

Conference

“Seeking security: Towards a new vision for tenure relations in farming areas”

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Nkuzi Development Association (NDA) in partnership with Social Surveys Africa (SSA) organised a conference on the tenure security of farm dwellers, which was held in Johannesburg from 25-27 October 2005.

In attendance were representatives from civil society, farm dweller communities, farm workers' unions, farm owners, academia and the State.

The conference aimed to discuss the transformation of the farming sector to one operating with the respect for human rights and dignity as envisaged in the South African Constitution. In particular, the organisers intend-

ed to share ideas on how to better address the issue of evictions from farms in South Africa.

The discussions during the conference centred on the National Eviction Survey and the implications of its findings; economic and legal issues arising from evictions from farms; education on farms; the situation of women on farms; the views of civil society organisations on evictions; and the government's

perspective on the challenges and opportunities in addressing the problem of eviction.

The National Evictions Survey and its findings

As noted above, the conference provided a forum for discussing the findings of the National Evictions Survey and their implications for the farming sector and land reform.

The objective of the Survey,

produced by NDA and SSA, was to obtain accurate information on the extent, nature and impact of evictions from farms.

It revealed a very disturbing picture of the situation of farm dwellers. Specifically, it disclosed an increase in evictions in post-apartheid South Africa. The reasons given for the evictions include:

- the declining economic conditions of farm owners;
- disputes between farm dwellers and farm owners over child labour on farms – for example, where parents refused to allow their children to work on the farm;
- death or termination of employment of a primary occupier, which is usually a male household member;
- farms closing down or changes in land use;
- conflicts between farm dwellers and farm owners over access to services; and
- farmers simply not wanting people living on their farms any more.

Most of those evicted are black South Africans and long-term occupiers on the farms. Women and children make up 77% of the evictees (women making up 28% and children, 49%).

The vulnerability of women and children is made worse by the fact that their security of tenure is linked to the continued employment of their husband or a male member of the household. Farm owners have often used the death or termination of employment of a male household member (the primary occupier) as a reason for evicting the rest of the household.

Regrettably, the Land Claims Court (LCC) supports this position. In *Landbou Navorsingraaad v Klaasen*

LCC 83R/01 (2001), it ruled that an eviction order against a primary occupier can be used for evicting other household members.

Furthermore, the survey revealed that in the last 21 years, 1.7 million people have been evicted and 3.7 million people have been displaced from farms. Between 1984 and 1993, the number of people who were displaced amounted to 1,832,341 and 737,114 people were evicted from farms. Between 1994 and 2004 these figures increased to 2,351,086 people displaced and 942,303 people evicted.

The increase in evictions for some years have been attributed to:

- severe droughts in 1984 and 1992;
- political uncertainty, trade liberalisation and the passing of the Restitution of Land Rights Act in 1994;
- the passing of the Extension of Security of Tenure Act (ESTA) in 1997; and
- the coming into effect of the Basic Conditions of Employment Act in 2003.

Conversely, the Survey established that the coming into effect of the Labour Relations Act resulted in a drop in evictions from 7.4% in 1994 to 5.0% in 1995. An increase in farm employment in 1993 also resulted in a drastic drop in evictions – from 10.7% in 1992 to 0.4% in 1993.

The Survey shows that those evicted have low levels of education – 37% have no education and 76% have none beyond primary school. They are also extremely poor, with the men having an average wage of less than R530 per month while the women's is R332 per month.

As the Survey revealed, the evictions placed most of the evicted farm dwellers in a position that made

them vulnerable to further eviction and violations of their human rights. This is because in most instances alternative accommodation or land is not available to them or, where it is, is in most cases so expensive for them that they fall into arrears, making them liable for eviction again.

While some evictees continue to live in deplorable conditions in new settlements, in the long run others find themselves in settlements with better services such as schools, tap water, shops and electricity. However, they are not necessarily able to access such services due to lack of financial resources.

Challenging the evictions is made impossible by the lack of legal representation for the farm dwellers at the State's expense. Although the LCC, in *Nkuzi Development Association v Government of The Republic of South Africa and Another* LCC 10/01 (2001), held that indigent farm dwellers whose tenure is under threat are entitled to legal representation at the State's expense, legal representation for farm dwellers is still a problem. For example, in the first four months of 2005, six of the seven eviction orders granted in the Worcester Magistrates Court and confirmed on review by the LCC were undefended.

Furthermore, the Survey reveals that the ability of the evicted farm dwellers to get help in relocating to new settlements is made impossible by their lack of awareness of their rights, their lack of resources and low education levels and limited work experience.

Government's perspective

Input on the government's perspective was put forward, ambiguously, by delegates from the Department

of Land Affairs (DLA). The Department of Housing - one of the key role players in addressing the eviction problem - was, surprisingly, not on the government perspective panel.

The DLA delegates admitted that it has failed to adequately address the land and eviction problem. Participants noted that the land reform programme has failed to ease the problem of evictions. They criticised the current legislation and policies as seriously inadequate and difficult to enforce, thus necessitating their review.

While agreeing that ESTA needs to be revised, the DLA delegates also acknowledged that legislative amendments alone would not solve the land and eviction problem.

On a positive note, the DLA is in the process of consolidating ESTA and the Land Reform (Labour Tenants) Act 3 of 1996.

However, it is disappointing that this process, which was started in 2001, has not yet been completed, mainly due, as stated by the DLA delegates, to lack of consensus within the Department as to how it should be done and what should be included in the consolidated legislation.

According to the DLA delegates, the DLA faces many challenges to its efforts to addressing the land and eviction problem satisfactorily. They include:

- time constraints;
- lack of capacity;
- inadequate support from other government departments;
- lack of provision of legal repre-

- the identification of hot-spots of eviction in order to move towards obtaining land.

Conclusion

The conference established that farm dwellers are marginalised or ignored in land reform programmes. Further, unremitting evictions have resulted in farming life becoming unattractive and have also led to a

mushrooming of squatter settlements. It also revealed the shocking absence of the State in addressing the eviction problem.

Addressing this problem is crucial because, as evidenced from the discuss-

ions during the conference, evictions from farms will probably increase as some farm owners are hoping to convert farm dwellers' houses to cottages in preparation for 2010 World Cup. This has already resulted in evictions from farms in the Western Cape (Stellenbosch area).

Some of the proposals made at the conference to address the problem of evictions are that the government should:

- tighten up legislation on evictions by creating substantive rights in land for occupiers and balancing the rights of farm owners with those of farm dwellers;
- recognise and protect independent tenure rights and employment rights for women (the employment of women on farms is often tied to that of their husbands);
- implement a well resourced pro-

gramme of information dissemination, support for farm dwellers and enforcement of their tenure rights;

- implement the recommendations of the Land Summit;
- document and maintain accurate statistics on evictions to help increase budgets;
- ensure legal representation for farm dwellers faced with eviction; and
- educate farm dwellers on their rights.

As noted by NDA and SSA, what is needed in the long run is the creation of a new dispensation in farming areas that accommodates both commercial farms and small farms and allows space for new and emerging farmers and new settlements for farm dwellers.

Such new settlements must give farm dwellers homes of their own and new economic and production opportunities.

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The findings of the National Evictions Survey will be released shortly in the form of a book, *Still searching for security: The reality of farm dwellers evictions in South Africa*, by Marc Wegerif, Bev Russell and Irma Grundling. It will be available for free on various websites and in printed form from NDA and SSA.