

ILLEGAL EVICTIONS, CONFLICT RESOLUTIONS AND SECURITY OF TENURE FOR FARM DWELLERS(ESTA OCCUPPIERS AND LABOUR TENANTS)

PRESENTATION TO THE RURAL SAFETY SUMMIT

DATE: 27-28 JUNE 2022



agriculture, land reform
& rural development

Department:
Agriculture, Land Reform and Rural Development
REPUBLIC OF SOUTH AFRICA



**STAY
SAFE**

PROTECT SOUTH AFRICA

TOGETHER WE CAN BEAT THE CORONAVIRUS

Index/Focus Areas for the Presentation

1. Introduction,
2. Demographics of farmworkers, farm dwellers and labour tenants in South Africa and status quo with regards to access to land or lack thereof,
3. The state and nature of evictions and/or threats of evictions on farms; factors underlying evictions; mechanisms put in place to monitor evictions on farms, and mechanisms to defend the tenure rights of residents on farms,
4. Policy mechanisms to promote secure access to land by farmworkers, farm dwellers and labour tenants,
5. Progress report regarding access to land by farm dwellers and tenants or people living on farms generally, and
6. Any proposals for policy and/or legislative amendments.



agriculture, land reform
& rural development

Department:
Agriculture, Land Reform and Rural Development
REPUBLIC OF SOUTH AFRICA



**STAY
SAFE**

PROTECT SOUTH AFRICA

TOGETHER WE CAN BEAT THE CORONAVIRUS

Introduction

The **legacy of apartheid spatial planning constraining economic development** of Urban areas, Townships, Rural Villages and Small Towns remains.

According to Statistics SA (Stats SA), 2011 census, approximately 2,8 million people are involved in Agriculture and therefore, live on land owned by others in commercial farming areas, in circumstances characterised by insecure tenure and are therefore vulnerable to evictions.

Approximately three million black South Africans (6% of the population) who live on privately owned farms in formerly white commercial farming areas are among the poorest South Africans, whose vulnerability is exacerbated by their “socio-economic marginality and geographical isolation.

There are many more millions of South Africans that **live in informal settlements, backyards, inner-city buildings whose occupation is sometimes unlawful and/or insecure. Lack of recourse for people with vulnerable land rights other than the courts to resolve disputes and conflicts** involving civil law and interpretations of property law and succession, hence most loose their tenure land rights.

Land-related conflicts have manifested in widely **publicised evictions, violence and killings, land rights violations, GBV&F, acts of criminality as well as community unrest.**



agriculture, land reform
& rural development

Department:
Agriculture, Land Reform and Rural Development
REPUBLIC OF SOUTH AFRICA



Demographics of farmworkers, farm dwellers and labour tenants in South Africa and status quo with regards to access to land or lack thereof.

As indicated above, the 2011 Census, Stats SA points out that in SA, **2.88 million households or 19.9% of the population** are involved in agriculture as farm workers; 5.1 % had employment of a permanent nature; 25.2% had employment of limited duration; 23.6% had employment of an unspecified duration and women were less likely than men to have employment of a permanent nature. It is assumed, that there has been very little changes in the farm dweller demographics across the country. Since this survey and the population for farm workers vary from Province to Province.

The Constitution of the Republic of South Africa, 1996 is the Supreme Law of the country and it protects the rights of all people in SA. Human rights are applicable to all people, by virtue of being human and everyone is born with these rights. Chapter 2 of the Constitution contains the 27 rights that are collectively called the Bill of Rights and are inherent to all human beings. Farm workers and their families are entitled to the human rights in the Bill of Rights, including all rights that are applicable to workers.

Section 25(6) of the Constitution provides a right to tenure security: “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.” To give effect to this constitutional Mandate, the Extension of Security of Tenure Act and the Labour tenants Act were promulgated.



agriculture, land reform
& rural development

Department:
Agriculture, Land Reform and Rural Development
REPUBLIC OF SOUTH AFRICA



STAY
SAFE

PROTECT SOUTH AFRICA

TOGETHER WE CAN BEAT THE CORONAVIRUS

Information on Labour Tenants Claims Lodged in terms of the Labour Tenants Act

“**Land Reform (Labour Tenants) Act 3 of 1996:** The purpose of this Act is to provide for security of tenure of labour tenants plus those persons occupying or using land as a result of their association with labour tenants; and to provide for the award of land and rights in land by labour tenants to secure their land tenure.

