small scale farmers imposed by a legislative framework and this bill will simply cement that.

7. Land reform exemption

- 7.1. Having provision for a land reform exemption is insufficient - this already exists in the Promotion of Land and Assistance Act 126 of 1993 (as amended), and yet extremely few subdivisions have been effected in the land reform programme. The difference between the Bill and Act 126 is that Act 126 *automatically exempted* land reform projects from compliance with subdivision laws like Act 70. Section 2(4) of Act 126 say that if the subdivision relates to land reform project then Act 70 does not apply. What is needed instead is proactive promotion of subdivision, both for land reform purposes and in general.
- 7.2. The Policy and Bill reflect the hostility of DAFF to small-scale farming and to land reform. The Policy states that the land reform process, in dividing large farms into small farms to facilitate land claims, has reduced agricultural output and the capacity of the emerging agricultural sector. It does not provide evidence for this, nor for the claim that land reform has involved subdivision which is has (almost universally) not done. We would like DAFF to make public the number of subdivisions of agricultural properties that it has supported since 1994.
- 7.3. The Policy claims that numerous projects have failed because of insufficient knowledge and support. Yet the framework does not recognize how **subdivision restrictions have limited land reform, protected wealthy farmers from competition and created a shortage of small and medium farms on the land market.**
- 7.4. The approach in this Bill is that the land reform exemption only kicks in when the Minister of Agriculture, the Minister of Rural Development and Land Reform and the intergovernmental committee all agree that it is a good thing to suspend the subdivision in a specific case. This may be related to land use change requirements, as in the case of high-value cropping land (Section 12 of the Bill). This means that the special treatment for land

reform remains but it is much weaker, as it is an outcome of a complex intergovernmental decision making process on a specific parcel of land. This adds another layer of decision-making, and likely costs and delays both to the state and to applicants. **It is a step backwards for encouraging the subdivision of good farmland for redistribution through land reform.**

8. Expropriating under-utilised land

- 8.1. In Section 65(1), the Bill provides the DAFF Minister the power to ‘purchase or, subject to compensation, expropriate any agricultural land for the purposes of agricultural production’ if in the public interest. This attempt to place the public interest over the private interests of individuals holding agricultural land for speculative purposes is laudable. Equitable access to land is not only in the public interest, it is a constitutional right, as detailed in Section 25(6) and 25(8) of the Constitution’s Bill of Rights.
- 8.2. Section 54 on the ‘optimal agricultural use of agricultural land’ states that land not used for 3 years or used ‘significantly below the land’s optimal production potential’ may be subject to expropriation at a lower price than surrounding land. Section 65(3) of the Bill specifies that a hearing will be granted to landholders prior to expropriation but further clarification is needed about compensation.
- 8.3. However, the bill is unclear on how optimal production potential is defined and determined. Section 54 on ‘optimal agricultural use of agricultural land’ does not provide an indication. Under what criteria will land be expropriated? While this policy has the potential to support the government’s land redistribution programme by expropriating underutilized land from commercial farmers, its thrust of protecting large holdings and its emphasis on the commercial farming class and protecting its agricultural lands suggests this will not be the case.

9. Active support for land consolidation is counter to the Constitutional imperative

- 9.1. Since 1994, agricultural deregulation and trade liberalisation, among other factors, have contributed to massive consolidation of ownership of agricultural land. This is the very opposite of land reform. The Bill’s promotion of further land consolidation will mean further ownership consolidation, perpetuating or even accelerating this problematic trend in South African agriculture. This makes small-scale and subsistence farmers vulnerable and may further restrict their already precarious access to land and tenure rights.

10. Tax benefits for farmers?

- 10.1. The PDALF policy framework highlights that farmers need greater protections and security so that they are better incentivized and more capable of protecting agricultural land. Bill section 56 on the 'rights and obligations of, and incentives for, landowners' outlines 'rights to farm' in 56(1) and opportunities for government assistance to incentivize optimal high potential cropping land utilization in 56(2).
- 10.2. Furthermore, the framework highlights taxation strategies to discourage the conversion of agricultural land and encourage optimal agricultural use – these taxation strategies are mentioned in 152(1) of the bill but are not detailed.
- 10.3. Who are the landowners benefitting from this support made available by PDALF and how are 'land users' defined? Will rights and financial support accorded to 'landowners and users' mean fewer resources are available to support land beneficiaries and smallholders?

