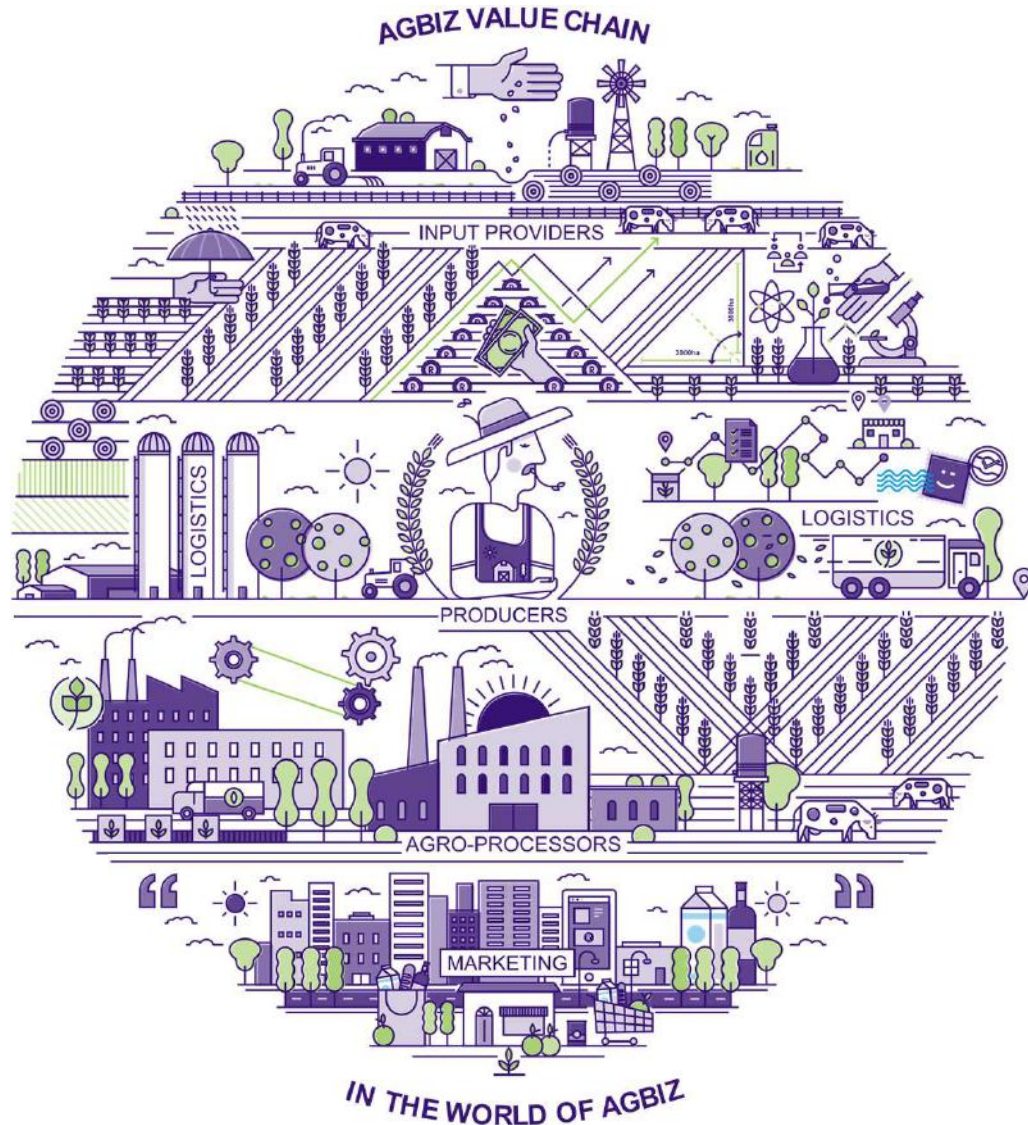


Agbiz inputs on the ULTRA Amendment Bill

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Portfolio Committee on
Agriculture, Land Reform &
Rural Development
By Theo Boshoff



- Agbiz represents the agricultural value chain;
- Financiers, insurance, seeds, fertilizers, agro-processors, logistics, food companies & commodity organisations;
- Part of Business Unity South Africa (BUSA) and the Nedlac task team on the Bill.