The Department is currently processing applications for awards of land by Labour Tenants, which were made not later than 31 March 2001. The Department received **20, 325** claims lodged in terms of section 16 of the Act, and **10 992** claims have since been finalized. There are approximately **9, 333** applications still outstanding with the majority in KZN followed by Mpumalanga Province.

The Constitutional Court confirmed an order of the Land Claims Court that the Department must process the outstanding applications and that a Special Master for Labour Tenants (SMLT) be appointed. The Office of the Special Master’s role is to **supervise, monitor** and **oversee** the functions of the Department in the resolution of outstanding claims in terms of the **Land Reform (Labour Tenants) Act, 1996**.

The Department is therefore working with the Special Master on Labour Tenants to settle all the outstanding labour tenant claims as order by the Land Claims Court.



agriculture, land reform
& rural development

Department:
Agriculture, Land Reform and Rural Development
REPUBLIC OF SOUTH AFRICA



STAY
SAFE

PROTECT SOUTH AFRICA

TOGETHER WE CAN BEAT THE CORONAVIRUS

Labour Tenants Claims Lodged and Settled

Province	Lodged	Settled	Outstanding
Eastern Cape	4	0	4
Free State	15	1	14
Gauteng	403	65	338
KwaZulu-Natal	11 446	6125	5321
Limpopo	159	0	159
Mpumalanga	8 286	4796	3490
North West	11	5	6
Northern Cape	1	0	1
Western Cape	0	0	0
Total	20 325	10992	9333

Targets

The metrics of determining targets are inconsistent to make scientific projections.

A Multisite Accelerated Claims Resolution Initiative was developed by the Special Master on Labour Tenants (LT) and has been adopted is being rolled out, parallel to the establishment of a credible database, capacity building for project officials, and the roll out of the LT implementation plan.

Targets:

- **500** in **2020/21**;
- **1500** for **2021/22**;
- **2000** for **2022/23**
- **2500** for **2023/24**



agriculture, land reform
& rural development

Department:
Agriculture, Land Reform and Rural Development
REPUBLIC OF SOUTH AFRICA



**STAY
SAFE**

PROTECT SOUTH AFRICA

TOGETHER WE CAN BEAT THE CORONAVIRUS

State and Nature of Land Rights violations on Farms

Department through the Land Rights Management (LRM) facility deal with reported cases of Land Rights Infringements (LRI) or evictions. Some cases are resolved through negotiations and mediation and some resolved by courts, hence the stats are updated yearly and stats for 2021 FY will be finalized soon.

Types and Nature of Land rights violations:

- Evictions through court orders,
- Illegal evictions(without a court order),
- Threatened evictions,
- Constructive evictions(denied access to water & demolition of houses),
- Labour tenancy disputes,
- Burial rights,
- Livestock disputes (grazing and numbers),
- Restoration of rights,
- Denial to Burial rights,
- Access to basic services(water and energy),
- Right of way or right of access,
- Restrictions on livestock numbers, and
- Demolishing of residence or houses.



agriculture, land reform
& rural development

Department:
Agriculture, Land Reform and Rural Development
REPUBLIC OF SOUTH AFRICA



STAY
SAFE

PROTECT SOUTH AFRICA

TOGETHER WE CAN BEAT THE CORONAVIRUS

State and Nature of Evictions or threats of Evictions on Farms

The evictions range from legal to illegal evictions.

