

UMHLABA Wethu 8



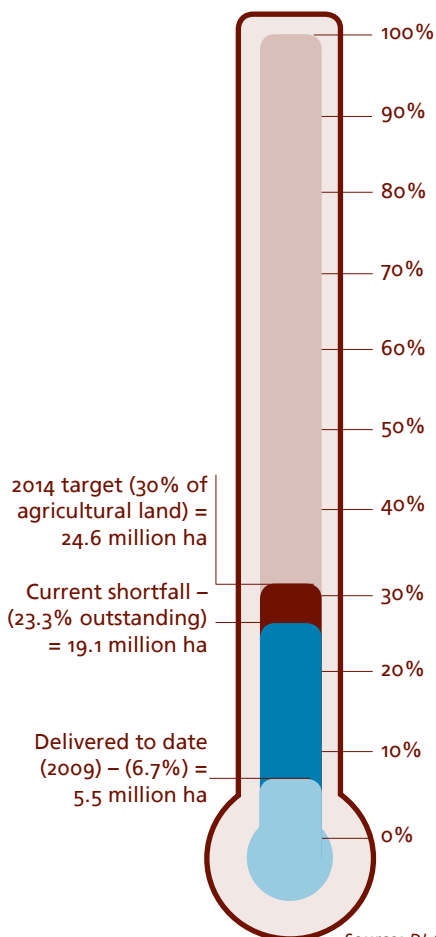
A bulletin tracking land reform in South Africa



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LAND BAROMETER



Source: DLA, March 2009

SPECIAL EDITION: INSECURE TENURE AND LABOUR – FARM DWELLERS AND WORKERS

This edition of *Umhlaba Wethu* centres attention on the many challenges farm dwellers and workers experience and continue to face. These challenges reflect in their long pursuit of secured tenure rights and a living wage that will provide a sustainable livelihood. Both the Extension of Security of Tenure Act (ESTA) of 1997 as well as the Sectoral Determination 13: Farm Worker Sector provisions affect farm dwellers and workers. The Farm Sectoral Determination regulates wages, working hours and other basic conditions of employment for farm workers while ESTA promotes tenure security and regulates illegal evictions.

A review of ESTA was earmarked since 2001 by the previous Department of Land Affairs. It is eight years on and the legislation remains unchanged and farm dwellers tenure rights had been severely compromised. Meanwhile, a new development seems to suggest a new approach to legislating evictions. A proposal by the parliamentary committee is now being considered and suggests that farm dweller evictions be legislated under the Prevention of Illegal Eviction from and Unlawful Occupation of Land Act (PIE), which criminalises land

invasions but provides greater legislative protection to the security of tenure of poor people. To date, PIE has excluded persons who are occupiers in terms of ESTA.

Minimum wages for workers in the agriculture sector were introduced by the Department of Labour in 2003. This year, wages increased again between 9% and 10% and these new wage levels came into effect from the 1st of March 2009 and will be in place until the next review period. Once more, agricultural wages and employment conditions came under scrutiny and drew criticism from both organised agriculture and workers themselves, although for conflicting reasons.

It remains unclear what vision there is for farm workers and dwellers. What does the new rural development resolution mean for farm-based livelihoods? Will the Zuma administration prioritise farm dwellers as part of the broader development objectives? It is hoped that this focus on farm dwellers and workers will help to highlight the critical policy and implementation gaps that affect the ability of this segment of the population to have better lives.

Karin Kleinbooi, Editor, PLAAS

LAND REFORM SUMMARY (AS AT JUNE 2009)

- A small increase in land reform delivery is notable and by June 2009 5.5 mil ha of the targeted 24.6 mil ha (6.7% of 30%) of agricultural land had been transferred through various land reforms.
- Of this, 3 mil ha of land were transferred through the redistribution & tenure reform programmes, combined.
- 2.5 mil ha of land were transferred to claimants through the restitution programme.
- The figures above include state land.
- The DRDLR plans to transfer the remaining 19.1 mill ha (23.3% shortfall of the 30% target of agricultural land), by 2014.

Percentage of land delivered by programme



* This pie chart includes state land. Source: DDLR, June 2009

RURAL DEVELOPMENT AND LAND REFORM

2009–2010 POLICY TARGETS

- A rural development plan.
- A Green Paper and White Paper on Agrarian Transformation, Rural Development and Land reform.
- A Women and Gender Training Manual for Land Reform Implementers.
- Finalising the Land Use Management Bill (LUMB) for integrated spatial planning by March 2010.
- Finalising the regulations for the implementation of Communal Land Rights Act 11 of 2004 (CLARA).

2009–2014 DELIVERY TARGETS

- The Department undertakes to deliver 656 000 ha through the Redistribution programme by 2010 (p.48).
- The Department undertakes to establish 65 000 new commercial producers in agriculture before 2014 through the Land and Agrarian Reform Programme (LARP) (p.19).
- The Commission anticipates settling 1 695 of the 4 560 outstanding rural claims during the 2009/2010 financial year (p.24) and the settlement of all other outstanding claims by 2011 (p.47). The Commission stated approximately R18 billion is needed to settle all outstanding claims.

Source: DRDLR Strategic Plan 2009-2012

TENURE REFORM INFORMATION SYSTEM (TRIS): CALL CENTRE SUMMARY

In April 2008 a call centre was set up as part of the land rights management facility as a service to farm workers to monitor evictions. The toll free number is 0800 007 095. By February 2009 the centre had, since its inception, registered a total of 9 331 calls also relating to various other pieces of legislation. The highest number of calls appears to be ESTA-related with 2 268 calls registered across provinces.

