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## AGRI SA COMMENTS ON THE UPGRADEING OF LAND TENURE RIGHTS AMENDMENT BILL

### 1. BACKGROUND AND GENERAL COMMENTS

Agri SA is a federation of agricultural organizations, which was established in 1904 as the South African Agricultural Union and consists of 9 provincial unions, 25 commodity organizations and 32 corporate members. Agri SA, through its affiliated membership represents a diverse grouping of individual farmers regardless of gender, colour or creed. Agri SA is committed to the development of agriculture in South Africa. Commercial agriculture ensures that our country is food secure and that the sector remains globally competitive. We are a non-profit, apolitical organization that is helping to develop a stable and profitable agricultural environment in South Africa.

Many of Agri SA's affiliates are active in farmer support programs in the former homeland areas and on state land. These farmers experience many problems as a result of not having ownership rights. The lack of tenure security presents huge problems in these areas. Allotments and permission to occupy (PTO) permits are not freely transferrable by the holder. PTOs are allocated by the land governing authority (traditional leader or CPA) and as such cannot be freely traded between individuals. This hampers agricultural production as a successful farmer cannot simply acquire additional land by 'buying' or 'renting' another household's PTO. Similarly, since PTOs are not freely transferrable. It is not often accepted by lenders as collateral for a loan. This issue will be elaborated upon below. Often the duration of PTO rights is not specified. As such, the holder has little certainty that he or she will be able to use for the land in question for a specified period of time in the future. This uncertainty deters investment in the land (by the holder or third parties) as one cannot be sure that the holder will be able to use the land long enough to realise a return on the investment. There is reportedly a strong bias towards males when it comes to the allocation of use rights. Farmers in these areas tend to experience almost no access to financing from commercial financial institutions. The primary reason for this is that the lending criteria often requires land to be used as collateral. Use rights must be transferrable by succession to an heir of the holder's choice, irrespective of gender. Many farming operations are family-run, and as such one must be sure that the land upon which the farming business is build can be transferred to the heir (family or otherwise) of the holder. This should not be subject to the discretion of the land governing authority.

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Agri SA's preference is for full title for farmers farming on state land. The ULTRA Amendment Bill is a step in the right direction. Transferability of rights is of paramount importance. Land rights should also be of indefinite duration and there should be no bar whatsoever in terms of gender regarding the acquisition of ownership rights.

There is a lot of unlocked agricultural potential in many of the old homeland areas, where rainfall is better than on the western side of South Africa. Secure tenure for farmers in the form of ownership in these areas will help to unlock this potential to a greater extent. The clarification of the process of conversion of the Schedule 1 and 2 rights into ownership and the confirmation of women's rights in this regard is therefore welcomed.

## **2. SPECIFIC COMMENTS**

### **2.1 Long title of the Bill**

As the intention of the Bill is to deal with the upgrading of land tenure rights in the schedules to the Bill and not with land tenure rights generally, this needs to be stated clearly in the long title.

### **2.2 Section 2(1)**

In line with the comments above on the two schedules, section 2(1) should be rephrased to read: "Any land tenure right mentioned in Schedule 1 and which was granted in respect of Any person who, is the registered holder of a land tenure right according to the register of land rights in which that land tenure right was registered in terms of the provisions of any law or could have been a holder of that land tenure right, but could not as a result of laws or practices that unfairly discriminated against such person, may apply to the Minister, in the manner prescribed, for the conversion of such land tenure right into ownership in respect of"

### **2.3 Section 2**

We would like to suggest that a new section 1E and 1F be inserted to allow for delegation by the Minister and make provision for mediation in the case of disputes. that read as follows:

"1E (1) "The Minister must designate an officer of the Department or a suitably qualified person who is not an officer to conduct the inquiry"

(1E)(2) "the person designated under subsection (1) shall have all the rights and duties referred to in section 24D(5)(b)-(e); (6) and (7).

(1F)(1) "Where no objection is received within the prescribed period, the land tenure right shall be converted into ownership"

(1F)(2) "Where an objection is recorded, the person designated under subsection (1E)(1) shall, in addition to the rights and duties referred to in subsection (1E)(2), facilitate mediation between affected parties and report to the Minister the outcome of such mediation. "

### **3. CONCLUSION**

The Amendment Bill is welcomed as a step in the right direction in terms simplifying and extending the granting of full ownership to people residing on state land. Similarly, beneficiaries of land reform, should also be able to qualify for ownership rights on the land that is acquired on their behalf.