Thursday, 10 November 2022]

No 179—2022] FOURTH SESSION, SIXTH PARLIAMENT

PARLIAMENT

OF THE

REPUBLIC OF SOUTH AFRICA

ANNOUNCEMENTS, TABLINGS AND COMMITTEE REPORTS

THURSDAY, 10 NOVEMBER 2022

TABLE OF CONTENTS

COMMITTEE REPORTS

National Assembly

1. Women, Youth and Persons with Disabilities 2
2. Small Business Development 3
3. Agriculture, Land Reform and Rural Development 23

COMMITTEE REPORTS

National Assembly

1. Report of the Portfolio Committee on Women, Youth and Persons with Disabilities on the Amendment of Article 20 (1) of the Convention on the Elimination of All Forms of Discrimination Against Women, dated 8 November 2022.

The Portfolio Committee on Women, Youth and Persons with Disabilities, having considered the request for approval by Parliament regarding the Amendment of Article 20 (1) of the Convention on the Elimination of All Forms of Discrimination Against Women, referred to it, recommends that the House, in terms of section 231(2) of the Constitution Republic of South Africa Act 108 of 1996, approve the amendment of Article 20 (1) of the Convention on the Elimination of All Forms of Discrimination Against Women.

Request to be considered.

2. REPORT OF THE PORTFOLIO COMMITTEE ON SMALL BUSINESS DEVELOPMENT ON THE PETITION FROM INDEPENDENT FIELD TECHNICIANS REGARDING CONTRACTUAL DISAGREEMENT WITH TELKOM OPENSERVE - REFERRED TO THE PORTFOLIO COMMITTEE BY THE SPEAKER OF PARLIAMENT FOR CONSIDERATION, DATED 09 NOVEMBER 2022.

The Portfolio Committee on Small Business Department (the "Committee"), having considered the Petition against Telkom Openserve from the Directors of Sundane Projects, Mzanzi Broadband, ACCS Telecoms, and Folo Electricals with reference to contractual disputes and allegations of corporate bullying referred to the Portfolio Committee on Small Business Development by the Speaker of the National Assembly for consideration, reports as follows –

1. INTRODUCTION

The Portfolio Committee on Small Business Development received a referral (the "Petition") from the Speaker of the National Assembly in accordance with section 17 of the Constitution and clause 350 (b) of the rules of the National Assembly for deliberation and possible mediation between the Independent Field Technicians and Telkom Openserve, hereinafter referred to as the "Parties". In terms of the Petition before the Committee, the Independent Field Technicians ("IFTs") are alleging that Telkom Openserve, a wholly owned subsidiary of the Telkom Group, acted in bad faith by failing to honour and perform its obligations in accordance with the provisions as set out in the contract entered into by the Parties. As a matter of course, upon receiving the Petition, the Committee invited the IFT companies to clarify the nature of their grievances for the Committee to determine whether or not the matters were arbitrable given its limited powers.

Throughout its engagements with the Parties, the Committee constantly ensured that it safeguards the principle of audi alteram partem. The invitation to Telkom Openserve was accordingly extended to allow the organisation to state its side of the story and possible remedial measures it plans to implement to solve the impasse. A public petition is usually a last resort to seeking relief. It is nonetheless an effective way of promoting public involvement and participation, especially

on matters that seek to shape policy discourse. The Committee had noted from the inception when it started reflecting on the matter that the issues were complex, confidential in nature, and given its limited authority – the realistic armory at its disposal would be to use the art of persuasion while comprehensive policy and legislative mechanisms are still being considered by the government.

It is imperative to further note that during the fifth Parliament, the Committee had held several sessions with small businesses following numerous complaints from the sector ranging from allegations of corporate bullying, non-payment of services rendered, price discrimination, unfair terms of trade, red tape to deliberate supply chain bullying often used by big conglomerates to stamp out competition. Many of the complaints received during the fifth Parliament had been levelled, in the most, against companies in the telecommunications sector such as Huwaei, Vodacom, Mobile Telephone Network ("MTN"), Telkom SOC Limited, and others, particularly at how they treated their subcontractors. The Committee had then concluded that the practice was widespread to the degree that it saw it appropriate to adopt a resolution to pursue legislative response. There was consequently a Private Members Bill ("PMB") sponsored by then Member of Parliament Honourable Toby Chance, Small Enterprises Ombud Service Bill, which was vetoed by the Portfolio Committee in favour of a Committee Bill.