- **Illegal evictions:** Constitute evictions that happens without the court orders and/or with Magistrate court orders, without being reviewed by the Land Claims Court in terms of the Act.
- **Legal evictions: Constitute** evictions granted through a court order from a competent Court.
- **Threats/Constructive evictions:** (where the owners make the circumstances of farm dwellers difficult, thereby coercing them to leave the farms. This includes **disconnection of water/ electricity, vandalism to dwelling structures, limiting access to the dwelling structures by families as well as government services such as water or medical to the dwelling structures**)

The legal evictions are done after following all requirements in terms of legislation which the Land Claims Court satisfy itself before of those requirements before issuing them. Some illegal evictions takes place without the knowledge of the Department hence the Department has prioritized the rolling out of ESTA Awareness campaigns in the current Financial year to educate both the Farm dwellers and Land owners on the provisions of ESTA and LTA regarding their rights on Land.



agriculture, land reform
& rural development

Department:
Agriculture, Land Reform and Rural Development
REPUBLIC OF SOUTH AFRICA



**STAY
SAFE**

PROTECT SOUTH AFRICA

TOGETHER WE CAN BEAT THE CORONAVIRUS

Factors Underlying Farm Evictions

- Illegal termination of employment contracts,
- Termination of right of residence – farm dweller families **live on land that is not theirs and their land rights are vulnerable** farm dweller
- Farm expansions for economic reasons,
- Freedom of association- other family members or relatives are denied visitation to their families on farms,
- Farm dweller grazing rights,
- Rights to burial,
- Land needs are various and include **land for residence and access to land for cultivation, rituals, burial, and grazing their stock,**
- **Unlawful evictions and various land rights violations,**
- **Lack of Security of tenure for farm dwellers,**
- ***Incidents of murder, public violence and damage to property, racism, land invasion, and allegations of stock theft, and***
- ***Provision of basic services on farm – farm dwellers depend of land owner to access water, energy and other amenities and often denied access.***



agriculture, land reform
& rural development

Department:
Agriculture, Land Reform and Rural Development
REPUBLIC OF SOUTH AFRICA



9

**STAY
SAFE**

PROTECT SOUTH AFRICA

TOGETHER WE CAN BEAT THE CORONAVIRUS

Factors Underlying Evictions on Farms Continue...

- Lack of basic services like water, electricity and refuse removal which results to self-help most farm dwellers, workers and labour tenants.
- Violation and or Abuse of land rights of farm dwellers, farm workers and labour tenants by land owners and or persons in charge.
- Breach of terms and conditions of stay by farm workers, farm dwellers and labour tenants.
- Violation of rights of land owners and persons in charge by farm workers, farm dwellers and Labour Tenants.
- Illegal demolition of illegal structures constructed by farm dwellers without consent of the farm owner/ persons in charge.
- Insecure land tenure of farm workers, farm dwellers and labour tenants.
- Rejection or denial of labour tenant claims by affected land owners.



agriculture, land reform
& rural development

Department:
Agriculture, Land Reform and Rural Development
REPUBLIC OF SOUTH AFRICA



**STAY
SAFE**

PROTECT SOUTH AFRICA

TOGETHER WE CAN BEAT THE CORONAVIRUS

Mechanisms put in place to monitor evictions on Farms

- **Rapid Response Strategy:** DALRRD is a member to a Rapid Response on Rural Safety that is established by IMC of DALRRD which is a Joint Task Team established to monitor evictions and safety in rural areas which included farms. The strategy aims **to address rural safety as an integrated day-to-day policing approach by creating a safe and secure rural environment.** It is intended to **improve the safety and security of all persons living and working on farms and other rural areas.**
- **ESTA Awareness Campaigns:** The task team composes of various government Departments Ngo's far dwellers and land owners and / parsons in charge.
- A dedicated team in every District office of DALRRD conducts land rights awareness campaigns are conducted more often to educate those working and staying on farms on their promotions and protection of their land rights including their rights to permanent secure tenure.
- **Eviction Toll Free number: 0800 007 095-** provided by DALRRD to all who which to report all land rights violations and or evictions.
- **Legal Aid SA:** can be contacted on the **national toll-free number 0800 110 110,** to request **Legal representation directly in terms of the agreement between DALRRD, DJOC&CS.**



agriculture, land reform
& rural development

Department:
Agriculture, Land Reform and Rural Development
REPUBLIC OF SOUTH AFRICA