- Data in Table 1 reflects the volume of calls to the toll free call centre relating to ESTA (this call centre was set up in the

Tenure Reform Implementation Systems Directorate).

- The highest recorded calls on ESTA-related matters were recorded from KwaZulu-Natal at 391 calls, followed by 310 calls from Mpumalanga.
- These are also the two provinces reflecting the highest number of calls related to labour tenancy.
- The table reflects the monthly calls per province and the highest number of ESTA-related calls were recorded in May 2008 (at 323) and February 2009 (at 296),

but remained relatively high between May and November 2008.

- The lowest volumes of ESTA-related calls were recorded at the opening of the centre in April 2008 (36 calls) and, contrary to the general viewpoint that the highest number of evictions happens around December, only 71 calls were recorded during this month in 2008.
- While the recorded data is a huge shift to ensure evictions data is captured nationally it does not reflect how calls are categorised; and whether these calls relate to actual or threats of evictions.

Table 1: Monthly recording by toll free call centre in TRIS relating to ESTA by province:

	*Apr-08	May-08	Jun-08	Jul-08	Aug-08	Sep-08	Oct-08	Nov-08	Dec-08	Jan-09	Feb-09	Annual No. of calls**
Eastern Cape	11	37	27	29	29	27	23	32	9	29	40	293
Free State	5	24	23	21	17	24	14	12	4	12	27	183
Gauteng	2	38	22	25	23	32	21	28	7	23	39	260
KwaZulu-Natal	9	52	36	37	38	44	32	44	12	33	54	391
Limpopo	2	39	29	22	35	28	24	24	5	17	23	248
Mpumalanga	3	37	32	28	31	37	25	33	18	26	40	310
Northern Cape	4	31	18	18	23	22	16	5	2	19	20	178
North West	0	29	26	23	19	25	11	9	6	16	30	194
Western Cape	0	36	21	14	28	27	21	15	8	18	23	211
Month calls/province	36	323	234	217	243	266	187	202	71	193	296	2 268

* Data is recorded monthly and provides a breakdown per province from April to February

** Data is distributed annually. The next data set will be released in February 2010

Source: Directorate: Tenure Reform Implementation Systems (TRIS) Apr 2008-Feb 2009



EVICTED FARM WORKERS: A FORGOTTEN AND DISPLACED COMMUNITY

Approximately 2.8 million people live on commercial farmland, many without secured tenure. An eviction can be devastating for those affected and it is often exacerbated by vulnerable circumstances. In spite of the legislative framework, the situation of evicted farm dwellers often remains precarious. This story reflects a reality that can be told by many farm dwellers who have been displaced by evictions.

A survey undertaken by Nkuzi Development Association and Social Surveys on farm worker evictions, reported that between 1994 and 2003 more than two million farm dwellers were evicted and over four million displaced, with 77% being women and children. The Extension of Security Tenure Act, 1997 (ESTA) was aimed at strengthening and protecting farm workers' tenure security rights. However, this has not been the case and ESTA merely regulated evictions.

The story of Sara Beukes (see Box 1), an evicted farm worker from Rawsonville, demonstrates that ESTA does not prevent farm worker evictions and does not guarantee real security of tenure.

As Sara's story shows, housing rights remain linked to employment contracts. Thus, when employment contracts are terminated, farm workers also lose their housing rights. Furthermore, women farm workers, especially seasonal workers, are in most cases dependent on their male partners for housing as housing contracts are usually in the name of the male permanent worker. This means that women and children are most vulnerable to being evicted when the father or male partner dies or his employment is terminated.

There are clearly a number of reinforcing issues that exacerbate the vulnerability of farm workers to evictions. Firstly, ESTA is inadequate in the protection of farm workers' tenure rights. For instance, despite the requirements of ESTA for the provision of alternative and suitable housing for evicted farm workers, this does not happen in reality. Secondly, the lack of coordination between the different government spheres in terms of their respective roles and responsibilities to evicted farm workers leads to civil society organisations assisting farm worker communities by, for example, bringing all relevant stakeholders together and pressuring government to provide alternative housing. The Women on Farms Project has played an important role in mobilising and organising community-based farm worker structures, such as the Rawsonville Crisis Committee, by providing education and information about land and housing rights in order that they may take up their own struggles to bring about transformation.

Rose Horne, Women on Farms Project

Box 1: The Sara Beukes story

'I am Sara Beukes, a 49-year-old woman living with my two daughters and two grandchildren in Rawsonville. I am a farm worker from Rawsonville and I was born here. My mother, grandmother and my great-grandmother all worked in Rawsonville. As far as I can remember my whole family worked on farms in the Rawsonville area. I never went to school.

'My husband and I worked and lived on Merwida wine farm in the Rawsonville area since 1996. In 2002, my husband became very ill, his feet began to swell. At first I thought it was TB, but in December he told me that it was HIV/AIDS. He died in January 2003. The day after he told me that he had AIDS, I had myself tested. That is how I found out that I was also HIV positive. I later also contracted TB and got very sick. I was too sick to work in the vineyards so I asked the farmer whether I could work in his garden. He said no, I must just go and die.

'The farmer applied for an eviction order, which was granted by the Magistrates' Court in Worcester. I was given two months to vacate the house and I had nowhere to go. In March 2006 I moved into a public toilet on a sports field with my two children and two grandchildren. Other evicted farm workers were already living there. While living on the sports field in the public toilet, I also became aware of other evicted farm workers living under a bridge in Rawsonville.

'Because the Women on Farms Project had informed me about our rights as farm workers, I was no longer scared to speak out. I was also able to share the knowledge I had with these other evicted farm workers.

