

CHAPTER 15

LEGISLATION ON LAND AND LAND REFORM

INTRODUCTION

It is clear from some of the literature reviewed, and also some of the submissions received by the Committee that the government's land reform policy and the illegal invasions of commercial farmland are viewed as salient factors in violence against farmers. For example, Prof N.J. Moolman¹ avers that the struggle over land manifests itself in farm attacks, as do the authors of the Action: Stop Farm Attacks memorandum², who find a correlation between the numbers of farm attacks and numbers of rural land claims in specific regions. Philip du Toit³ warns of potential adverse economic consequences of the reform policy, and suggests that acts governing this process may not meet constitutional criteria. It is also apparent from research on relationships between farmers and workers⁴ that while recognising the need for reform, many farmers are concerned about the potential consequences of specific provisions of legislation for the financial viability of farming, and for their own security (in terms of constraints placed on them in dismissing and evicting workers).

Since it was not spelt out in its terms of reference, the Committee initially considered ignoring the problem of land-invasions, but then realised it could not do so. A large section of the farming community perceive farm attacks as part of a larger campaign to intimidate farmers in order to drive them off the land, and illegal land occupation is also seen as part of that campaign. Illegal land occupation is in fact often accompanied by a large degree of intimidation of the farmers concerned which, by definition, constitutes a farm attack. Furthermore, illegal land occupants are often involved in farm attacks in the narrow sense of the word, e.g. by committing arson or even lodging a physical attack on the farmer.

The land issue is therefore an important component of the context relating to the safety and security of farmers. It is a very complex matter, and to understand it it is necessary to give a brief overview of the fundamental tenets of the government's land policy, the relevant legislation governing that policy, and reported progress in meeting the goals set by the policy insofar as it affects farmers.

LAND POLICY AND LEGISLATION

While the specifics of government land policy have undergone change since the first democratic elections in 1994 (see below), the three main principles which shape the policy have remained, i.e.

¹ See for example Moolman, C.J. 'A criminological perspective on property rights and violence against farmers' in *Property Rights in South Africa* compiled by Van de Graaf H. and Jordaan Dr C.L. (TAU 1999) p 163.

² Action Stop Farm Attacks *A memorandum on farm attacks and the implications thereof to commercial agriculture and food production in South Africa* (2000)

³ Du Toit P 'The parallel on land reform in South Africa and the rest of the world' in *Property Rights in South Africa* compiled by Van de Graaf H. and Jordaan Dr. C.L. (TAU 1999) p 122.

⁴ Johnson R.W. and Schlemmer L *Farmers and farmworkers in KwaZulu-Natal* (1998)

- Redistribution to provide disadvantaged and poor people with land.
- Restitution of rights in land lost through forced removals linked to homeland consolidation.
- Land tenure reform to improve security of tenure of vulnerable people and communities.⁵

The main goal of the policy is to redress past racial imbalances in land ownership and occupation, in line with principles enshrined in South Africa's Constitution. For example, subsection 5 of section 25 directs the state to take 'reasonable legislative and other measures' to allow citizens to acquire land on an equitable basis and subsections 6 and 7 refer specifically to the need to redress past racially discriminatory laws. However, the State 'may not unfairly discriminate directly or indirectly against anyone on one or more grounds, including race' (section 9(3)).

In order to implement this policy, a variety of land-related legislation, and amendments to legislation, was passed, particularly in the 1994 – 1998 period.

There are three pieces of legislation which are of particular importance. They are the Restitution of Land Rights Act No 22 of 1994, the Land Reform (Labour Tenants') Act, No 3 of 1996, the Extension of Security of Tenure Act, No 62 of 1997 (known as ESTA) and the Prevention of Illegal Eviction from and Unlawful Occupation of Land Act, No 19 of 1998.