Fast-forward to the sixth Parliament, the Committee continues to receive complaints relating to unethical behavior of big businesses, and public sector conduct, especially in the area of supply chain management and disputes between small enterprises themselves. With the small enterprise sector projected to create more than 11 million jobs by 2030, a favourable environment must be created for that goal to be achieved. The Committee remains of the view that pursuance of lawsuits to resolve disputes can be costly and require mechanisms that are accessible and affordable to small business concerns. Commercial disputes suppress the sector's vibrancy and ability to create jobs. Messy and drawn-out litigations stifle growth, drain resources and require experience that most small businesses do not have. The importance of putting in place a dedicated dispute resolution mechanism cannot, therefore, be overemphasised. Even though the dispute between Telkom Openserve and IFT companies had correctly been referred to the Committee, however, it must be noted that the Committee had to confine itself to the procedures for dealing with Petitions as set out in the rules of the National Assembly and the National Council of Provinces.

2. BACKGROUND

In 2015, the Telkom Group created the Independent Field Technicians programme out of skilled workers who had either resigned, retrenched, or taken early retirement with a promise of assistance to set up small businesses for subcontracting by the telecoms giant. The programme intended to offer support to the IFTs with the medium-term objective of seeing them graduate from the programme in 2020. At the inception, a total of 33 IFT enterprises participated in the incubation programme. As of the financial year 2022, 31 IFT companies have active commodity contracts. The contracts were renewed to February 2023 and IFTs are still providing service to Telkom Openserve. In the initial stage of the dispute, there was an original 11 IFT companies, as shown in table 1 below, that enquired with the Department of Small Business Development ("DSBD") and later with Parliament.

Table 1: Original IFT Companies in Dispute

IFT COMPANIES	RETRACTED FROM THE DISPUTE	ACTIVE IN DISPUTE
Callmaster	**X**	
Fibre to the Ground	**X**	
Folo Electrical		**X**
Highness Trading	**X**	
Mzanzi Broadband		**X**
NZST	**X**	
Rams Smith	**X**	
Thobela Communications		**X**
Vintage Drakensberg	**X**	
Sudane		**X**
ACCS	**X**	

Source: Telkom/Openserve Report to Parliament (2022)

However, following the engagements, some of the IFT companies withdrew from the Petition as a result that they were content with changes that were satisfactory and would continue operating under the terms of the revised contract. Of the 11 IFT companies, seven (7) pulled out while the

four (4) are still aggrieved and pursuing the dispute. In terms of the information relayed to the Committee was that, all four IFT companies are still active in providing services on the commodity contract and have also consented to their contracts being renewed for a further period ending February 2023. This was confirmed to the Committee in writing by Telkom Openserve. However, upon further engagements with IFT companies, the Committee learnt that there are actually just three active companies out of the four. Sudane is no longer operational and has never received any contract or agreed to a contract extension through February 2023. According to Ms. Smith, Sudane was not able to continue owing to a lack of resources and funding. During its preliminary deliberations regarding this matter, the extension of contracts was one of the outcomes that the Committee had sought to achieve to create an atmosphere where IFT companies may recover their operations and recoup lost revenues.

2.1 MAIN REASON FOR DISPUTE

From the Committee's valuation of the issues based on the presentations received from both parties, the main source of the dispute seems to have been Telkom Openserve's unilateral decision in 2017 to introduce a new contract structure, modifications, and business rules when IFT companies were renewing contracts. According to Telkom Openserve, the reason for the amendment was due to - cost leakage, the requirement to improve technician behaviour to align operational behaviour, an improvement on workmanship, and minimise repeats. The amendments made included -

- First Failure rate ("FFR") days to 30 days;
- Non-payables on repeats;
- Service Level Agreement ("SLA") penalties including Net Promoter Score ("NPS").

The Aggrieved IFT companies were not pleased with the new business rules introduced in the contract and disputed the changes made. In response to the disagreement, further amendments were made to the contract to ease and provide support to the IFT companies which included -

- Telkom Openserve waiving FTTH FFR ("First Failure Rate") penalties levied to service providers for FTTH Voice;
- Telkom Openserve wrote off all outstanding SLA penalties and stopped the enforcement of SLAs as well as the FFR penalties up to 01 March 2019;
- The 2020 contract terms were amended to reduce RRR days from 30 to 14 days and FFR from 30 to 7 days as of 1 December 2020;

- The 2021 amended RRR days from 14 to 7 days with effect from 01 February 2022.