'In November 2006 we were assisted by civil society organisations such as the Women on Farms Project and Sikhula Sonke. Through the collective action and pressure by these structures, the Breede Valley Municipality was mandated to provide emergency housing to the evictees. However, they provided us with steel containers, nothing even resembling a decent house. The containers, which have no toilets or windows, were placed next to the cemetery and the sewerage works. Our children are constantly sick because of this. It is [three] years later and we are still living in the containers, which are extremely hot during the summer and cold and wet during the winter.'

Source: Sara Beukes, March 2009

FARM WORKERS AND DWELLERS: FROM RIGHTLESSNESS TO REAL RIGHTS

What is the future for the large population of poor South Africans who live, or work, on commercial farms? Is it a secure future in which people will enjoy their rights and be able to live decently? Or is it a lawless future, devoid of rights, in which people will remain vulnerable to abuse and to eviction?

PLAAS co-hosted a workshop about this issue in October 2008, together with the University of Stellenbosch Law Faculty and Legal Aid Clinic, the Norwegian Centre for Human Rights and the Norwegian University of Life Sciences. The event focused on the Extension of Security of Tenure Act (ESTA), 62 of 1997.

Given that ESTA and the institutions that were meant to implement it have largely failed, what is to be done? Should ESTA be more strenuously enforced? Should its legal framework be challenged and changed? Or, given the powerful interests, who would prefer to see it repealed or diluted, should it be defended? These questions were debated at the workshop – and participants put forward some new perspectives, suggestions and plans.

Four of the main issues discussed were:

1. A breakdown in the rule of law

Although there is a special court, the Land Claims Court, that was set up to deal with land rights and land law, in practice the vast majority of people whose rights to land have been infringed have never been able to get the support of this judicial system. The failure to enforce ESTA – and evidence that as few as 1% of those evicted from farms have had access to the courts – represents a breakdown in the rule of law, and a systematic violation of section(s) 26(3) of the Constitution, which requires that:

No one may be evicted from their home, or have their home demolished, without an order of court made after considering all the relevant circumstances. No legislation may permit arbitrary evictions (s 26(3)).

Most farm workers who have been evicted have had this right violated. The culpability of state law enforcement institutions, in failing to enforce this law, must be investigated.

2. Securing tenure and providing redress

ESTA provides (in s 4) that farm dwellers can upgrade their tenure rights, including to full ownership, either in the homes and on the land they already occupy, or elsewhere. But these portions of the Act are poorly formulated, and there is no government programme to give effect to them. Implementation of ESTA has been largely a matter of dealing with evictions, rather than securing rights. Yet the insecure rights that people on farms have are considered in the Constitution's provisions on property rights, in s 25(6), which requires that:

A person or community whose tenure of land is legally insecure as a result of past racially discriminatory laws or practices is entitled, to the extent provided by an Act of Parliament, either to tenure which is legally secure or to comparable redress (s 25(6)).

It is unclear what ESTA has done to create more secure tenure or redress. Test cases will be needed to clarify government's obligations in this area.

3. Gender equality

Women who live on farms are often not regarded as having the legal rights of an 'occupier', but only resident on the basis of the rights of their husbands and fathers. The legal definition of who is an occupier must be revised to confirm the status of family members as occupiers – otherwise women's position are made more vulnerable and their independent tenure rights can be ignored. This issue should be challenged through test cases.

4. Legal representation

Those farm workers who do get to the courts to defend their rights often have no-one to represent them, even though the courts have ruled (in a declaratory order in the 'Nkuzi judgment' of 2001) that government must provide legal representation at its own expense in such cases. The Legal Aid Board and the Justice Centres have been unable to provide lawyers with relevant specialist knowledge, and now government has set up a system to pay private lawyers to take on these cases. Participants were concerned about how this is actually working – are private lawyers best placed to take on evictions cases to represent farm workers, when farmers have specialist ESTA lawyers? The new system must be monitored and assessed.

Participants called for the law to be strengthened, and for it to be enforced – but also pointed out that for most farm workers just avoiding eviction is not good enough: rights must be clarified, secured and upgraded, and conditions on farms must be improved. To realise the rights of farm workers and dwellers, securing tenure is a starting point (which is still to be achieved), not an end point. As Ida Jacobs of Sikhula Sonke said:

It has been 11 years since ESTA has been promulgated and yet nothing has changed for farm workers. There is no real security of tenure for people who live on farms, especially for women. The Act is meant to protect farm women but has done nothing to improve the lives of farm workers, but just facilitates the process of evictions. It has left thousands of people destitute and vulnerable ... As farm workers, we don't understand the legislation, but we understand that it results in allowing the landowners to evict us.

Ruth Hall, PLAAS



ESTA AUTOMATIC REVIEW PROCEDURE

The automatic review process allows the Land Claims Court to scrutinise the legality of administrative action such as an eviction order in ESTA matters and, where appropriate, to set the action aside, correct it or grant some other remedy.

Under s 19(3) of ESTA all eviction orders granted by lower courts will be automatically reviewed by the Land Claims Court in Randburg. This entails that the court files a review and all relevant documents have to be sent, as speedily as possible, to the Land Claims Court. The review furthermore suspends eviction orders that were granted, for the duration of the review process (s 19(5)). Being new legislation which ultimately amended the common law of eviction and the legal position of farm workers especially, the review process was aimed at scrutinising eviction orders to ensure that the letter of the new law had been complied with. Initially it was thought that the review process would be an interim measure, implemented only until such time presiding officials, counsel and all relevant role players became more acquainted with the measures.

