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## MEDIA RELEASE

### **Agbiz engages with CRC on the review of Section 25 of the Constitution**

**“Agbiz today had the opportunity to make an oral submission to the Constitutional Review Committee (CRC) on its position in terms of the review of Section 25 of the Constitution,” Dr John Purchase, CEO of Agbiz said. The Agbiz delegation was led by the chairman, Francois Strydom, and further comprised the CEO of Agbiz, Dr John Purchase, Wandile Sihlobo and Theo Boshoff, who presented the submission to the CRC. The following is the position of Agbiz as summarized in today’s presentation:**

The function of Agbiz is to ensure that agribusiness plays a constructive role in the country’s economic growth, development and transformation, and to create an environment in which agribusinesses of all sizes and in all sectors, can thrive, expand and be competitive. Although the majority of our members operate in the value chain and are not large landowners per se, the entire upstream and downstream value chain relies on a successful and growing primary agricultural sector and Agbiz views the success of the land reform programme as one of the single, greatest factors needed to ensure its long-term sustainability. Land reform is an imperative given the history of dispossession, skewed patterns of ownership and insufficient access to land for economic and settlement purposes in South Africa. **Agbiz therefore supports the three-tiered land reform process of redistribution, tenure reform and restitution mandated by sections 25 (5), (6) and (7) of the Constitution respectively.**

**It is within this context that Agbiz has invested a considerable amount of time and resources over the past eight years to promote the success of land reform, both through inputs on policy and draft legislation, as well as formulating alternative funding mechanisms to speed up the process in a sustainable manner.** Agbiz was involved in the various workstreams known as the NAREG process following the publication of the Green Paper on Land Reform in 2011, played a leading role in the Inter-Departmental Task Team on Outcome 7 led by the Department of Rural Development and Land Reform (DRDLR), and continues to participate and lead the Business delegation in several task teams at the National Economic Development and Labour Council (NEDLAC) deliberating on legislation that affects land rights and land reform. In association with the Banking Association of South Africa (BASA), we developed

a blended financing model based on the public-private-partnership principle to facilitate private sector lending to accelerate land redistribution.

As a business chamber representing the interests of a significant portion of the South African economy, we have a fiduciary duty towards our members to base our advocacy on sound research, objective analysis and the best available evidence. As such, we have researched the legal merits of an amendment to the Constitution and investigated the economic consequences using recognised methodology in partnership with reputable research institutions to inform our position. **Through this process we could not find compelling evidence to indicate that the slow pace of land reform is directly related to section 25 of the Constitution.** We are of the view that the current provisions of the Constitution provide the best possible framework within which meaningful and sustainable land reform can be achieved.

The current wording of section 25 of the Constitution strikes a good balance between the prospective protection of property rights from arbitrary deprivation, which is essential to economic freedom and individual liberty, whilst simultaneously placing an obligation to correct the skewed patterns of ownership inherited from the previous dispensation. Land reform is a necessary prerequisite for social justice in South Africa. However, we believe that social justice is not limited to redress but also must create new opportunities for those who were denied in the past. **The protection of property rights is vital for individuals to achieve economic fulfilment and freedom.** We are of the view that the current provisions catering for expropriation in the public interest provide the state with a powerful tool to achieve this goal and therefore no amendment is required. What has been missing to date is the political will to implement these provisions within the context of land reform.

Section 25 furthermore includes specific provisions unique to the South African situation which caters for land reform. Most notable, section 25 (3) obligates a court to consider the 'history of the acquisition of the property', a clause inserted for the purpose of land reform but which has not been tested adequately to date due to no suitable cases being placed before the court. **Section 25 (8) is furthermore clear that no provision of section 25 may impede land, water and related reform. The claim that section 2 impedes the state from giving effect to land reform therefore could be a misinterpretation opposed to a defect in the text.** Finally, even the right to compensation may be limited by a law of general application if it is reasonable and justifiable to do so in terms of section 36. Amendments to this provision could have unintended consequences for other forms of property and other sectors of the economy. Since the Constitution relates to 'property' in the widest sense, amendments for specific purposes, such as land reform, should be undertaken through amendments to legislation where a distinction can be made.

In terms of unintended economic consequences the first major concern is agricultural financing since the sector requires finance to produce on a scale that enables it to compete globally. Financiers have a fiduciary duty towards depositors to mitigate their

risk, which is why collateral is often used in accordance with international banking regulations. **The total farm debt currently amounts to more than R197 billion, of which roughly 75% is collateralised through the value of the land.** Expropriation without compensation poses a risk to commercial banks, which have an exposure of R148 billion, the Land Bank holding R49 billion, and the remainder primarily sitting with agribusinesses. **In the absence of reliable collateral, it will constrain agricultural finance.** This could likewise have a spill-over effect on the rest of the value chain as well as other sectors of the economy.