The Restitution of Land Rights Act, Act no 22 of 1994

The first legislation enacted after the 1994 elections was which has been amended several times. This Act was passed to provide for restitution of rights in land to those dispossessed in terms of racially based law and to establish a Commission on Restitution of Land Rights and a Land Claims court. The relevant sections of this legislation are as follows :

Subject to meeting certain criteria, a person or a community could lodge a claim to land of which he/she/they had been dispossessed since 1913 with an office of the Land Claims Commission, headed in different regions by a Regional Land Claims Commissioner (RLCC), reporting to a Chief Land Claims Commissioner (CLCC) appointed by the relevant minister. This claim had to be lodged by December 1998.

The legislation lays down specific procedures to be followed by those lodging claims. Having established that the claim meets the specified criteria, the RLCC must follow certain administrative procedures. They have powers to investigate the validity of the claim (section 12) and, if there is a dispute, refer disputes for mediation (section 13).

Section 11 stipulates that no claimant resident on the land claimed at the time of commencement of the Act may be evicted without the permission of the CLCC, but also that 'no claimant or other person may enter upon and occupy the land without the permission of the owner or lawful occupier' (sections 11,7 (b) and (d)). Land may not be

⁵ 'Land Reform: valuable advice for farmers' issued on behalf of Absa AgriBusiness, cited in *Natal Witness Farm Supplement*, 24-02-01.

subdivided or sold without giving the RLCC one month's notice, and such sale may be set aside by the court.

Section 14 spells out when a claim should be referred to the Land Claims Court, viz. if parties agree in writing it is not possible to settle claim by mediation and negotiation, or the RLCC certifies that it is not feasible to settle it in this way, or the parties to any dispute arising from a claim agree about how it should be finalised and the RLCC concurs, or the RLCC opines that the claim is ready for hearing in the court. Various documents must be made available to the court. After the matter has been heard, the court may dismiss the application, or may make an order, in terms of section 35 of the Act, restoring land or a portion of land claimed, or providing alternative relief, including an order to the State to grant the claimant an appropriate right in alternative state-owned land. The court may not make such an order unless the Commission has acted in accordance with all the provisions of section 14.

The original Act and its amendments spell out in detail the powers and procedures of the Land Claims Court, which has the status of High Court. Judgments may be taken on appeal. A 1999 amendment stipulates that its powers include 'to determine any matter involving the validity, enforceability, interpretation or implementation of an agreement contemplated in section 14(3), unless the agreement provides otherwise'.

In terms of section 29(1) 'any interested person, including an organisation, may apply to the Court for leave to intervene as a party to any proceedings before the court'. In terms of Section 36(1) 'any party aggrieved by any act of or decision of the Minister, Commission or any functionary acting or purportedly acting in terms of this Act, may apply to have such act or decision reviewed by the Court'.

In later amendments to the original Act, sections 42A, B, C and D were added, expanding the powers of the Minister, including in appropriating money from Parliament to facilitate the development of, or the settlement of persons on, land which was subject to an order of the court. Also of import in these amendments, are the powers given to the Minister in cases in which rights to relief in land are waived (section 42D). If the Minister is satisfied that a claimant is entitled to restitution of a right in land 'and that person has entered into an agreement in terms of which he or she has waived any or all of his or her rights to relief' the Minister, after consultation with the Commission, may award land and/or pay compensation with the monies appropriated from parliament for that purpose.

The Land Reform (Labour Tenants') Act, Act no 3 of 1996

This Act is aimed at providing security of tenure for labour tenants on farms and those associated with them, and assisting them to acquire rights in land. Those qualifying for assistance include people whose parent or grandparent resided or continued to reside on a farm and had the use of cropping and/or grazing land, in return for his or her labour (sections 3 to 15). With the enactment of this legislation a person working as a labour tenant on 2 June 1995 and his/her family members were, subject to the provisions of the Act, given the right to occupy and use that part of the farm he/she was then using and occupying (section 3). This right could be terminated only within the provisions of the Act. In return the tenant had to provide labour to the owner or the lessee of the farm, or to nominate a person acceptable to the owner/lessee in his/her stead (section 4).