When the Act first commenced, by far the majority of eviction orders granted by magistrates' courts were set aside, amended or remitted to lower courts. In the past few

years, however, the number of eviction orders to be set aside in the review process has gradually declined. It is inevitable that the body of law, also containing guidelines regarding compliance with requirements resulting from these reviews, has impacted on these statistics. The review process is carried out by a single judge in the Land Claims Court. New judgments are only handed down when eviction orders are set aside, amended or if the case is remitted to the lower court – thereby setting out reasons for the final decision. On the other hand, the confirmation of an eviction order is not necessarily set out in a judgment, but is instead confirmed in correspondence via the Registrar.

The review process can be problematic. In practice the automatic review process is hampered by, amongst other things, incomplete files that reach the Land Claims Court resulting, invariably, in time-consuming and protracted correspondence. Despite s 19(5), specifically providing for the suspension of eviction orders, in many instances evictions still occur during the review process (see example *Van Heerden v Magaga* 2007 (LCC)). Not only does the review have no practical impact, but even a restoration order would be useless because the respondents would in many instances have left the land and are not

always traceable. The automatic review process only relates to the eviction order as such and not the execution of the order that takes place at a later stage. As *Sibeko v Rautenbach* 2008 (LCC) has indicated, wrongly evicting occupants of a particular dwelling during the execution of an eviction order would not be picked up in the review process. These instances would normally not resonate in the courts, except if the particular individual has the means to approach the court him or herself. Probably the biggest limitation on the review process is that it only kicks in when a lawful eviction is sought, which, according to research, accounts for only 1% of all evictions! The large number of unlawful evictions would thus never be exposed to this additional level of scrutiny. Despite the shortcomings inherent in the process and the practical obstacles involved, it remains essential that a second level of scrutiny be retained, as long as it is an in-depth, vigorous process. In this regard all role players have the responsibility of placing as much information as possible before the court when the eviction order is considered so that all relevant circumstances are reflected in the set of documents forwarded to the Land Claims Court for final scrutiny.

Prof Juanita M Pienaar. Law Faculty, University of Stellenbosch

NEW APPOINTMENTS

The newly established Department of Rural Development and Land Reform has seen some internal shifts. Two new branches are being established in the Department:

- **Leona Archery**, former head of Mpumalanga's land reform office was appointed Deputy Director General in the newly established Rural Development branch.
- **Moshe Swartz** joins the Services, Training and Institutional Facilitation (STIF) branch as Deputy Director General.
- Former deputy **Blessing Mphela**, is now the new Chief Land Claims Commissioner, DRDLR.
- **Eddie Mohoebi**, previously the acting Chief Operations Officer is now the new Chief Director: Land Restitution, DRDLR.
- **Mdu Shabane** continues as Deputy Director General of the Land Tenure Reform directorate.

ACCESS TO JUSTICE FOR THE POOR IN RURAL FARMING AREAS OF SOUTH AFRICA

The Nkuzi judgment of 2001 placed an obligation on the Ministries of Justice and Land Affairs to implement a reasonable programme to give effect to the declaratory order. The LCC stated clearly what the constitution requires so that people can exercise their rights effectively, but left open the question of precisely how the programme should be implemented. The Land Rights Management Facility manifested an initiative by the former Department of Land Affairs to give effect to the judgment and its land tenure programme.

The previous Department of Land Affairs (now DRDLR) has established a Legal Services Project (LSP) from 1st July 2008 to ensure that indigent farm dwellers (including farm workers) have access to competent legal representation when faced with threats to their security of tenure on farm land that they occupy. The LSP is a component of the Land Rights Management Facility (LRMF) within the Department, and was established to advance land tenure reform. It will operate alongside the National Land Mediation Panel (NLMP), also a component of the LRMF.

The LSP has 65 attorneys with specialised legal training in areas of law related to land tenure, and those who work for NGOs and legal aid clinics that provide legal representation for rural communities. The Panel is a national panel organised in the various provinces. The attorneys' firm Cheadle Thompson & Haysom Inc. has been appointed to manage the national panel of lawyers.

The establishment of the Panel of land rights lawyers aims to fulfil a ruling by the Land Claims Court which held that the state is under an obligation to provide legal representation or legal aid, at state expense, to people who cannot afford to hire lawyers and whose rights under either ESTA or the LTA are threatened. The Court held that these individuals have a right to representation if a substantial injustice might otherwise result. Prior to the establishment of the Panel these individuals were able to access legal representation through the Legal Aid system but in many cases this resulted in representation by lawyers who were without knowledge or experience in this area or who were unsympathetic to their plight. Therefore the establishment of the Panel enables vulnerable farm dwellers to receive legal representation where legal proceedings are instituted that might result in their eviction from land and housing that they have occupied for many years, or might otherwise undermine their statutory or constitutional rights.

The Panel will also be able to deal with priority cases (see Box 2) and cases that involve overlapping rights violations (for example, many tenure cases also involve matters of labour rights such as unfair dismissal). The LSP has a holistic approach to providing legal services through advice, litigation services, legal counselling, referrals and support in respect of developmental, settlement, production, and land acquisition issues. Cases can be referred to mediation where appropriate.

Ashraf Mahomed, Cheadle Thompson & Haysom Inc Attorney

Box 2: Priority cases

Cases are referred to the LSP through the offices of the provincial or district offices of the DRDLR. The LSP is mandated to provide legal representation in appropriate civil cases involving the following issues:

- Evictions;
- threats of evictions;
- water cut-offs;
- electricity cut-offs;
- damage to property;
- burial rights;
- unlawful impounding of livestock;
- grazing rights; and
- human rights and general constitutional issues.