11. Foreign ownership

- 11.1. The policy framework, supported by Section 60(1) of the bill, requires that foreigners must receive written consent to acquire or register agricultural land. All we wish to note here is that there are currently two simultaneous legislative attempts to regulate foreign ownership – here and in the Regulation of Agricultural Landholdings Policy Framework and Framework Bill – and they are at odds with one another.

12. An unnecessarily heavy administrative burden

- 12.1. This bill will require a greater capacity at national, provincial and municipal level and will have a heavy administrative burden. Land use and how it connects with SPLUMA is very unclear. A lot of investigations proposed here will duplicate investigations carried out under NEMA. It is long and without any regulations as yet. Replaces Act 70 which was tight and short with something long and extensive. There is an exemption for land reform land. There are implications especially for high potential cropping land. It seems like a duplication and over-regulation and seems that it will make it more difficult to access productive land close to the cities.

13. Changes in land use are already adequately regulated

- 13.1. There is already tight regulation in the change of land use and this Bill reintroduces the issue of subdivision with a much more cumbersome and expensive way at a time when the environmental regulation of land resources is much more strengthened. Changed uses of high-value agricultural land need National Environmental Management Act (NEMA) and

Spatial Planning and Land Use Management Act (SPLUMA) approval, amongst others, and subdivisions would also be subject to these regulations. Subdivision may be misused to rezone land along coastal areas and rivers for recreational purposes, for instance, which requires assessing the extent to which SPLUMA, NEMA and ICMA protect against this. It is not a reason to add another, far more complex, level of regulation through different levels of the state. NEMA (Section 2) and SPLUMA (Sections 29 & 30) both make provision for one integrated decision-making process. This Bill would undo the streamlining achieved in these Acts.

14. National land registry

- 14.1. This is the one part of the Bill which addresses a real need and proposes a solution which could assist with information management on agricultural land.
- 14.2. The National Agricultural Land Register will be an electronic geo-referenced register run by DAFF to track the use of and protect agricultural land. It will include information on all land uses and classification (including non-agricultural uses like mining), ecosystem evaluation, production and land ownership, including nationality and gender. In the latter respect, it overlaps with the Draft Regulation of Agricultural Landholdings Policy Framework of the Department of Rural Development and Land Reform and the related Bill which is not yet published.
- 14.3. The land register would require ‘all governmental, semi-governmental and public entities in possession of datasets and other information relating to agricultural land potential’, including in the former homelands to make available information they hold on agricultural land (Section 69(3)(a)). The register would also include a tracking and reporting system for subdivision and rezoning (Section 75).
- 14.4. In addition to creating positions for the establishment and maintenance of NALR, an internal PDALF technical committee will be created for each municipality, out of each provincial department responsible for agriculture, and out of DAFF, and an intergovernmental committee to oversee high value agricultural land applications for rezoning or subdivision and applications related to land reform. Additionally an Agricultural Land National Advisory Commission will be established, as mentioned in Section 92. Questions need to be raised whether the creation of new regulatory bodies, committees and registers is the most effective use of DAFF’s budget or whether finances could be used to improve or expand existing support and protections for agricultural land and production.
- 14.5. The draft policy says that the agricultural sector does not provide credible data on the value of land and this bill addresses that with the introduction of a national land register. **However, the national land registry can be placed under CARA.**

15. Conclusion

- 15.1. Large property owners have strong vested interests in keeping land markets regulated so as to prop up land prices, making land more expensive than if subdivision were freely allowed, and a wide range of parcels of different sizes were available on the market. In addition, these vested interests are opposed to subdivision of farmland for land reform purposes.
- 15.2. The effect of introducing this Bill, which is unlikely either to be passed in its current form, nor to be adequately implemented (given the vast additional administrative burden on different pheres of the state. The net effect of introducing it is to further delay the final Repeal of the Subdivision of Agricultural Land Act, and keeps this odious apartheid law on the law books of a democratic and free South Africa.
- 15.3. The Bill aims to further consolidate agricultural land holdings and continue to limit the state's capacity to implement meaningful land reform. **The Bill, if enacted, would constrain the quantity and quality of land available for land reform.**
- 15.4. This bill is politically conservative and based on apartheid-era logic that is widely discredited and holds no basis in science or agronomy. It uses the language of land reform but will not assist land reform at all. Its true purpose and effect will be to protect the interests of wealthy owners of large properties.
- 15.5. **There is no need for this Bill at all. The President should sign into law the Subdivision of Agricultural Land Repeal Act, which was passed by Parliament in 1998.**