According to Telkom Openserve, despite all those efforts, resolution could not be reached with the companies. They insisted to be paid for all non-payment claims submitted and did not consider the contract terms and pricing philosophy.

The IFT companies asserted in their submissions that repeats are completely different and not as a consequent of Technician's behavior or the result of poor workmanship as alleged by Telkom Openserve. But rather a poor network infrastructure due to corroded underground cable, which renders the network prone to faults. Most of these flaws were beyond the Technician's control. The penalties are being waived not because of poor workmanship, but because of an entirely separate issue or factors outside the Technician's control. No number of days should be attached to any warranty installation or repair if it is not related to the original performance. The amendments they referring to are current and not addressing the issues of the past or the Petition. Therefore, the IFT companies insisted to be paid for all non-payment claims submitted because they had been wrongfully fined for a service rent that Telkom Openserve had solidly proofed. Their contract provisions are in conflict with contractual law.

3. SUMMARY OF THE COMMITTEE MEETINGS IN RELATION TO THE PETITION

Since the matter was referred to the Committee by the Speaker of Parliament, the Committee has had four (4) separate meetings as follows -

3.1 Presentation by Independent Field Technicians

The inaugural meeting in relation to the Petition was held on 16 February 2022. In that meeting, Honourable Kruger, the sponsor of the Petition, made some introductory remarks. He said the case of the IFT's experience with Telkom Openserve has been on the agenda for quite some time. He contended that what the Committee was about to deal with was a classic case of big business bullying small businesses. He informed members of the Committee that the Department had failed small businesses by not completing the National Small Enterprise Amendment Bill wherein provisions on dispute resolution mechanism had been incorporated. Mr. Kruger was critical and lamented the Department's lucklustre performance in tackling legislation that affected small

businesses. In attendance, were IFT directors who made introductory remarks and apprised the Committee how Telkom Openserve had deliberately dragged the matter.

Ms. Evelyn Smith, Director of Sudane Projects and Services, led the IFT presentation. She commended Telkom Openserve for having started a Black Economic Empowerment ("BEE") initiative to prop up small businesses by entering into contractual relationships with IFTs who were drawn largely from the unemployed and the previously disadvantaged. Ms. Smith charged that their challenges began when Telkom Openserve took autonomous decisions without involving IFT companies. For instance, there were negotiations with car rental companies on their behalf without them being involved in that process. She claimed that that was done under duress with most IFT companies left in a position where opting out would have led to contracts being terminated. IFT companies maintained that they could have leased vehicles for half the price that Telkom Openserve was charging them.

Furthermore, some of the criticisms levelled against Telkom Openserve were that the company had decided to discontinue paying invoices within seven (7) as per the initial agreement and changed to one month – the repeat fault prices were changed, there was no call-out fee when fixing the line and using own material. Some of the cables were lying in the water, on manholes, and this, they argued, magnified the number of faults reported. Some of the inadequacies of the programme were that Telkom Openserve was only sponsoring tools for half the technicians of a company, implying that, IFT companies had to acquire their tools. In her particular case, through no error on her part, Telkom Openserve had a problem issuing a vendor number to her, she only received work three weeks after the start date yet was still liable for leasing costs for the full month. The work she received was adequate for the first few months but then began dropping, while she was still responsible for leasing and paying other related costs.

The second presenter, Mr. Darian Sithi of ACSS Telecommunications, narrated his displeasure and experience with Telkom Openserve. He said that contract amendments left him without a house, and had to downgrade his vehicle because Telkom Openserve had operated in bad faith. He said that Telkom Openserve's permanent staff were flooded with work but the IFTs were unilaterally and without mutual consultation left in the wilderness. The third and final presenter of

the IFT delegation, Mr. Johnny Makgatla of Mzansi Broadband, commented that he had looked at the BEE project as once in a lifetime opportunity to emancipate his business as they were made to believe that they would be getting a guaranteed amount of work over an extended period. However, after the Telkom Openserve backlog was cleared, the IFTs received fewer and fewer assignments and the prices they received for the work done were at the same time gradually reduced.

He told the Committee that the decision to decrease workload and reduction in prices had separately been taken without considering their cash-flows positions, fixed-term contracts, and legal obligations such as leases, car hire, etc. In conclusion, Ms. Smith said that in 2017, there were changes to the Service Level Agreement ("SLA"), and in their assessment, this was when teething problems began. The effects of the changes were that part of Telkom Openserve's costs and risks were shifted onto the IFTs, and prices they were receiving for work were reduced with negative impacts on their cash flows. The Independent Field Technicians had then, collectively, registered their difficulties with Telkom Openserve in line with provisions of the contract on dispute resolution. But only cosmetic changes were effected to the revised contracts. The Committee then resolved that Telkom Openserve needed to be given the right reply. A follow up meeting was therefore scheduled.