Section 5 of the Act prohibits eviction unless it is carried out in terms of an order of the Land Claims Court issued under the Act, following an action brought by, or supported under oath by, the owner (section 6). Section 7 empowers the Court to make an eviction provided it is 'just and equitable', and the tenant is in breach of conditions of employment (but in terms of Section 9 tenants who have reached the age of 65, or are unable to provide labour because of disablement, may not be evicted). Under certain conditions the court may also order the relocation of the tenant and associates, subject to compensation being paid to them (section 8). Upon the death of a labour tenant whose rights have been retained, his/her associates may be given 12 calendar months' notice to leave the farm (section 9). However, 'if the rights of any owner are unfairly prejudiced by the operation of this section, he or she may apply to the Court for equitable relief and the Court may make such order as it deems just and equitable under the circumstances'.

If an order for eviction is made the owner should be ordered by the Court to pay 'just and equitable' compensation (guidelines are provided), and the owner may be ordered to allow the tenant and associates/predecessors to demolish structures/improvements he/she has erected and remove materials and his/her own crops (section 10). Notice of at least two calendar months must be given to the tenant and the Director-General of Land Affairs of intended eviction (section 11), and attempts should be made to mediate any disputes between owner and worker.

Section 12 allows for labour tenant rights to be applied retrospectively, by the Court, to persons who were no longer tenants when the Act was promulgated, but would have had them had the legislation been in place on 2 June 1995. Section 13 confers exclusive jurisdiction on the Land Claims Court to hear appeals arising from relevant proceedings already underway in other courts at the commencement of the Act. There is a provision under Section 15 for urgent proceedings for eviction, the Court being guided by criteria relating to likely harm or danger to owner and/or damage to property and the absence of any 'other effective remedy available to the owner or lessee' (Sec 15b).

Sections 16 to 28 provide for the acquisition of ownership or other rights in land by labour tenants. Tenants may apply (section 16) for (a) land they are entitled to occupy in terms of section 3 of the Act, or (b) land he or she and their family had occupied during a period of five years immediately prior to the commencement of the Act and of which they had been unfairly deprived, or (c) rights in land elsewhere on the farm or in the vicinity proposed by farm's owner. At the same time tenants may apply for reasonable rights of access to water, right of way or any other servitude enjoyed as a labour tenant.

Such claims, if made, can be resolved in various ways. If claimant and owner agree about the validity of the claim, it may be settled by transferring the land claimed, or other land on the farm, or by monetary compensation. In terms of section 18 the Director-General of Land Affairs, who is party to proceedings, must confirm the agreement and, if he/she is satisfied that it is 'reasonable and equitable', must submit any agreement certified by him or her in terms of subsection (5) to the Court. However, if there is disagreement about the claim, or the Director General is not satisfied with any agreement reached between the parties to the claim, he/she should, 'at the request of any party' refer the application to Court.

The President of the Court (or a nominee) may appoint an arbitrator to hear the application (section 19). Sections 21 and 22 deal with the powers of the arbitrator, whose report constitutes rebuttable evidence in court of the facts established by him or her. In making orders, the Court may – if it has decided that the applicant has a valid claim - transfer the land in question or other land (including that held by the State) to the claimant. However, the Act makes it clear that the owner is entitled to compensation in the event of a successful claim by a tenant: 'The owner of affected land or any other person whose rights are affected shall be entitled to just and equitable compensation as prescribed by the Constitution for the acquisition by the applicant of land or a right in land' (section 23). The compensation should be paid by the applicant (section 24 – but see below re: sections 26 and 27). Section 25 deals with land subject to mortgage bonds or deeds of sale, and section 26 empowers the Minister to grant advances or subsidies, from moneys appropriated by Parliament, to assist labour tenants to acquire rights in land and to develop land occupied or to be occupied by labour tenants.

Extension of Security of Tenure Act, Act no 62 of 1997.