MINIMUM WAGE ON COMMERCIAL FARMS: HOW ARE FARM WORKERS AFFECTED?

Most farm workers depend on farm wages for their entire livelihood. However, along with a decline in employment came a structural change in the nature of agricultural employment, which is much more flexible and leaving a gap for employers not to comply with the legislation. With the introduction of a minimum wage for farm workers in 2003 it was hoped that farm workers would be enabled to sustain a livelihood. Seemingly, the current trends are leading to further impoverishment amongst farm workers. Is the minimum wage enough? Phillan Zamchiya recalls his personal communications with farm workers during his field research in Limpopo and highlights the shortfalls of the minimum wage.

The Department of Labour (DoL) introduced a statutory minimum wage for farm workers in March 2003. The Sectoral Determination 8 of 2003 has been superseded by Sectoral Determination 13 of 2006. The law is a promulgation in terms of s 51(1) of the Basic Conditions of Employment Act, 75 of 1997, that regulates employment conditions and prescribes minimum wages in the agricultural sector. The Sectoral Determination applies to all farm workers in all farming activities in South Africa, but excludes the forestry sector. Under the law, the farmer must pay the farm worker at least a minimum wage of R1 090 or an hourly rate of R5.59 for those working less than 45 hours a week (the figures apply to the period between 1 March 2008 and 28 February 2009). The extent to which farmers abide by this or whether the law is followed is one of the issues addressed in research in 2008 on Malamula (pseudonym), a commercial fruit farm in Limpopo province.

According to farm workers, permanent workers receive a monthly rate whereas the seasonal workers are paid according to production targets (piece work). Seasonal farm workers were paid R40.60 for every 60 bags of lemons filled in a day, R28.50 for 40 bags and R11.40 for 20 bags. The number of hours was not determined by the time spent in the field but by the number of bags filled: 60 bags of fruit were calculated as eight hours, 40 bags as five hours, 20 bags as two hours and 10 bags as one hour. On my third field visit to the

farm there was a newly recruited young farm worker who worked tirelessly for eight hours but could only fill 10 bags of lemons, thus his remuneration was R5.70 for the day. During my last visit to the farm the owner conceded that he was actually using the piece rate system in order to ensure that productive workers were rewarded more than less productive workers. Most of the permanent workers received the minimum monthly wage.

Other scholars have also found that permanent workers benefit more than casual workers from the extension of labour legislation to the commercial farms.

The farm owner makes a monthly deduction of R180 from all the farm workers for an ambiguous provision of services regardless of whether they are in the permanent or seasonal category. Even the salaries of four seasonal workers who reside off the farm are also affected by deductions. The farm workers say that it is difficult to break down the costs of each deduction. This is because 'the owner just tells us the deductions are for electricity, water, crèche, firewood, housing and maize meal'. The farm workers are not given individual pay slips. From my survey, the monthly income for some farm workers could be as low as R300 per month because of the piece rate system. One of the young male farm workers told me that: 'I only got R244 this month after deductions after trying my best in the field; it seems I cannot pick more lemons so I am leaving to try my luck in Pretoria in the urban industries.'

The above empirical data shows that despite the extension of labour legislation and the introduction of the minimum wage to farm workers there is non-compliance with the labour laws with regard to seasonal workers. Payments may be better for permanent workers who are paid the legislated minimum wage. The government, civil society and trade unions must play a more proactive role to ensure maximum compliance with the law.

Phillan Zamchiya, PLAAS

PRIORITIES FOR RURAL DEVELOPMENT AND LAND REFORM

A comprehensive rural development strategy that is linked to land and agrarian reform and food security is listed as one of the ten priorities of the new land administration. In the absence of a rural development plan the Greater Giyani Local Municipality in Limpopo and Riemvasmaak (a 1994 land claim) based in the Northern Cape were chosen as the first of the pilot projects for rural development. The lessons from Giyani will inform a policy on rural development. This is a two-year pilot. The Department moreover proposes a new institution, the Rural Development Agency, to be operational by

2012. The rechanneling of R500 million that was previously allocated to land redistribution and tenure reform is suggested to fund the Agency's operations. In the national budget R1.8 billion was allocated for rural development. However, the Department stated this is not sufficient to roll out a comprehensive rural development plan. This is further exacerbated by the limitation of what is possible given the current resources for land reform as pointed out by Tozi Gwanya: 'With the current level of funding of land reform we shall be able to deliver four million hectares by 2014. We either have to

Box 3. Comprehensive Rural Development Programme (CRDP)

[T]he Department [adopted] a strategy based on the following three pillars:

- Agrarian transformation;
- Rural development; and
- Land reform.

Agrarian transformation includes, but is not limited to:

- increased production and the optimal and sustainable use of natural resources including land, grass, trees, water, natural gases, mineral resources etc;
- livestock farming (cattle, sheep, goats, pigs, chickens, turkey, game, bees, fish, etc), including the related value chain processes;
- cropping (grain, vegetables, fruit, spices, medicines, etc), including the related value chain processes;
- the establishment and strengthening of rural livelihoods for vibrant local economic development;
- the use of appropriate technology, modern approaches and indigenous knowledge systems; and
- food security, dignity and an improved quality of life for each rural household.

Rural development includes, but is not limited to:

- Improved economic infrastructure:
 - Roads, railways, ports;
 - shearing sheds;
 - dipping tanks;
 - milk parlours;
 - community gardens;
 - production/marketing stalls;
 - fencing for agricultural purposes;
 - storage warehouses;
 - distribution and transport networks;
 - electricity networks;
 - communication networks (land lines, cell phones, radio, television, etc);
 - irrigation schemes for small-scale farmers;
 - water harvesting, water basin and watershed management systems (dams, etc);
 - post office services and internet cafes;
 - rural shopping malls.

