

Submissions by the Commercial Farmers’ Union of Zimbabwe to the Stakeholder Consultative Meeting on the Zimbabwe Land Commission Bill held in the Ministry of Land and Rural Resettlement (The “Ministry”) Head Office Boardroom on the 23rd of October, 2014

Introduction

1. These submissions are prepared pursuant to the Ministry’s invitation to add value to the proposed Draft Zimbabwe Land Commission Bill (“the Bill”).As a point of departure, we take the opportunity to commend Ministry on this most noble initiative.

2. The importance of a fair and transparent land administration system that ensures security of tenure and leverages the inherent value of land as a means of production cannot be overemphasized. A good land administration regulatory framework will enable
 - a. the sustained building of agricultural investor confidence both local and foreign to drive growth,
 - b. the unlocking of the latent collateral value of agricultural land to drive increases in production, the upgrading and retooling of farms and the expansion of farming infrastructure and
 - c. the reduction of unnecessarily high risk loaded interest rates on agricultural credit finance to drive the increase in competitiveness.

These are all *sine qua non* for real growth in the agricultural industry to take place. The main pillars of the ZIM ASSET Blue print are food and nutrition security, and job creation. Agriculture is the key to delivering these aspirations. Land policy that ensures increased production and growth is as such critical. It is therefore with great enthusiasm that we pledge to offer our best constructive endeavours to contribute to the perfection of the Bill.

3. From the outset we note the following preliminary points
- a. that the Zimbabwe Land Commission (The “Commission”) is a creature of the Constitution being established in terms of the Constitution.
 - b. its functions are specifically assigned by the Constitution and are very broad in their formulation.
 - c. the discharge of the Commission’s functions are guided and bound by the principles set out in section 289 of the Constitution. We would also note that the formulation of all policy relating to agricultural land in Zimbabwe should be guided by these principles irrespective of whether that policy is recommended by the Commission or formulated by Government. The inference being that any policies and legislation relating to Agricultural land that is inconsistent with these principles will be entirely unconstitutional.
 - d. that the Constitution provides in section 297 subsection (5) that “The State and all institutions and agencies of government at every level, through legislative and other measures, must assist the Zimbabwe Land Commission in carrying out its functions and must protect its independence, impartiality, integrity and effectiveness.”
 - e. That section 297 subsection (6) of the Constitution provides that the Government must make adequate and suitable provision, through legislation and other appropriate means, to ensure that—
 - (a) the Zimbabwe Land Commission is able to exercise its functions efficiently and independently; and
 - (b) persons employed by the Zimbabwe Land Commission carry out their duties conscientiously, fairly and impartially.

It is against the backdrop of these points that we make our contributions to some of the specific provisions of the Bill below.

Specific Comments on some of the Bill's Provisions

Section 2 Interpretation

4. The definition of “acquiring authority” should not make reference to any other enactments. The reason for this is that it sets a tone that limits the Commission’s ability to propose reforms to the legal framework which governs and facilitates Land Administration. This may include recommendations of the repeal or reframing of the any enactments relating to Land Administration. A limitation of the Commission’s functions in this regard would be at odds with its Constitutional mandate which is clearly to make recommendations to the Government on a wide variety of matters relating to tenure systems, acquisition and allocation processes and so forth.

5. The functions assigned to it in terms of section 297 of the Constitution relate only to “agricultural land” which is defined in section 72 of the Constitution as excluding all forms of Urban and Town land and significantly Communal Land. Therefore the jurisdiction of the Commission relates only to Land which falls within Resettlement areas, Purchase areas and Commercial Farming areas. It is submitted therefore that the definition of “farm” should therefore exclude Communal Lands.