The Agbiz/IDC Agribusiness Confidence Index has proven to be a reliable indicator for the sector as real economic growth in the sector and agribusiness confidence has always gone hand in hand. Recently, however, Agbiz has witnessed a deviation with confidence declining whilst the sector was still doing relatively well. This deviation is probably due to uncertainty regarding property rights. Business confidence usually reflects business decisions, and the risk posed here is that the revenue being generated by the sector might not be reinvested due to depressed business confidence. This will pose challenges for the future of the sector if investments are not made into fixed improvements. **Decreased investment and finance in the sector will inevitably soon lead to reduced production. South Africa is currently a net exporter of food which enables the sector to provide food at export parity prices. However, if we lose this status we will be required to import food at import parity prices, which will have a direct knock-on effect on the price of basic food for consumers.**

**In order to do justice to the challenges facing the land reform programme, it is necessary to delve into the true reasons why land reform has not proceeded at the desired pace and investigate the assumption that the need to pay compensation for expropriated land makes the programme unaffordable.** By analysing figures related to the last ten years' budget, actual expenditure, average price per hectare, and actual number of hectares acquired, a picture of poor financial management emerges. Whilst acknowledging that the actual budget for land has always been relatively small for a programme of national importance (less than 0.4% of the national budget), the relative and real allocations have progressively shrunk in the past 10 years. Along with a declining budget, evidence shows that large portions of the land reform budget have been reprioritised and spent on other projects of the DRDLR related to rural development. There is a clear correlation between the reallocation of the budget and a rapid decline in the number of hectares acquired for land reform from 2009 onwards as the Department took on the added responsibility of rural development without receiving an additional budget. **The affordability challenges are therefore largely attributed to an unfunded mandate to effect rural development, and not due to the provisions of the Constitution.** By analysing a number of court judgements and recent land reform transactions, it also became apparent that the state has never implemented its 2011 decision to abandon the willing-buyer, willing-seller model in favour of expropriating land

for reform. In fact, there are several instances where the state has purchased land for reform at prices far exceeding market value. An assessment of affordability based on just & equitable compensation will therefore be entirely premature as the state has never expropriated for the purpose of land reform. **Only after the just and equitable compensation principle has been tested by the state and adjudicated upon in court can a meaningful assessment be made.**

**Agbiz believes that alternative proposals to fast track sustainable land reform need to be developed, even though land reform in its widest context is a complex topic which requires a nuanced approach.** A return to a needs-based approach whereby land needs and aspirations of different categories of beneficiaries are addressed by a variety of methods. It is common knowledge that the state does not have the resources, capacity nor technical skills to transform the commercial agricultural sector on its own. **We therefore propose that the state partners with the private sector and ring-fences a portion of its budget to leverage private sector to become involved on a public-private-partnership basis.** Agbiz and its members are committed to AgriBEE and many have voluntarily entered into joint ventures with black beneficiaries, communities or farm worker trusts. To capitalise on this goodwill, Agbiz and the Banking Association South Africa proposed a blended finance model for land reform that would see private sector match the funds committed by the state to establish new black, commercial farmers. The model includes various permutations including credit guarantees, loan/grant co-funding as well as interest subsidies. By incentivising the private sector to take up the challenge of establishing black commercial farmers, the state will be able to focus its capacity and resources to address the social function of land reform. Labour tenants, rural dwellers and farm workers all require assistance to obtain access to land and tenure security. By pursuing transformation in the commercial sector on a public-private partnership basis, the state can focus its resources on addressing their legitimate needs by acquiring property either through purchase or expropriation, subject to just and equitable compensation, followed by subdivision where applicable. **Spatial planning instruments must also be used to earmark suitably located urban and peri-urban land for settlement purposes.**

**Expropriation only deals with the method of acquisition, while solutions to non-resource constraints need to be developed. Considerable research has shown that there are a number of systemic challenges hindering the land reform programme. These challenges are diverse, including beneficiary selection, legislative gaps, poor post-settlement support and poor implementation of existing policies.** To address these issues, Agbiz included concrete solutions that are recommended as alternatives to address the underlying issues. These include evidence-based decision making on a collaborative, public-private-partnership land audit to ensure credibility and universal buy-in. In the medium-term a move can be made towards an e-cadastre which synchronises land ownership information with water rights, land claims and mineral rights to make

informed decisions. **Furthermore, numerous legislative gaps have been identified by Parliament's High-Level Panel which relates to the identification of land and beneficiaries, elite capture and the legal framework for land redistribution. Legal reform is also urgently needed to secure tenure for communal occupiers and reform governance in communal land allocation to ensure transparency and accountability.** These areas have great potential for agricultural development and investment but it is contingent upon legal reform which recognises a continuum of rights capable of acting as a platform for economic development.

**Finally, there are various contributions that the private sector can make post-acquisition to encourage the success and viability of agricultural enterprises on restored land, these include:**

- Partnership models;
- Blended development finance;
- Rural development agency;
- PPPs for multi-plural extension, training and support;
- Encourage commodity-specific initiatives;
- Facilitate market access & trace opportunities;
- Climate change adaptation; and
- Reduce regulatory burden for small businesses.

“Agbiz experienced the interaction with members of the CRC as constructive and cordial, and sincerely thanks the CRC for the opportunity to make an oral submission”, Dr John Purchase, CEO of Agbiz stated today.

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