DRDLR, Strategic Plan 2009–2012

increase the budget allocation for land acquisition or extend the time line.’ (DRDLR 2009–2012: 17).

Nevertheless, the DRDLR’s very ambitious list of priorities (see Box 3) implies that the Department aims to play a leading role in rural development. It is, however, highly unlikely that the ‘new’ Department in its current form will achieve rural development on its own. Reviewing the Department’s vision together with other organisational and budgetary changes will not be enough. A greater co-ordinating role between relevant departments and a coherent vision for rural development and land and agrarian reform is much needed if it wants to achieve its objectives. Such a vision must find resonance in a coherent plan-of-action on how to ensure that all those who produce in the rural economy have viable options to make a living, whether through commercial, non-commercial or a blend of economic activities.

Additionally, the DRDLR has now identified five primary categories and explicitly identifies who will potentially be targeted for land reform (see Box 4).

This is a fundamental shift in the Department’s approach and is paving a way in looking at what type of land reform will be suitable and effective for who in the range of potential (rural) beneficiaries. The importance of small-holder family farming and investing in the productivity of household farming to reduce food insecurity and assist beneficiaries towards self-sufficiency is also recognised in this revised strategic direction. Whilst the categories-approach is significant and useful, it may be limiting in respect of the needs and interests that are shared amongst all, or most producers.

Sources: DRDLR. Strategic Plan 2009–2012; Estimates of National Expenditure 2009/10; Riemvasmaak CRDP, June 2009

Box 4

- *Category 1: Landless households* – those who have no space even for subsistence production and seek land for small-scale subsistence purposes, with or without settlement; including rights-based applicants such as farm dwellers,
- *Category 2: Commercial-ready subsistence producers* – those who wish and are capable of having a more commercial focus but need land and support, mostly on a part-time basis; including rights-based applicants such as farm dwellers,
- *Category 3: Expanding commercial smallholders* – those who have already been farming commercially at a small scale and with aptitude to expand, but are constrained by land and other resources,
- *Category 4: Well-established black commercial farmers* – those who have been farming at a reasonable scale, but are disadvantaged by location and other circumstances, and with real potential to become large-scale commercial farmers;
- *Category 5: Financially capable, aspirant black commercial farmers* – established businesspeople who wish to expand into agriculture and who, by and large, will be part-time farmers (Riemvasmaak CRDP: 53).



POLICY UPDATES

The Department announced the following legislation and policy priorities for 2009/10 in Parliament in June 2009.

The legislative policy priorities are as follows:

- Land Use Management Bill;
- CLaRA regulations;
- Black Authorities Act Repeal Bill;
- Deeds registries amendment Bill; and
- Sectional Titles Amendment Bill.

The Land Use Management Bill was tabled in Parliament but notwithstanding several interactions with the Portfolio Committee and eventually their acceptance of the Bill, Parliament did not proceed with it.

The policy priorities are listed below:

- The Willing Buyer-Willing Seller Options;
- Policy on Land Owned by Foreigners (PLOF); and
- A Comprehensive Rural Development Strategy.

In total the Department has ambitiously set out to review 30 pieces of legislation and policies in the next year. ESTA has not been listed as one of the priorities for review. No parliamentary programme has been finalised yet.

Furthermore, a number of reviewed grants are relevant to land reform, including:

Settlement and Production Land Acquisition Grant (SPLAG)

Settlement and Production Land Acquisition Grant (SPLAG) is targeted towards rural dwellers as well as farm workers and dwellers who want to access land for household food security. The SPLAG is applicable to both land for settlement and agricultural production for people living and/or working on rural land. In this context, rural land (land outside proclaimed towns) also refers to farm land. The grant has been approved by the Director General and came into effect on 10 July 2008.

The Land Acquisition for Sustainable Settlements (LASS) The Land Acquisition for Sustainable Settlements (LASS) applies to commonage and urban settlements. The LASS policy was approved by the Minister on the 18th of August 2008.

The LASS grant can be applied for two purposes:

- Commonages for agricultural development to enable municipalities to acquire land to create commonage for the purpose of establishing schemes for agricultural purposes.
- Urban Settlements to enable municipalities to acquire land for residential development. This grant is available to municipalities to acquire land for settlement purposes. It enables municipalities to pro-actively identify settlement needs in communities.

Source: DRDLR, Strategic Plan 2009-2012

GENERAL NEWS

- In its 2009-2012 Strategic Plan the department sets out its strategic objective for the provision of tenure security that creates socio-economic opportunities for people living and working on farms and in communal areas. The following targets have been set to ensure the rights of people would be confirmed:

Target 2009/2010: 11 587 people

Target 2010/2011: 12 746 people

Target 2011/2012: 14 020 people

- In a landmark case in May 2009 acting Judge Shenaaz Meer of the Land Claims

Court, in case no.: LCC 70/2009, granted Rekie Nellie Ndala (a pensioner) and Andreas Mahlangu (Ndala's nephew and initiate) of the Ndebele tribe the right to hold an initiation ceremony (initiation school) in accordance with their culture, custom and tradition on the farm Yzervarkfontein (belonging to JT Boerdery CC), where they reside. Both applicants were recognised as occupiers in terms of ESTA and therefore had the right to family life in accordance with the culture of their family as provided for in s 6 (2)(c) of ESTA.