**STAY
SAFE**

PROTECT SOUTH AFRICA

TOGETHER WE CAN BEAT THE CORONAVIRUS

Mechanisms to defend Tenure Rights of Residents on Farms

- **Legal Aid South Africa (Legal Aid SA):** is a state-funded institution that provides free legal advice, assistance and representation to those who cannot afford it, particularly the poor and vulnerable. Anyone who requires the services of a lawyer but does not have the necessary funds can approach Legal Aid SA for assistance. Memorandum of Understanding (MoU) has been signed by all parties in this regard.
- **District offices of DALRRD in the 44 District Municipalities:** are the 1st point of call for interventions, conduct land rights enquiries, inspections and prepare probation reports in resolving farm evictions and referrals for mediation and Legal representation to defend evictions in court.
- **Panel of Mediators:** has been set up by the Department of Agriculture, Land Reform and Rural Development (The Land Rights Management Facility) that provides mediation services to all farm dwellers, and labour tenants faced with land rights violations and evictions.
- **Panel of Arbitrators:** is current in the process of being set up for farm dwellers through the Department of Justice and Correctional Services. The panel will consist of retired Judges.
- **Labour disputes and working conditions:** Farm workers who do not stay on the farm when they face rights violations they are referred and assisted by Department of Employment and Labour.
- **Provision of long term security of tenure:** Acquisition of land in full title is provided in terms of sec 4 of ESTA and 16 of Labour tenants Act by DALRRD. If they don't qualify in terms of the above provisions, their tenure is secured through the Department of Human Settlements in terms of Housing Code.



Progress report with regard to access to land by farm dwellers Continue...

TENURE ACQUISITION SINCE 2019 - MARCH 2022

PSSC	Number of Farms	Hectares Acquired	Number of Individuals Benefited	Number of Females Benefited	Number of Youth (<=35 years) Benefited	Number of People with Disabilities Benefited
Eastern Cape	1	77	13	7	10	0
Gauteng	4	232	184	100	57	0
Kwazulu-Natal	19	7,710	505	262	186	2
Mpumalanga	8	1,841	215	114	89	0
North - West	2	771	34	11	2	0
Grand Total	34	10,632	951	494	344	2

- The Department of Agriculture, Land Reform and Rural Development acquired 10 632 hectares of land through the Land Tenure since April 2019 to March 2022.
- The number of Farms acquired amount to 34 and benefited over 900 individuals, of which over 400 are females, over 300 are young people and 2 are people with disability.



agriculture, land reform
& rural development

Department:
Agriculture, Land Reform and Rural Development
REPUBLIC OF SOUTH AFRICA



**STAY
SAFE**

PROTECT SOUTH AFRICA

TOGETHER WE CAN BEAT THE CORONAVIRUS

Progress Report with regard to access to land by farm dwellers and programmes of government to support livelihood activities by farm dwellers/ labour tenants and people living on farms generally

TENURE ACQUISITION SINCE INCEPTION - MARCH 2022

PSSC	Number of Farms	Hectares Acquired	Number of Individuals Benefited	Number of Females Benefited	Number of Youth (<=35 years) Benefited	Number of People with Disabilities (PLWD) Benefited
Eastern Cape	76	46,672	15,533	416	42	1
Free State	139	44,579	3,836	620	85	0
Gauteng	59	5,112	4,459	504	116	0
Kwazulu-Natal	327	213,360	58,601	10,696	7,521	86
Limpopo	67	33,797	5,308	336	8	0
Mpumalanga	152	116,523	25,394	2,020	827	0
North West	66	26,048	78,259	20,435	1,710	378
Northern Cape	41	57,203	4,472	270	79	1
Western Cape	94	251,314	13,990	4,107	3,216	32
Grand Total	1,021	794,608	209,852	39,404	13,604	498

- The Department of Agriculture, Land Reform and Rural Development acquired 794 608 hectares of land through the Land Tenure since inception to March 2022.
- The number of Farms acquired amount to 1 021 and benefited over 200 000 individuals, of which over 39 000 are females, over 13 000 are young people and 498 are people with disability.



agriculture, land reform
& rural development

Department:
Agriculture, Land Reform and Rural Development
REPUBLIC OF SOUTH AFRICA



**STAY
SAFE**

PROTECT SOUTH AFRICA

TOGETHER WE CAN BEAT THE CORONAVIRUS

Policy mechanisms to promote secure access to land by farm workers, farm dwellers and labour tenants.