This Act has become known as ESTA. It is intended to ensure that rights enshrined in section 26(3) of the South African Constitution – prohibiting evictions without a court order – are enforced. This legislation aims to (1) provide State assistance in ensuring security of tenure, ideally through joint efforts of occupiers, land owners and government bodies, (2) extend the rights of occupiers 'while giving due recognition to the rights, duties and legitimate interests of owners', and (3) regulate the conditions under which occupiers may be evicted.

An occupier is defined in section 1 as 'a person residing on land which belongs to another person, and who has on 4 February 1997 or thereafter had consent or another right in law to do so' but excluding (a) a labour tenant, (b) a person using or intending to use the land in question mainly for industrial, mining, commercial farming purposes (but including a person who works the land himself) and (c) a person who has an income in excess of a prescribed amount.

According to section 2, the Act applies to all land except (with certain exceptions) proclaimed township land. It obviously includes farm land. Of particular relevance to land owners is the issue of what is deemed to constitute 'consent' to reside on land, dealt with in section 3. If a person residing on, or using, land on 4 February 1997 had previously done so with consent, and that consent had been 'lawfully' withdrawn prior to that date, that person would be deemed an occupier 'provided he or she has resided continuously on that land since consent was withdrawn'. However, the withdrawal of consent would constitute a valid termination of the right of residence, 'provided that it was just and equitable' in terms of the provisions of section 8, which section regulates the termination of rights in residence. Other important clauses regarding consent 'for the purposes of civil proceedings' are contained in subsections 4 and 5 of section 3: A person who has continuously and openly resided on land for a period of one year shall be presumed to have consent unless the contrary is proved, and a person who has continuously and openly resided on land for a period of three years shall be deemed to have done so with the knowledge of the owner or person in charge. (However, these two provisions do not apply to State land.)

Section 4 outlines the ways in which subsidies may be used for purposes of development of land or assisting occupiers or former occupiers to acquire land rights. The criteria by which applications for such subsidies would be assessed are detailed, bearing in mind the 'mutual accommodation of the interests of occupiers and owners'. In granting a subsidy to beneficiaries of a development, the Minister should be satisfied that 'the development is acceptable to a 'majority of the adults concerned'. In the case of development envisaged under this section, the provisions of the Subdivision of Agricultural Land act 1970 should not apply.

Chapter III starts by affirming the fundamental rights of both owners and occupiers (section 5), and then details the rights and duties of occupier (section 6) and owner (section 7). The occupier should have the right to reside on or use land he/she occupied or used on or after 4 February 1997, and 'have access to such services as had been agreed upon with the owner or person in charge, whether expressly or tacitly'. At the same time, the occupier must not engage in unlawful conduct, e.g. damage to property, intimidation, or enabling or assisting 'unauthorised persons to establish new dwellings on the land in question' (section 6). The owner should not interfere in the occupier's exercise of his/her legal rights but may, if the occupier has been warned to move a trespassing animal, and has not done so, have such animal impounded in terms of relevant law (section 7).

Sections 8 to 15 regulate the termination of rights of residence and eviction. An occupier's right of residence may be terminated on lawful grounds, if it is 'just and equitable', taking into account factors such as existing agreements, conduct of parties, fairness of procedures followed by owner. If the occupier is an employee the provisions of the Labour Relations Act apply. The rights of persons who have lived on land belonging to the owner for 10 years, or who have reached the age of 60, or who are disabled, may only be terminated under certain conditions which relate to unlawful activities or a serious breach in the relationship between owner and occupier. Dependents should be given 12 months written notice to leave if an occupier dies. (These provisions are similar, but not exactly the same, as those of section 9 of the Labour Tenants' Act, referred to above.)

Section 9 makes it clear that an occupier may be evicted only in terms of an order of court, and the conditions under which order may be issued are given. The owner should give the occupier, the municipality in which the land is situated, and the head of the provincial Land Affairs office, at least two months' written notice of the intention to obtain an eviction order.