- Advocate Dirk du Toit, former Deputy Minister of Agriculture and Land Affairs,

passed away on the 1st of June 2009. He was Deputy Minister from 17 June 1999 to 10 May 2009, and was an ANC MP since 1994. Du Toit was a member of the ANC's national executive committee in North West.

- In March 2009 Tozi Gwanya, Director General in the DRDLR, reported that his Department estimates R74bn is needed if the 30% target for the 2014 deadline is to be met. Mr Gwanya subsequently announced in Parliament in June 2009 that 2025 is now likely to be a more realistic deadline.

NEW PUBLICATIONS

Understanding Land Tenure Law. 2009. Ashraf Mohammed, Brendan Barry, Nicole Yazbek, Paul Benjamin, Pushpa Naidu, and Sheldon Magardie. Juta Law. This handy pocket book explains key definitions in the law and provides useful, practical guidelines on land rights disputes relating to three key pieces of legislation on tenure, including ESTA, LTA and PIE. Furthermore, it also sets out the nature and scope of legal protection available to occupiers of land and labour tenants, with a section on access to the courts, including the Land Claims Court. The pocket book provides accessible, plain language commentary on land tenure law in South Africa and is developed by Cheadle, Thomson & Haysom Inc. under the auspices of the Legal Services Project of the Department of Rural Development and Land Reform.

Contested paradigms of 'viability' in redistributive land reform: perspectives from southern Africa. 2009. Ben Cousins and Ian Scoones. This working paper describes the origins of a hegemonic, 'large-scale commercial farm' version of viability and its influence on policy debates on land redistribution in South Africa, Namibia and Zimbabwe. It critically interrogates this influential notion, reflecting on debates about the relevance of small-scale, farming-based livelihoods in southern Africa. The discussion is located in the context of competing analytical paradigms for assessing land reform: neo-classical economics, new institutional economics, livelihoods approaches, welfarist perspectives, radical political economy and Marxism. The paper proposes an alternative approach to viability that draws on different frameworks, and suggests what a re-casting of the debate might imply for policy and practice in southern Africa today. Available at www.lalr.org.za

World Development Vol. 37 No. 8 special issue: The Limits of State-Led Land Reform. 2009. T Sikor and D Müller. Why have land reforms consistently failed to attain their objectives? This edition offers a thought-provoking critique of the dominant approach to land reform, which conceives of the state as the sole initiator and implementer of land reform. It also explores the potentials of community-led approaches to achieve effective, efficient and equitable land reform. An introductory essay can be downloaded from: <http://dx.doi.org/10.1016/j.worlddev.2008.08.010> The entire issue is available at: http://www.sciencedirect.com/science?_ob=PublicationURL&_tockey=%23TOC%235946%232009%239996

[29991%231277088%23FLA%23&_cdi=5946&_pubType=J&view=c&_auth=y&_acct=C000066539&_version=1&_urlVersion=0&_userid=5203207&md5=105139ec10f193347f70560d9eodf575](http://dx.doi.org/10.1016/j.worlddev.2008.08.010)

Rural Poverty, Agricultural Policy and Land Based Livelihoods: Implications for Agrarian Transformation and Rural Development. 2009. Peter Jacobs and Ephias Makaudze. SPP. The research report provides findings and insights to the rural poor of the Cape West Coast. SPP commissioned this broad-based investigation into the livelihood strategies of rural communities and investigates who the rural poor of the Cape West Coast are; what their livelihood strategies are; what kind of land-based productive assets (land, livestock, etc.) they have and how these are accessed and used. The research makes a useful distinction between rural categories, including on and off-farm land reform farmers, non-land reform farmers, farm workers; mineworkers and fisherfolk, and provides constructive analysis of how the demands for land from these groupings varies.

Agricultural policy and rural poverty in South Africa: A survey of the past 20 years. 2009. Stephen Greenberg. SPP. Greenberg's overview analyses shifts in agricultural policy, the restructuring of the sector, and considers how these influence/d the dynamics of rural poverty. This report helps to deepen understanding of the various crises in agriculture, both locally and globally, and sheds some light on the uneven changes in rural poverty. The report provides some suggestions and recommendations for a policy agenda for pro-poor agricultural growth.

Overcoming Historical Injustice: Land Reconciliation in South Africa. 2009. James Gibson. Cambridge University Press. The book - part of a trilogy on consolidating South Africa's democracy - explores how historical attachments to land in South Africa were shaped by group identities formed under colonialism and apartheid. Gibson's analysis, based on attitudinal data collected using innovative research techniques, unpacks contemporary views and attitudes to land. He argues that complex and diverse views on reparative justice in relation to land are deeply embedded in how racial groups in South Africa identify the symbolic meaning of the land they lost (through historic dispossession) or hold under legal ownership (but which is now claimed by others).



RESEARCH UPDATES

Farm Dwellers in Limpopo: Tenure, Livelihoods and Social Justice

PLAAS is completing its field work in Limpopo, where it has been studying the situations of people who live, or work, on commercial farms. The focus is on factors impacting on farm dwellers' lives: changing farming practices in horticulture; the conversion to game farms; labour migration from Zimbabwe and elsewhere; and the impact of land restitution. PLAAS will host a report-back workshop in Limpopo in September and release research findings before the end of the year. For information, contact Ruth Hall on rhall@uwc.ac.za

Farm workers and the transformation of the commercial agriculture in the Western Cape: Contextualizing the contribution of civil society organizations

This study analyses the role civil society plays in supporting the development of sustainable livelihoods for farm workers in the Western Cape. It is part of a broader study entitled *Social movements and Poverty Reduction*. The research looks at how civil society engages organised agriculture and the state and the strategies they use in order to better the lives of farm workers. For more information please contact Jan Mogaladi at jmogaladi@uwc.ac.za