- **The Extension of Security of Tenure Act, 62 of 1997 and the Land Reform (Labour Tenant) Act, 3 of 1996**, both make provision for the Department to make funds available for the acquisition of land for tenure security of farm dwellers.
- **Farm Dweller programme has been developed by DALRRD**: which brings together various government stakeholders to fulfil different constitutional obligations will go a long way to provide not just tenure security but overall upliftment in the quality of living of farm dwellers through the addition of provision of housing, municipal services, and economic opportunities in agriculture.
- **Agri-Village policy**: the policy is under development by the Department of Human Settlements working with the DALRRD. The Department has identified the hot pot Provinces –like Western Cape, KwaZulu-Natal and Mpumalanga, however, the project will be rolled out in other Provinces.



agriculture, land reform
& rural development

Department:
Agriculture, Land Reform and Rural Development
REPUBLIC OF SOUTH AFRICA



**STAY
SAFE**

PROTECT SOUTH AFRICA

TOGETHER WE CAN BEAT THE CORONAVIRUS

Policy mechanisms to promote secure access to land by farm workers, farm dwellers and labour tenants.

CONSTITUTIONAL MANDATE	LEGISLATIVE & POLICY MANDATE
<p>Right to security of land tenure</p> <p>Section 25(6) of the CRSA states that:</p> <p>“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 for in an Act of Parliament, either to tenure which is legally secure or to comparable redress.”</p>	<p>Right to security of tenure</p> <ul style="list-style-type: none"> ✓ Section 4 of Extension of Security of Tenure Act 62 of 1997, ensures protection and promotion of rights of occupiers and land owners, ensures measures to facilitate long-term security of tenure for occupiers ✓ Section 16 of The Land Reform (Labour Tenants) Act 3 of 1996 provides for security of tenure of labour-tenants and those persons occupying or using land as a result of their association with labour tenants; to provide for the acquisition of land and rights in land by labour tenants <p>Policies & Judgements</p> <ul style="list-style-type: none"> ✓ Land Tenure Policy on Commercial farming areas ✓ Mwelase Judgement
<p>Right to housing,</p> <ul style="list-style-type: none"> ✓ Section 26 of the Constitution entitles: Everyone to the right to have access to adequate housing <p>Right not to be evicted</p> <ul style="list-style-type: none"> ✓ Section 26(3) of the Constitution, which reads: “No one may be evicted from their homes, or have their homes demolished, without an order of court made after considering all the relevant circumstances. 	<p>Right to housing-</p> <ul style="list-style-type: none"> ✓ Housing Act 107 of 1997 provides for the facilitation of a sustainable housing development process. ✓ Section 4 (6) of ESTA provides for an opportunity to qualifying categories apply for a housing subsidy as provided for in terms of Sections 10A, 10B, 10C and 10D of the Housing Act, 1966 (Act No. 4 of 1966).



agriculture, land reform
& rural development

Department:
Agriculture, Land Reform and Rural Development
REPUBLIC OF SOUTH AFRICA



PROTECT SOUTH AFRICA

TOGETHER WE CAN BEAT THE CORONAVIRUS

Policy Mechanisms Continue...

CONSTITUTIONAL MANDATE

- Right of access to basic services
- ✓ Section 139(5) of the CRSA obliges on municipalities to ensure that each member of the community has access to at least a minimum level of basic services. Section 153(a) states that municipalities are “obliged to prioritise the social and economic development of the community

Right to sustainable development

- Section 27(1) entitles: “Everyone to the right to have access
- ✓ health care services, including reproductive health care;
- ✓ sufficient food and water;
- ✓ social security, including, if they are unable to support themselves and their dependents, social assistance.