Section 3 Appointment of Members of the Commission

6. It is submitted that the Provisions of section 3 should be expanded upon to ensure that the composition of the Commission fairly balances all interests. It is important for agricultural growth that potential agricultural investors have the utmost confidence in the fairness of administrative bodies and the procedures in terms of which they operate. If there are perceptions that the Members of the Commission are appointed to serve partisan interests then this confidence may be undermined. Moreover, the Constitution requires that Government protect the independence, impartiality, integrity and effectiveness of the Commission. We therefore submit that the Minister’s powers to recommend the appointment of members of the Commission to the President should be limited to lists of suitably qualified candidates. These lists should be submitted by various independent Institutions who represent stakeholders or Institutions who can add technical value. Bearing in mind that the

Constitution limits the membership of the Commission to a maximum of 9 being a Chairperson, Deputy Chairperson and no more than 7 other members, we propose that the composition be made up of 1 candidate chosen from a list of 3 candidates submitted by each of the following institutions: the Law Society of Zimbabwe, The Royal Institution of Chartered Surveyors, The Bankers Association of Zimbabwe, each one of the 4 registered Farmers' Unions in Zimbabwe, the Church and Civil Society Forum of Zimbabwe and of course the Ministry of Lands and Rural Resettlement. In selecting the candidates there must be proper regard to gender sensitivity. Additionally, it is submitted that a minimum qualification of a Bachelor's degree in either Law, Economics, Agriculture, Business, Finance and, of course, Land administration or the equivalent professional qualifications or experience should be set as a prerequisite for selection also ensuring that there is a balance in the various disciplines.

Section 7 Disclosure of interests by Commissioners

7. We would propose that, in addition to the very good provisions on disclosure of interests and conflicts of interests, a standard bi annual voluntary disclosure of interests be inserted as mandatory for all members. This is in line with current global trends on best practice corporate governance procedures.

Section 8 Disqualification for appointment as a Commissioner

8. In section 8(3)(b) of the Bill it is submitted that any person who holds any other office on any other statutory body should not qualify for appointment on the Commission. The reason for this is that the Bill imposes a weight of duties on Commissioners will require focus and substantial commitments of time and energy.

Section 10 Suspension from Office of Member of the Commission

9. Section 10 of the Bill gives the President the discretionary power to suspend Commissioners. It is submitted that a right of appeal should lie to the Courts if the suspended member is aggrieved by the President's decision.

Section 12 Filling of Vacancies

10. Section 12 provides for the filling of Vacancies. It is submitted that the Institution who nominated the candidate, in accordance with the proposals made in paragraph 6 above, who has left a vacancy be invited to again submit a list of suitably qualified candidates to the

Minister who shall choose from that list 1 candidate to fill the Vacancy and recommend to the President that the candidate be duly appointed.

Section 14 the Compensation Committee

11. Section 14 provides for the Composition and functions of the Compensation Committee. It is important to remind ourselves that the Commission's functions include recommending the best practice land administration policy to Government and to also assist in the implementation of that best practice Land Administration policy. The Compensation Committee is a body recognized in terms of current land legislation, the danger here is that the Commission will be locked into functioning within the current paradigms of Land administration policy without being able to claim its right to shift those paradigms and recommend the redesign of land policy for the future. Nonetheless, issues relating to compensation in respect of the acquisition of land and improvements fall squarely within the mandate of the Commission. It is therefore submitted that the Compensation Committee be a standing subcommittee of the Commission Chaired by a member of the Commission.

12. As to the proposed composition of the Compensation Committee it is noted that it is weighted in favour of the interests of Government having six civil servants and five other members without any specific mechanism for the nomination of those members mentioned. In order for the Compensation Committee to be fair and effective it is proposed that the various competing interests be balanced in the composition of the Committee. Therefore it is submitted that the composition of the Compensation Committee be as follows: One Member of the Commission to Chair proceedings, the Secretaries for the Ministries responsible for Lands and Finance, the Chief Government Valuation Officer, one member chosen from a list of suitable candidates submitted by the Royal Institute of Chartered Surveyors, one member chosen from a list submitted by the Law society of Zimbabwe and two members chosen from lists of suitable candidates submitted by a farmers' union chosen by the party whose case is being assessed by the Committee. In addition it is submitted that the Committee should work within the confines of clear, fair and transparent guidelines for the assessment of the value of compensation. Before an investor makes a land based investment he or she should be able to predict with a fair degree of certainty the value of any compensation payable if that investment is to be acquired.

