

24 March 2017

**TO: DEPARTMENT OF RURAL DEVELOPMENT AND LAND REFORM**

**ATTENTION: MINISTER GUGILE ERNEST NKWINTI  
DIRECTOR GENERAL ADV. SELLO RAMASALA**

**DELIVERED: VIA EMAIL**

[RALHBill@drdlr.gov.za](mailto:RALHBill@drdlr.gov.za)

[Sello.ramasala@drdlr.gov.za](mailto:Sello.ramasala@drdlr.gov.za)

---

**COMMENTS ON PUBLIC PARTICIPATION OF THE DRAFT REGULATION OF AGRICULTURAL  
LAND HOLDINGS BILL 2017, AS PROMULGATED IN THE GOVERNMENT GAZETTE NOTICE  
NO. 40697 ON 17 MARCH 2017**

---

Dear Sir/Madam,

My name is \_\_\_\_\_ with Identity Number: \_\_\_\_\_, and as an affected party and South African citizen I wish to make the following submission to the Department of Rural Development and Land Reform regarding the Regulation of Agricultural Land Holdings Bill. **It is my humble submission that the period allowed for public participation in this matter was too short, and I shall continue to explain as to why.**

**1) IMPORATANCE OF MEANINGFUL PUBLIC PARTICIPATION:**

The Constitution<sup>1</sup> makes express provision not only for representative and direct democracy but also for participatory democracy, particularly with regard to original lawmaking.<sup>2</sup> Section 59(1) and 72(1) of the Constitution place a duty on the National Assembly and the National Council of Provinces respectively to facilitate public involvement in their legislative and other processes, while section 118(1) does the same in respect of provincial legislatures. For ease of reference the above sections are quoted as follows:

---

<sup>1</sup> Constitution of the Republic of South Africa, 1996.

<sup>2</sup> C. Hoexter: *Administrative Law in South Africa* (2<sup>nd</sup> Edition, Juta) p.78

**59(1):** The National Assembly must-

- (a) Facilitate public involvement in the legislative and other processes of the Assembly and its committees; and
- (b) Conduct its business in an open manner, and hold its sittings, and those of its committees, in public, but reasonable measures may be taken-
  - (i) To regulate public access, including access of the media, to the Assembly and its committees; and
  - (ii) To provide for the searching of any person and, where appropriate, the refusal of entry to, or the removal of, any person.

**72(1):** The National Council of Provinces must-

- (a) Facilitate public involvement in the legislative and other processes of the Council and its committees; and
- (b) Conduct its business in an open manner, and hold its sittings, and those of its committees, in public, but reasonable measures may be taken-
  - (i) To regulate public access, including access of the media, to the Council and its committees; and
  - (ii) To provide for the searching of any person and, where appropriate, the refusal of entry to, or removal of, any person.

**118(1):** A provincial legislature must-

- (a) Facilitate public involvement in the legislative and other processes of the legislature and its committees; and
- (b) Conduct its business in an open manner, and hold its sittings, and those of its committees, in public, but reasonable measures may be taken-
  - (i) To regulate public access, including access of the media, to the legislature and its committees; and
  - (ii) To provide for the searching of any person and, where appropriate, the refusal of entry to, or the removal of, any person.

The above sections are enforceable duties and not mere constitutional flourishes, and same has been demonstrated by the Constitutional Court<sup>3</sup> in the cases *Doctors for Life International v Speaker of the National Assembly*<sup>4</sup> and *Matatiele Municipality v President of the Republic of South Africa*.<sup>5</sup>

Ngcobo J explained for the majority in *Doctors for Life*, that the duty to facilitate public involvement “will often require Parliament and the provincial legislatures to provide citizens with a meaningful opportunity to be heard in the making of the laws that will govern them”. The legislature has considerable leeway in deciding how public participation will best be facilitated, **while the question for the court is whether what has been done is reasonable in all circumstances.**<sup>6</sup>

---

<sup>3</sup> *Ibid* p79.

<sup>4</sup> 2006 (6) SA 416 (CC).

<sup>5</sup> 2007 (6) SA 477 (CC).

<sup>6</sup> C. Hoexter: *Administrative Law in South Africa* (2<sup>nd</sup> Edition, Juta) p.79

In *Matatiele*, the same majority affirmed the obligation on a provincial legislature to consult with people affected by the redrawing of provincial boundaries. **The court rejected the view that** the Constitution intended to cover merely the participation of elected representatives in the legislative process, as well as the argument that **it was sufficient for the legislature merely to “create space for the public to be involved”**. It concluded that the failure of one of the affected provinces to hold public hearings or invite written representations was unreasonable and a “plain, clear and unmistakable violation of section 118(1)(a) of the Constitution.”<sup>7</sup>

## **2) HOW IS THIS APPLICABLE TO THE PUBLIC PARTICIPATION OF THE BILL?**

The period allowed for commentary and representations on the Bill was a mere 30-days as promulgated in the Government Gazette. There are two questions which therefore need to be answered with regards to the public participation allowed by the Department of Rural Development and Land Reform:

1. Is the period allowed for public participation reasonable; and
2. Did the Department merely create a space for the public to be involved?

If one has reference to the White Paper on National Health Insurance (NHI) which was promulgated in the Government Gazette<sup>8</sup> on 11 December 2015, the Minister of Health allowed for comments thereon within 3 months from the date of publication thereof. On 11 February 2016 however, the Minister of Health revised the period of public participation in the Government Gazette<sup>9</sup> and allowed for further public participation up until 31 May 2016.

The NHI has far reaching effects on the entire medical profession of South Africa and therefore requires a lot of public participation to raise concerns and make recommendations. The proposed Bill arguably also fall within the same ambit as it will have far reaching effects on the entirety agricultural land in South Africa. With reference to the first question, a period of only 30 days allowing for comments and representations surely could not be considered reasonable, especially considering the far reaching implications of the proposed Bill. This would suggest that on the last question, the Department merely allowed a 30-day period to create a space for the public to be involved.

---

<sup>7</sup> *Ibid* p79.

<sup>8</sup> Gazette No. 1230.

<sup>9</sup> Gazette No. 165.

A crucial consideration is whether the participation will be meaningful and whether it is likely to have an impact on policy, decision or legislation finally being adopted.<sup>10</sup> My argument in this regard would be that a further allowance in the period for comments and representations will indeed be both meaningful and will have an impact on the final adaptation of the Bill.

I therefore propose that the Department revise the period allowed for public participation because of the far reaching implications of the Bill on agricultural property throughout South Africa, and to allow for further comments and representations to be made for a period of between 60 and 90 days.

## **CONCLUSION**

I trust that you will consider the abovementioned.

Yours truly,

---

---

<sup>10</sup> C. Hoexter: *Administrative Law in South Africa* (2<sup>nd</sup> Edition, Juta) p.83