3.2 Presentation by Telkom Openserve

The second meeting took place on 30 March 2022 via a virtual platform to listen to Telkom Openserve's explanation of its contractual dispute with Independent Field Technicians. Mr. Phindile Dyani, Executive: Government Relations, led Telkom Openserve delegation. He thanked the Committee for allowing the organisation to make a presentation concerning the IFT programme. In his introductory remarks, he informed the Committee that during the fifth Parliament, Telkom SOC Limited had visited the Committee and elaborated extensively on details of the company's engagement with SMMEs and the concept thereof. In briefing the Committee, Mr. Dyani outlined Telkom's company profile and the role each subsidiary plays in fulfilling broader Telkom's Group mandate. He said that Telkom Group had transformed from its old telephonic company to a new, fully digital company that generates approximately R40 billion in revenue and has more than 12 000 employees.

In addition, he said that through its subsidiary, Openserve, Telkom runs the largest fibre in South Africa, expanding more than 50 000 kilometers. Ms. Mmathebe Zvobwo, Telkom Executive: Enterprise and Supplier Development (FutureMakers), provided an outline of Telkom's shared value as well as the Telkom Group's investment in FutureMakers. She highlighted that FutureMakers had generated at least R1 billion in revenue. The operational details of FutureMakers's Independent Field Technicians Programme were provided to the Committee. The key objective of the programme is to foster inclusive participation of black-owned Information and Communications Technology ("ICT") small businesses within Telkom Group's supply chain. The background to contract implementation was provided. The contract negotiations in respect of the contract in a dispute started in May 2017 and concluded on 1 September 2017 and all service providers were re-briefed in a roadshow in December 2017.

However, the Committee acknowledged in this meeting that indeed, Telkom Openserve had not been part of the initial meeting with IFT companies wherein a number of accusations had been levelled against the organisation. There was an overriding sense of displeasure from members of the Committee who felt that Telkom Openserve might have consciously evaded responding to issues raised by IFTs in the Petition. Members of the Committee charged that it was common cause that the main purpose of the engagement was to tackle the Petition before it. There was therefore a consensus from all participants that the subject matter needed to be explored further and suggested another meeting in which both the IFTs and Telkom Openserve would be invited so that the Committee could have more time to listen to both sides. Without casting aspersions, the Committee pleaded with Telkom Openserve delegation to find an amicable and rational solution for both the company and its service providers. The Chairperson of the Committee concluded the meeting by calling for the organisation to facilitate the inquiry with the aggrieved IFT companies and utilise all its internal resources and mechanisms to find a win-win solution to the deadlock.

3.3 Summary of Progress Report: Telkom Openserve and Independent Field Technicians

The third meeting as regards the Petition was held on 18 May 2022. The Telkom delegation was led by Dr. Siyabonga Mahlangu, Telkom Group Executive: Regulatory Affairs and Government Relations. The meeting was characterised by cordial and pleasantry exchanges with Dr. Mahlangu giving assurance to the Committee that following the meeting of 30 March 2022, the Telkom

Openserve delegation had gone back to the drawing board and constituted a committee known as the Supplier Compliance Management Council ("SCMC") as an escalation channel to process the complaints received by the Committee from the IFTs. This council consisted of different professionals who sit together and deal with these matters on an individual basis. The established council was outside of the normal Telkom Openserve structures, established specifically to resolve such supplier disputes. He invited the SCMC Chairperson to present on behalf of the organization.

Mr. Shawn Botes, Chief Regional Officer at Telkom Openserve, outlined the six key matters that have been resolved. He indicated that the mechanism that has been put in place specifically to address this matter seemed to be yielding positive results. However, he humbly requested that the process be given more time to resolve the remaining sticky issues. The Committee was receptive to Telkom Openserve's approach to solving the disputes. However, the IFTs who had also been invited to this meeting were not entirely happy with the proposed course of action. According to Ms. Smith who responded on behalf of the IFT companies, Telkom Openserve fell short of addressing the core issues that gave rise to the Petition. The organisation’s presentation, she argued, was centred on the present, discussing neither the past nor the Petition. The IFT companies present in the meeting described Telkom Openserve’s behaviour as contemptuous and straying away from addressing fundamental issues of concerns to the IFT companies.