In terms of obtaining an order for eviction, the Act) distinguishes between persons who were occupiers on 4 February 1997 (section 10) and those who became occupiers after that date (section 11). The criteria governing eviction are outlined. Even if the conditions laid down are not met, the Court may order eviction 'if it is satisfied that suitable alternative accommodation is available to the occupier concerned'. Depending on circumstances and conduct/interests of the two parties, the court may also order an eviction even if no alternative accommodation is available. In ordering the eviction of persons who became occupiers after 4 February 1997, factors such as existing agreements about when residence would terminate, length of time occupier has resided on land, availability of alternative

accommodation, reasons for proposed eviction, and the respective interests of owner and occupiers should be taken into account.⁶

If an order for eviction is granted, compensation should be paid to the occupier for any improvements he/she has effected, and the opportunity must be given for structures, crops, etc. to be removed. (These provisions are similar to those of the Land reform (Labour Tenants) Act, No 63 of 1996 discussed above.) Such compensation, to be determined by the court, must be paid before the execution of the eviction order (section 13).

In terms of section 14 a person who has been evicted contrary to the provisions of this Act may apply to court for restoration of lost residence and rights and/or for compensation, damages and costs (provided, however, occupation had been 'peaceful'. Had the eviction been carried out in terms of a court order (i.e. prior to the existence of the 1997 Act), such proceedings would have to be instituted within one year of the commencement of the 1997 Act. Section 15 provides for 'urgent proceedings for eviction ... if there is a real and imminent danger of substantial injury or damage to any person or property if the occupier is not forthwith removed from the land'.

Chapter V covers matters relating to 'Dispute resolution and courts', of which the following are of particular relevance to the topic at hand: A party may institute proceedings in the relevant magistrate's court or in the Land Claims Court. If all parties consent proceedings may also be instituted in the High Court (section 17). A magistrate's court has jurisdiction in proceedings for eviction or reinstatement and criminal proceedings in terms of the Act, and may also grant interdicts and issue declaratory orders. Civil appeals from magistrates' courts must be handled by the Land Claims Court, and any order for eviction by a magistrate's court before 31 December 1999 should be subject to automatic review by the Land Claims Court (section 19). Full powers of jurisdiction in terms of the Act are given to the Land Claims Court, including in decisions on any constitutional matter relating to the Act and the review of arbitration award.

A party to a dispute may request the Director-General to appoint a person or persons with the relevant expertise to facilitate meetings of interested parties and attempt to settle the dispute through mediation (section 21). The dispute may be referred to an arbitrator, including to a member of the panel of arbitrators established under the Land Reform (Labour Tenants) Act (section 22).

A person who has been unlawfully evicted, i.e. without an order of the court, may also institute a private prosecution in terms of the provisions of the Criminal Procedure Act of 1977 (section 23).

The Prevention of Illegal Eviction from and Unlawful Occupation of Land Act, Act no 19 of 1998)

In addition to repealing the Illegal Squatting Act of 1951 and some other legislation, this Act, in terms of rights enshrined in Sec 25(1) and 26(3) of the Constitution, aims to prohibit unlawful evictions while providing for procedures for the eviction of people who

⁶ The main difference between the provisions of sections 10 and 11 seem related to the issue of accommodation).

occupy land unlawfully, which evictions should be carried out in a fair manner. An unlawful occupier is defined in section 1 as ‘a person who occupies land without the express or tacit consent of the owner or person in charge, or without any other right in law to occupy such land’ excluding certain persons, such as those protected by ESTA.⁷

In applying for the eviction of an unlawful occupier, the court should serve written notice on the occupier and the municipality having jurisdiction and certain information must be contained in that notice (section 4). After considering the facts, the court may order an eviction if it considers it ‘just and equitable’ to do so (subsection 6 and 7); however, if the occupier has been on the land for more than six months it should also consider ‘whether land has been made available or can reasonably be made available by a municipality or other organ of state or another land owner for the relocation of the unlawful occupier’. The court may also make an order for the demolition and removal of the buildings or structures that were occupied by such person. There is also provision for urgent proceedings for eviction, but written and effective notice must be given to the unlawful occupier and municipality (section 5).