13. It is essential that the Compensation Committee strikes a fair balance between the interests of the tax payer and those who have lost their substantial land based investments. The reason for this is twofold. Firstly, the more cases that are fairly disposed of by the Compensation Committee the fewer burdens will fall on the Administrative Court thereby reducing the drain on State resources. Secondly, and most importantly, the composition and activities of the Committee must create the perception for the investor that in the event that investments are acquired by Government the mechanisms for the assessment of compensation are fair, balanced and speedy. This will give the investor confidence and most significantly contribute to the reduction of the high country risk loaded interest rates.

Section 16 Secretariat

14. Section 16(5) transfers the secretariat of the former Agricultural Land Settlement Board. It is submitted that this should not be specified in the Bill. The Commission should be given the opportunity to begin afresh.

Section 17 Benefits and Allowances

15. Section 17 provides for the remuneration and allowances of Commissioners. It may be worth noting especially in the wake of the so called “salarygate” scandal, that these remunerations and allowances should be fair and not excessive.

Section 18 Functions of the Commission

16. Section 18(5) provides for other functions that are not mentioned specifically in the Constitution. The theme of our submission is the same here in that it would appear as if the Bill is simply giving the Commission functions that were previously carried out by other bodies that It is therefore submitted that

17. Section 18(6) ensures control remains firmly vested in the Minister thereby undermining the reason for the Commission’s existence. Whilst the substantial power of the Minister in terms of the Constitution is acknowledged and understood, it is submitted that these powers ought to be voluntarily limited and clearly defined by various Acts of parliament including the one proposed in the Bill. For the aspirations set out in ZIM ASSET to be achieved the foremost prerequisite is to ensure maximum productivity on agricultural land. This will only be

possible where sufficient and affordable credit finance is available to farmers. This in turn will only be possible if Zimbabwe's agricultural sector becomes attractive to investors who are willing to risk land based investments in our country. If the Minister were to take steps to define and limit his powers by legislation so that the investor can be reasonably assured that his investment and returns on that investment are safe this would increase the amount of capital available to agriculture. The slightest perception that arbitrary acquisitions of land based investments will take place will trigger capital flight and reduce lending into agriculture. It is therefore proposed that this clause either be deleted or better still rephrased to state that the Minister will only exercise his mandate to acquire and alienate land after fully considering recommendations from the Commission and in terms of fair, transparent and clearly understood criteria and procedures which should be set out in the Bill. This will have the effect of complying with section 297(5) of the Constitution in that it will promote the effectiveness of the Commission.

Part IV Land Settlement

18. Part IV deals with Land Settlement. Once again the point about locking the Commission into the current paradigms of land administration policy and the regulatory framework thereby limiting its scope to recommend reforms becomes relevant to the entire part. In other words, the process for land settlement should flow from policy recommendations made by the Commission. Instead the Commission has the framework in which it must work imposed upon it from the outset. It is therefore submitted that the entire Part be deleted and if necessary made a separate regulation by the Commission once it has made recommendations to Government on the Best practice fair and transparent procedure for the alienation of State Land which is guided by the principles in section 289 of the Constitution.

19. Notwithstanding the above recommendation a few comments on the sections within Part IV will be made below in order to contribute to the debate on what the best land administration systems.

20. Section 22 defines a lease, offer letter and permit. If it is the intention to preempt the Commission's recommendations on the best land tenure systems and instruments, which we stress that we do not propose be the case, then these definitions should apply to the whole

Bill and not simply the section in question. In addition, the schemes which the Minister may establish in terms of this section include farmer training and general development of the agricultural industry which seems to overlap with the functions of the Ministry responsible for Agriculture's functions. It is important to avoid duplication of effort in this regard.