The Committee reminded the meeting that negotiations by their very nature are a difficult and uncomfortable process of give and take. Hence the meeting resolved that it was not unreasonable to give Telkom Openserve additional time to engage IFTs to crack the remaining matters. The Committee undertook to hold a separate meeting with the IFT companies to gain insight and obtain concrete facts and evidence concerning outstanding areas of concern. The IFTs were encouraged to continue engaging with Telkom Openserve to find an amicable solution.

3.4 Concluding Session

The last meeting of the Committee with respect to the Petition took place on 7 September 2022. It is a deadline the Committee had set itself to consider, finalise and prepare a report to the Speaker of Parliament. In this meeting, Mr. Phindile Dyani - Telkom Executive: Government Relations, led Telkom Openserve delegation. He thanked the Committee for the work it has done in

facilitating meetings with aggrieved IFT companies especially the guidance and leadership demonstrated throughout the mediation process. Also in attendance were three representatives from IFT companies that had resolved to participate in the SCMC.

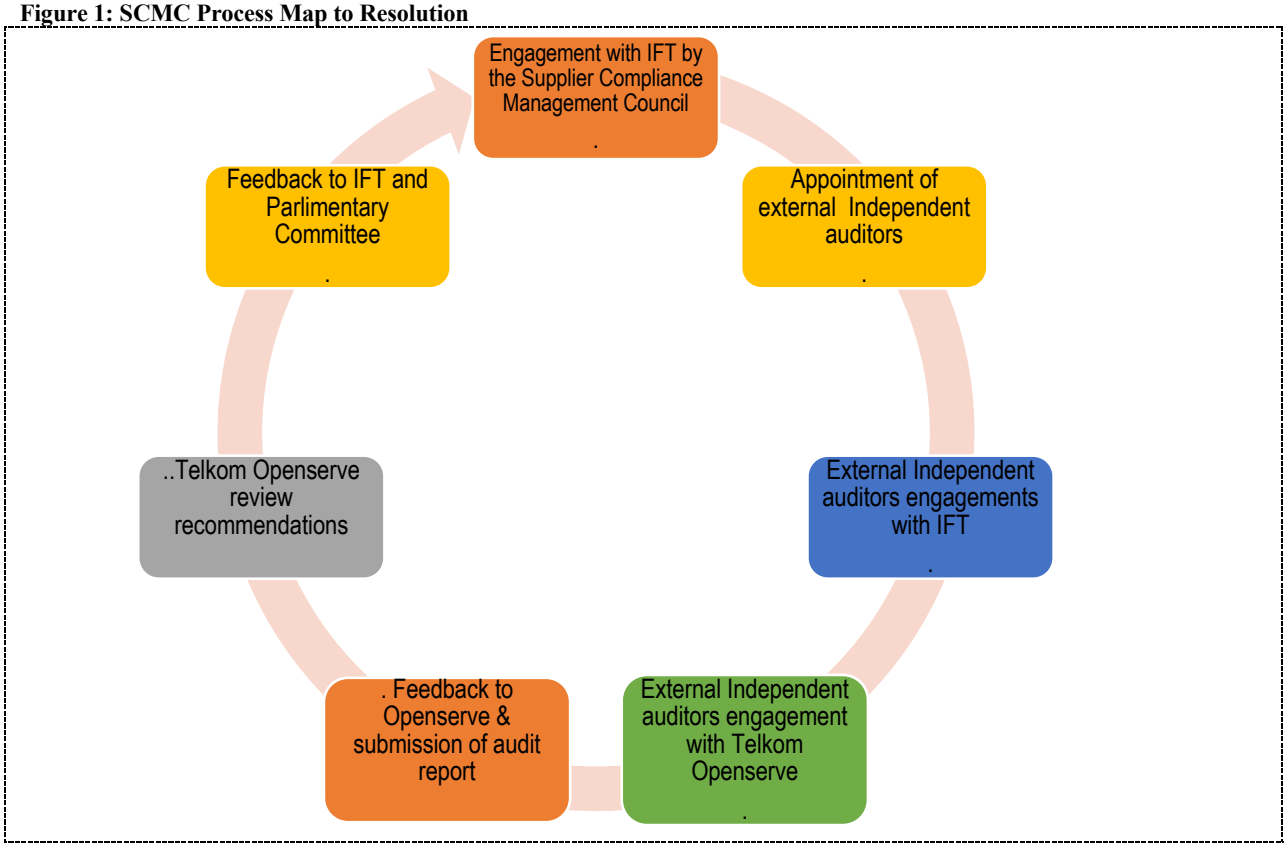
3.4.1 Final Submission by Telkom Openserve