POLICY AND LEGISLATIVE MANDATE

Right to basic services

- Intergovernmental Relations Framework Act 13 of 2005 ensures Integrated Development Plan is a super plan for an area that gives an overall framework for development.

Right to sustainable Development

- Section 4 1 (a) and (c) of ESTA enables Minister to approve subsidies for facilitation and planning for acquisition and for Development of land for farm dwellers
- Section 4 (4) (a) read with Reg 13 of ESTA- enable Minister to approve subsidies through agreement with provincial government, municipality or third party (like Human Settlement) to facilitate development.
- Section 4 (4) (b) of ESTA read with Reg 14 enables Minister to pay such subsidy to a provincial government or a municipality or third party for such development

Policies & Judgements

- Policy on security of tenure in commercial farming areas
- District Development Model
- Land Development Support policy
- Beneficiary Selection and Land Allocation policy – targets farm dwellers for land allocation
- Zabalaza Mshengu Judgement
- Sibanyoni judgement



agriculture, land reform
& rural development

Department:
Agriculture, Land Reform and Rural Development
REPUBLIC OF SOUTH AFRICA



STAY
SAFE

PROTECT SOUTH AFRICA

TOGETHER WE CAN BEAT THE CORONAVIRUS

Proposals for policy and/or legislative amendments.

ESTA has been amended and passed into law in 2019: **ESTA amendments provisions:**

- To substitute the provision of subsidies with tenure grants.
- To ensure no occupier facing application for eviction in court is without legal representation unless he/she waived her/his right to legal representation.
- The establishment and operation of a Land Rights Management Board and (Land Right Management Committees (LRMC).
- To establish a register by LRMC that will ensure a data base of the following:
 - ✓ Number of evictions,
 - ✓ Causes of evictions
 - ✓ How evictions were dealt with
 - ✓ Number of farm dwellers that have no access to land
 - ✓ Number of farm dwellers that have no access to basic services
 - ✓ Number of farm dwellers that have no access to sustainable development
 - ✓ Number of farm dwellers that have no access to housing



Proposals for policy and/or legislative amendments Continue...

Currently the Department is working on the finalization of relevant ESTA amendment Act Regulations and Proclamation of the Act into effectiveness to regulate the following:

- **Proclamation of bringing ESTA amendments** is under way with the estimated date being 1 October 2022.
- **Regulations will be published for public comment** by 1 September 2022 regulating the following:
 - ✓ How does one get the dispute arising on the farms gets help,
 - ✓ Which forms of measures are available to them,
 - ✓ How do you access those forms and or measure,
 - ✓ How does one apply for sec 4 of ESTA grants from land, alternative land, for accommodation and services and for development of land owned by former farm dwellers, workers and labour tenants,
 - ✓ Which information must be on the data base kept by DLRMC,
 - ✓ What must the court consider before granting an eviction of the farm dwellers, worker and labour tenants in addition to what is already regulated.



Proposals for policy and/or legislative amendments Continue...

- **A dedicated team** shall be created in the Fit-for-Purpose Departmental Structure in every District office of DALRRD to conduct land rights awareness campaigns more often to educate those working and staying on farms on their promotions and protection of their land rights including their rights to permanent secure tenure.
- **Roll-out of the Farm dweller Programme:** consisting of 5 components that aim at the following:
 - ✓ Promoting and protecting rights of the farm dweller
 - ✓ Providing them with permanent security of land tenure



agriculture, land reform
& rural development

Department:
Agriculture, Land Reform and Rural Development
REPUBLIC OF SOUTH AFRICA



**STAY
SAFE**

PROTECT SOUTH AFRICA

TOGETHER WE CAN BEAT THE CORONAVIRUS

END

THANK YOU



agriculture, land reform
& rural development

Department:
Agriculture, Land Reform and Rural Development
REPUBLIC OF SOUTH AFRICA



**STAY
SAFE**

PROTECT SOUTH AFRICA

TOGETHER WE CAN BEAT THE CORONAVIRUS