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Interest in the Bill

- Agriculture driver of post-covid, green jobs and economic development;
- Many areas under the administration of apartheid-era registers critical for expansion in the sector, but secure property rights required for investment;
- Agriculture 'dualistic' – commercial areas are well resourced & enjoy secure property rights whilst the emerging sector is hampered by insecure rights that limit investment;
- Secure property rights for all South Africans required to spur investment & break dualistic nature of agriculture;

General Inputs

Scope of Amendments

➤ Limited to Rahube case but wider review required;

Concept of 'Tribal Land' should be reviewed

- Indigenous, customary property law characterised by joint rules regulating access to land; but
- Not a one-size-fits-all – very diverse;
- Attempt to lump all indigenous land rights under 'tribal land' may threaten tenure security;
 - Challenge to the Communal Land Rights Act (CLaRA) led by 4 communities is a good example of this possibility.

General Inputs

Concept of 'Tribal Land' should be reviewed

- Understand that s3, 19 & 20 (relates to schedule 2) has seldom been used;
- Department developing dedicated legislation on communal land rights;
- Why not then repeal s3 and all provisions relating to 'tribal land'?

General Inputs

Conversion of all rights to ownership

- New process – schedule 2 rights converted to ‘ownership’ after application;
- Private ownership (common law) preferred by investors, but should be carefully considered where it clashes with customary practices:
 - Practice always trumps ‘paper’ provisions!
- Communal land ownership under custom recognised by the courts (*Richtersveld case*);

General Inputs

Conversion of all rights to ownership

- ‘Upgrade’ to legally secure forms of customary law ownership should be considered where there are multiple, ‘layered ‘ rights in land;
- Rahube case good example – may be more than one legitimate interest;
- Co-ownership or separate legal entity possible (i.e. a trust), but customary property law could be developed to provide legally secure rights that consider a plurality of rights;
- NB! – aim must be to make existing practices legally secure & not to impose common-law ownership where it is not practiced in custom.

General Inputs

Discretion of the Minister

- Amendments made at Nedlac very promising;
- Minister to give effect to unopposed applications & must mediate where contested;
- However where no agreement is reached, the Minister must make a decision which will affect the applicant or objector's property rights;
- In this situation, it is critical that criteria is supplied to guide the Minister's decision as it can be taken on review; and
- That parties can approach a court for an equitable order;
- NB – this was a critical point under CLaRA which should not be repeated

General Inputs

Discretion of the Minister

CLaRA & *Tongoane case*:

- Minister had to decide on the existence of communal land rights and whether to transfer ownership to the community;
- *Tongoane case*: argued that this wide discretion of the Minister reduced the fundamental right of communal occupiers for secure tenure to something which falls within the discretion of the executive;
- Hence, argued that it could endanger tenure security opposed to strengthen it;
- *NB! – very important to take this into consideration where the Minister decides on rights under ULTRA.*

Specific Inputs

Notice of an application s(2)

- Many people in rural areas do not have access to the Government Gazette and may miss a notice that affects them;
- Discussion at Nedlac: when an application is lodged, the applicant must furnish details of all persons who may have an interest (i.e. who resides on the property?);
- The state can then notify them directly and give an opportunity to make representations.

Application to court (s14A)

- “court” not defined;
- Propose that this be defined as the Land Claims Court and be replaced with the “Land Court” if and when it is created.



Specific Inputs - Nedlac

- 100% agreement reached between parties at Nedlac on important provisions which improve the Bill, i.e:
 - Application of s2;
 - Minister to give effect to unopposed applications;
 - Mediation by Minister;
 - Designation and powers when conducting an inquiry;
- Nedlac amendments not reflected in current Bill (process issue);

We implore the committee to consider these and make the changed recommended by all constituencies.



Thank you!

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