Women's Access to Productive Resources in the Northern and Western Cape

The Surplus People Project is embarking on research investigating women's access to productive resources in six farming projects – two each in the Hantam Karoo, Namaqualand and West Coast regions. Three of these will be women-only and three mixed (gender) group farming projects. The aim of the research is to analyse how effectively women access productive resources in women-only farming projects compared to mixed projects. Experience so far shows women in mixed groups are marginalised from the control and benefits of land and other productive resources. In addition, the allocation of municipal and government financial support to agricultural projects counts support of gender equity in terms of the number of women in groups. However, control and decision-making over such financial and other productive resources in these groups are often dominated by men. The research is meant to challenge both the sexist marginalisation within land reform groups and the bureaucratic vacuum that exist in providing effective support to strengthen women beneficiaries of land reform. The outcomes of the research will be applied to support efforts of community action. Please contact ronald@spp.org.za

The use and effectiveness of social grants and the impact on economic growth in South Africa

State social grants are a major part of the puzzle in understanding how impoverished South Africans survive. As part of its broader focus on poverty and economically marginalised livelihoods, PLAAS is conducting research on 'social protection' (state social grants), focusing on research sites in the urban Western Cape and rural Eastern Cape, respectively. David Neves (with the assistance of Andries du Toit) is working on two projects. The first, entitled *Use and effectiveness of social grants*, investigates the economic impact of South Africa's state old age grant (pension) for the FinMark Trust. The second project, entitled *Dynamic exploration of the social pension in South Africa and the impact on economic growth*, for UK-based HelpAge International is a study on the use and effectiveness of social grants, which examines how social grants are used within the complex webs of social reciprocity on which impoverished South Africans are often embedded. In both projects qualitative PLAAS findings are being integrated with quantitative data analysed by the Economic Policy Research Institute (EPRI). Contact David Neves at dneves@uwc.ac.za for more information.

EVENTS

Farm workers and the transformation of the commercial agriculture in the Western Cape: Contextualizing the contribution of civil society organizations.

A draft report of the Western Cape case study will be presented at a workshop at PLAAS in September 2009. The workshop will include participating state institutions, civil society and researchers, to seek feedback and refine the research report on the study of civil society strategies and methods in supporting farm workers building better livelihoods. For more information about the workshop please contact Jan Mogaladi at jmogaladi@uwc.ac.za

On the 3rd of September 2009 the Water Research Commission will hold a workshop entitled 'Water Law Issues contested since the promulgation of the National Water Act, 36 of 1998'.

A number of issues with regards to water were based on various legal questions served before the courts in the past ten years, since the National Water Act was promulgated in 1998. Similarly, more issues were contested in various other forums, including administrative tribunals, administrative authorities or water management institutions, legal literature, agreements and settlements, arbitration and mediation, and international forums. Many of these have been

settled to various degrees of satisfaction and effectiveness and often lead to legal reform, and amended laws and policies, while many other issues and questions are still pending, or have not been satisfactorily resolved, and are in dire need of resolution, in order to create legal certainty. Adv Maritza Uys was commissioned by the WRC to draft an inventory of legal issues and questions which arose from legal practice since the commencement of the act. Experts in water law or management and interested parties involved in the water sector are invited to attend a consultation workshop in order to comment on the identified issues, and to make contributions to this water law issues inventory. The draft report identifies, collates and consolidates legal questions that have been brought up in legal practice during the first decade of the new water dispensation and it aims to:

- Act as a reference material for current interpretations of the water law;
- Ensure that there is consistency in the interpretation of the law by the Tribunal and/or contested parties;
- Advise decision makers where the NWA will need to be amended or has proven not to yield the purposes for which it was drawn up;
- Outline potential future custom designed training of its legal staff.

The Water Research Commission will host 'The water governance and institutional arrangements think tank' on the 10th of September 2009.

Following the standoff in the establishment of Catchment Management Agencies (CMA), the experience gained from the Inkomati CMA and the government led institutional realignment debate, there is a need to collectively think about what progress

has been made and what needs to be done in future and 'who' will do management of water resources? The Water Research Commission is holding a 'Think Tank' bringing together those who were involved and made contributions in earlier processes and those who can bring new ideas of how to proceed.

The 'think tank' will deliberate discussion points which could include:

- Why decentralize management and/or governance of WRM?
- Why hydrological boundaries for management and/or governance?
- The role of the NWA in social justice, what does it offer the poor and scope for meaningful 'redress' in allocations;
- The public participation 'bubble', what benefits is in WRM for the individual and/or community?
- The role of local government in management of water resources, water supply and sanitation;
- The appropriate level of management of water resources;
- The appropriate level of governance for WRM;
- Why a national 'straight jacket' approach?
- Scope for local manifestations of 'successful' local management and local systems.

It is not envisaged that the workshop will arrive at solutions but it will look at new possibilities and a feasible and desirable way forward. It will also discuss future research therefore the need for practitioners from outside the sector to be present. For further details and if interested to attend, please send an email to eimank@wrc.org.za or call +27 12 3309029.

PLAAS obtained information for Umhlaba Wethu from a wide range of sources, including statistical information from the Department of Rural Development and Land Reform (DRDLR) and the Commission on Restitution of Land Rights (CRLR): <http://land.dla.gov.za>. Front cover photo by Ruth Hall. Views expressed here do not necessarily reflect the views of PLAAS.

SEND SUGGESTIONS AND COMMENTS ON THIS PUBLICATION TO:

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