21. Section 24 the imposition of rentals is very noble and will establish accountability for the use of State land. It is also noted that according to section 293 of the Constitution the State may only alienate Agricultural land for value. It is therefore proposed that holders of both offer letters and permits should be required to pay some reasonable consideration to the State in respect of their rights of access. This will encourage productive farmers.
22. Section 28 confirms the Presidents right to retake land for public purposes. This provision whilst being necessary has the unfortunate effect of undermining perceptions of security of tenure on agricultural land. It is therefore proposed that the phrase "public purposes" be defined in specific detail so as to limit the President's power to arbitrarily acquire land.
23. Sections 29, 31 and 32 of the Bill give the Minister ultimate direct control over any transactions involving alienated land. The lessee's and his or her trustee, executor etc ability to seek out partnerships and cede rights to others is limited. The rationale for this is not understood. If the state continues to be paid a lease fee in respect of the land the likelihood is that the land will continue to be productive. The requirement for Ministerial approval imposes an administrative burden which will undermine business transactions that may otherwise have ensured the realization of maximum value in respect of the rights associated with the land.
24. Section 30 relating to the Granting of Title should include a mechanism for determining the purchase price. It is submitted that the purchase price should be related to its market value. In subsection (1) (d) reference should also be made to Shareholders. In subsection (2) allowances is made for the President in "Special circumstances" to waive the provisions of subsection (1). It is submitted that these circumstances should be defined. Finally, the President's powers to retake possession of the land should be severely limited to build investor confidence.

25. Section 35 gives no right to compensation. A right to compensation for improvements made on a leasehold should be given to encourage land based investments. If Government cannot afford the compensation then the incoming lessee can if possible raise the capital required to be offset against a lease fee on a lease with the right to purchase the leasehold.

Part V Control and Occupation of Agricultural Land

26. It is not clear what the purpose of Part V is. It is not understood if this Part regulates squatting on land or misuse of agricultural land for other purposes of both. It is submitted that it is too vague and the specific intention of this Part must be made clear. Again the comment that these kinds of regulations should flow from recommendations of the Commission is pertinent.

Part VI Derelict Land

27. The Provisions of Part VI in relation to derelict land should also flow from recommendations of the Commission. Section 50 removes rights to compensation for the acquisition of derelict land. It is submitted that compensation should be paid to owners of derelict land. It is important that land's inherent value is leveraged at every opportunity for the national benefit. If land is considered to have no value its ability to be used as collateral for maximum possible benefit is undermined.

Part VII General

28. In addition to the provisions relating to reports in section 52 it is proposed that all Reports of the Commission particularly land audit reports be made available to the public which is in line with the Commissions mandate to “to ensure accountability, fairness and transparency in the administration of agricultural land that is vested in the State;”.

29. It is proposed that in addition to the provision of section 53 that a minimum number of meetings per year of 1 per month be set for the Commission. In addition if a Commissioner fails to give apology for 4 consecutive meetings he or she must be disqualified as a member.

30. Section 54 inter alia affords an officer of Government the right to take part in the Commissions proceedings “as if they were members”. It is submitted that this may tend to undermine the independence of the Commission and should be deleted.

31. Section 56 of the Bill provides that the Minister may make regulations. It is submitted that this is at odds with the Constitution which provides that the Commission, with the approval of the Minister may make regulations. It is proposed that the section be reworded accordingly. In addition it is proposed that subsection (2) be deleted so as not to preempt policy recommendations by the Land Commission.

First Schedule Ancillary Powers of the Commission

32. The Final specific comment on the provisions of the Bill relates to Sections 10, 11 and 12 of the First Schedule “Ancillary Powers of the Commission”. It is submitted that these provisions which may provide Commissioners with significant financial benefits are not in keeping with best practice corporate governance procedures. Accordingly it is recommended that they be deleted.

Additional Suggestions relating to the Bill

33. It is submitted that provision should be made to enable the Commission to establish a special fund made up of lease payments, purchases prices and other payments in respect of alienated state land. This fund should primarily be used for the purposes of the settlement of compensation claims but may also be used to fund other programs aimed at improving land administration systems with a view to increasing agricultural growth.

Signed at Harare this 23rd Day of October, 2014

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For The Commercial Farmers’ Union of Zimbabwe