Section 6 deals specifically with eviction at the instance of an organ of state. Municipalities having jurisdiction over, or owning, the land in question, may arrange for mediation with a view to settling any dispute in terms of the Act (section 7).

No person may be evicted without an order from a competent court and if an unlawful eviction takes place there is an allowance for private prosecution (section 8). Magistrates’ courts have jurisdiction to issue orders or instructions, or to impose penalties, in terms of the Act.

Finally it should be noted that it is illegal for any person to receive or solicit payment for arranging, organising or permitting land occupation without the consent of the owner or person in charge of the land (section 3).

Evaluation of the legislation

These four pieces of legislation outlined above provide a framework for claiming for restoration of rights lost as a result of racial discrimination of the past, and for preventing any further erosion of rights relating to land (through, e.g. arbitrary eviction). At the same time, they attempt to protect the rights of property owners, including farmers, through stipulating, for example, that the behaviour of different parties should be lawful, that compensation should be paid wherever due, and that decisions taken and rulings made should be ‘just and equitable’. Allowances are made for disputes to be settled by mediation or arbitration, and, in the case of lands claims, for example, agreements can be reached between different parties without recourse to court action. With regard to land restitution claims, these can be addressed not only by restoring rights to the land originally occupied (if the claim is deemed valid) but also by monetary compensation or the award of other land.

⁷ Those with an informal right to land – linked primarily to homeland or national states land occupation - protected by the provisions of the Interim Protection of Informal Land Rights Act, No 31 of 1996, are also excluded. This interim legislation was in operation only for a limited period of time, however, lapsing on 31 December 1997.)

What of the role of the courts? Du Toit⁸ argues that the incorporation of the Land Claims Commission into the Department of Land Affairs represents a ‘mockery of the general principles of natural justice, the rule of law and the separation of powers’ and suggests that, unless there is a dispute over facts in a claim, or elect for adjudication by the land claims court, it will ‘no longer be compulsory to refer cases to the land claims court for adjudication’. The above overview of the legislation shows, however, that the courts – especially the Land Claims Court, which has equivalent powers to the High Court – continue to play a pivotal role in disputes of all kinds around land, including if there is a lack of consensus or disagreement on any land-related issues. Coertse, too argues that the court continues to play a very important role, ‘very much in the forefront of the government’s social engineering programme’.⁹ Despite the provisions in the Land Restitution Act for settling claims by administrative process leading to ‘agreement’ – which the National Land Claims Commissioner has claimed is speeding up the restitution process¹⁰ - there is no suggestion in the legislation that the role of the courts has been diminished. Indeed, as Coertse notes, there is now a provision for any interested party to approach the court.

Nor should it be forgotten that the Constitution itself contains provisions for ‘Just administrative action’ (section 33) – including being given written reasons for administrative action which has adversely affected their rights. Furthermore, in terms of the Constitution the government must ensure that review of administrative action by a court is written into legislation, which it is, in the case of land issues.¹¹

There is, then, on paper, a commitment to reform and restitution within a legislative framework. At the same time media reports suggest that progress in meeting policy goals has been painfully slow, and that this tardiness is fuelling threats of, and actual, land invasions.

Finally, it should be noted that the above legislation, and especially the Prevention of Illegal Eviction from and Unlawful Occupation of Land Act, Act no 19 of 1998, has now been definitively interpreted by the High Court in the epoch making judgement of *Modderklip Boerdery (Ems)Ppk vs Die President van die Republiek van Suid Afrika e.a., Transvaal Privaal Division, Case No 23170/2001 of 2002-11-20*, which sets out the Government’s responsibility in preventing the illegal occupation of land, on the one hand, and in providing suitable residential land to the homeless, on the other hand. This case is fully discussed elsewhere.¹²

LAND REFORM PROGRESS

It is not the intention to provide a detailed discussion and analysis of current trends in land policy – which is beyond the scope (and competence) of this committee’s work – but merely to draw attention to some key issues in debates about the success or otherwise of

⁸ Du Toit P. *op cit* p 124

⁹ Coertse M. ‘The Restitution of Land Rights Act and the Land Claims Court’ in 1999 *de Rebus* p 12.

¹⁰ Natal Mercury, 2000-11-10

¹¹ Also, in *Natal Witness*, 2002-09-09, the Chief State Law Advisor confirms that landowners still retain the protection of the Bill of Rights when applying to evict an unlawful occupier.

¹² See p 111.

the current policy. It seems evident that the extent to which progress in meeting policy goals will impact upon the expectations of putative beneficiaries of this policy, which in turn may impact upon rural stability and safety on the farms.

There was a discernable shift in the specifics of policy after the second democratic elections in 1999, primarily in terms of increased emphasis on ‘the importance of commercial farming as stimulus for rural economic growth’¹³ with a view to building a ‘core of successful black farmers’¹⁴. During 2000 there were reports that the government planned to resettle 70 000 black commercial farmers on nearly two million hectares of state land, over a period of fifteen years¹⁵ and that that by 2015 one third of all land currently held by white farmers – 26 million hectares – should have been transferred to landless black people¹⁶.

The emphasis on commercial farming led to criticism that this shift in policy failed to address the needs of the poor majority, and would widen the gap between the ‘haves’ and ‘have nots’.¹⁷ However, the Director-General of Land Affairs stressed that redistribution programmes for land settlement for residential purposes, commonage and farm worker equity schemes would continue, albeit in a slightly modified form,¹⁸ and in August 2001 the Minister for Agriculture and Land Affairs launched the Land Redistribution for Agricultural Development (LRAD) scheme, offering a range of grants and loans to ‘give historically disadvantaged South Africans (blacks, coloureds and Indians) access to agricultural land’ to stimulate both subsistence and commercial farming. It was estimated that this programme would cost up to R22 billion over a fifteen year period.¹⁹

Despite this commitment by the government, ‘(b)y the land affairs ministry’s own admission, the government’s implementation of the land reform programme...has not yielded spectacular results’.²⁰ For example, in February 2001, of the 14 808 land claims lodged with the Land Claims Commission in KZN (the vast majority, 11 445, of which were urban claims), only 2 023 had been settled. Of a total of 3 353 rural claims only 586 had been settled.²¹ According to the annual report of the Department of Land affairs for the period ended 31 March 2002, the total amount of land redistributed, country wide, during the twelve month period in question was 365 993 hectares of farming and residential land (263 972 hectares of which was state land), out of a targeted figure of 518 500, only 83 530 households had benefited. According to the media report citing these figures, the Department was struggling to deliver, and staff were leaving.²²

¹³ J Kirsten in *Mail and Guardian* 2000-04-14

¹⁴ ‘Thoko Didiza talks about plans and policy’ in *Afra News* No 46 March 2000 p 4-9

¹⁵ *Mercury* 9 May 2000-05-09

¹⁶ *Mercury Business Report* 2000-09-16

¹⁷ Kariuki S. ‘Land reform could widen the divide’ in *Mail and Gaurdian* 200-03-10. Amongst other critics of the policy shift were Ben Cousins of the University of the Western Cape : ‘Land reform at the crossroads: Who will benefit?’ in *Reconstruct* magazine, reprinted in *Afra News* No 46 March 2000; see also ‘Trickle-down development’ by Drew Forrest in *Natal Witness* 2000-05-12.

¹⁸ *Mercury* 2000-07-14

¹⁹ ‘Land redistribution for agricultural development’, full page advertisement in *Natal Witness* 2001-09-05; ‘Land reform gains ground’ *Daily News* 2002-05-23.

²⁰ Moloi D. ‘PAC makes ground on land issues’ in *City Press* 2002-02-17

²¹ *Daily News* 2001-02-14. In April 2001 it was reported that the Department of Land Affairs in KZN had spent only 38% of its budget in the year ending 31 March 2001, which the report linked to ‘in fighting’ *Natal Witness* 2001-04-02; in October 2001 it was reported that out of 102 positions in Land Affairs in KZN, 39 were unfilled *Natal Witness* 2001-10-09.

²² *Natal Witness* 2002-10-23

Referring to the issue of land claims, the National Land Claims Commissioner, however, has warned against sacrificing quality to speed up the reform process, pointing out that redistribution of land had to be 'sustainable', i.e. development had to accompany a hand over of land. This process is an extremely costly one, requiring a vast budget.²³ After providing a detailed breakdown of the land reform budget for the years 2001/2, David Mayson of the Surplus People Project, which researches land-related issues, concludes that 'it is clear that the budgets allocated to the relevant departments will not enable an ordered, fundamental and economically sustainable redistribution of land in South Africa'.²⁴ Periodic calls for, and allusions to, expropriation of land by the government appear linked to the financial implications of land reform policy. For example, the National African Farmers' Union and the National Land Committee reportedly called on the government to expropriate land it could not afford to buy²⁵ and allegedly both the Minister and Deputy Minister of Land Affairs had called for an updating of laws to allow expropriation for land redistribution.²⁶

During the past two years in particular the slow pace of land reform delivery has been used as an excuse to threaten illegal invasions in different parts of the country, including the Western and Eastern Cape and kwaZulu Natal.²⁷

While the question of land invasions sprang to prominence with the confrontation between government and thousands of invaders in Bredell, East Rand, and shortly afterwards in Daveyton,²⁸ such invasions have been taking place in a number of rural areas of the country for several years, as case studies cited in this report show.²⁹ Apart from the cases of land invasions discussed in this report, there are other examples: In 1996 the Pretoria High Court issued an eviction order against a group of squatters who had invaded land belonging to black cattle farmers in Mpumalanga, but in December 1997 the illegal occupants were given a third extension of the eviction order until 31 March 1998 by the Judge because 'the machinery of the state is slow'. The judge reportedly commented that if the Minister failed to move faster the land's owners would lose all confidence in his bona fides and that of the land affairs department.³⁰ The threat of orchestrated land invasions intensified during 2001 and 2002, with the newly launched Landless People's Movement quoted as saying, in July 2001, that if the movement's demand for land was not met within

²³ In the large Langa land claim in the Uitenhage area, R86 million had been paid out to claimants who had been dispossessed of their land and relocated during the homeland consolidation era - *City Press* 2002-09-08

²⁴ Mayson D. *A critical analysis of the 2001/2002 budget for land reform in South Africa* p 10

²⁵ *Mercury* 2000-11-10

²⁶ *Mercury Business Report* 2001-04-06

²⁷ The Restitution Forum of the South Cape and Karoo, representing 18 different community organisations and about 3 000 claims, was reported as having written to the President 'as a last resort because of delays in processing their claims for restitution, and threaten to embark on land invasions - *Mail & Guardian* 2000-04-14. At the same time the Transkei Land Services Organisation, described as one of Eastern Cape's most influential lobby groups for farm workers and dispossessed rural communities, threatened Zimbabwe-style invasions because of slow pace of delivery - *Mail & Guardian* 2000-04-28. In June 2001 a group of men representing several communities in northern KZN told the *Natal Witness* that delays on the part of Land Affairs were fuelling pressure to invade land - *Natal Witness* 2001-06-21.

²⁸ See p 111

²⁹ See p 96 *et seq*

³⁰ *Business Day* 5 December 1997-12-05, reprinted in *Land Update* Jan/Feb 1998

a 'reasonable time' it would 'have no option but to adopt Zimbabwe-style land invasions'.³¹

Prof Laurence Schlemmer cautions that that the image of poor people, desperate for a place to stay, is only part of a broader picture in which 'moneyed entrepreneurs', or people able to make political capital, benefit from their plight³²). Similar allegations have been made in some of the case studies described in this report.

³¹ 'Land occupations are "inevitable"' *Mail and Guardian* 2001-07-27

³² Schlemmer L 'The real housing story' in *Focus* (Issue 23, September 2001) p10-13