The Committee heard that the SCMC had invited four of the remaining 11 Aggrieved IFT companies on 29 June 2022 to present their dispute to the council for resolution, and for the outcomes, to be reported back to the Committee. The Council was given until 7 September 2022 to find a resolution with the IFTs and aimed to comprehensively report back to the Committee by the afforded time. An extensive scientific study had been conducted to understand the facts around the matter and what had gone right or wrong with the IFTs. As a result, part of the report presented in the meeting was undertaken by Independent Auditors to give Telkom Openserve and its shareholders adequate information about what transpired and what solutions can be undertaken as recommended by the auditors.

The SCMC, with the aim to satisfy the Committee directives in the previous meetings, collaborated and had engagements on the best approach possible to remedy the stalemate. The SCMC objective was to find an amicable resolution for Openserve and aggrieved IFT companies, report back and close off the dispute. The period of focus was limited to September 2017 when the contract was introduced to September 2020 when further amendments were made to the contract. Based on review and engagements with the IFT companies, the following recommendation and actions were taken by the Supplier Compliance Management Council:

- Appointment of external independent auditors to work on the files for the 3 IFT companies with two weeks to complete the exercise;
- The IFTs were to present the files to the external independent auditors;
- IFTs would be held to the contract as a binding agreement to the relationship between Telkom Openserve and IFT companies, it will be important for the auditors to ensure the compliance of the contract;
- The SCMC would review the recommendations based on audit finding and report back;
- Propose a way forward for resolution and present to Parliamentary committee on 7 September 2022 and implement proposed resolution.

Figure 1: SCMC Process Map to Resolution



Source: Telkom Openserve Report to Parliament (2022)

3.4.1.1 Engagement with IFT by Supplier Compliance Management Council

Figure 1 hereinabove provides a blow-by-blow illustration of what steps the SCMC undertook to amicably resolve the dispute. An invite was sent to the aggrieved IFT companies on 29 June 2022 and expected to accept or propose a convenient time to engage. IFT companies were requested to provide supporting documentation two days before the meeting for the council to go through and have a clear mandate on what is payable and the reasons there. The meetings were scheduled from 05 July 2022 to 19 July 2022. The details of the engagements were also shared with the Committee. The engagements by Supplier Compliance Management Council did not achieve the intended results and through the consultations, it was agreed with the three of four companies that an independent auditor firm will be appointed to review the terms and application thereof and provide recommendations that the SCMC to find a resolution. The one IFT company, Folo Electrical, opted to be excluded from the Supplier Compliance Management Council process and took no further part but escalated the matter back to Committee. The Committee has in its position a correspondence from Folo Electrical stating the reasons why it withdrew from the SCMC process.

3.4.1.2 Appointment of an independent auditor

An independent audit firm, MMQSMace Consultancy (Pty) Ltd ("MMQSMACE" herein), was appointed by Telkom Openserve on Monday 25 July 2022 to conduct an independent review to assist in providing recommendations for the resolution. The appointment was done through procurement governance and processes. According to Telkom Openserve, the first engagement with the auditor, by the Supplier Compliance Management Council, was conducted on 25 July 2022 to explain the scope of work and timelines for resolving the matter.

3.4.1.3 Invitation to IFTs to present their dispute to the auditors

The auditors sent out a memorandum on 10 August 2022 indicating to the IFT companies of their appointment and inviting them to a session to present to them their dispute. The sessions were scheduled at the auditor's offices: MMQSMace Consultancy (Pty) Ltd, Floor 2, Building 1, Waverley Office Park, 15 Forest Road, Waverley, Sandton, for 15 August 2022. The IFTs were expected to respond directly to the auditors on availability. The IFT companies were requested to prepare and bring with, them all documentation relating to this matter which will assist the process. All engagements took place with the IFTs as per schedule.

3.4.1.4 Engagements with Telkom Openserve

The auditors had engagements with Telkom Openserve to request clarity and details on questions they had regarding the contract, history, and process of the payment files. The meeting was held on 17 August 2022 at the auditor's offices in Waverley, Sandton. Further documentation was provided to support any claim or ambiguity.

3.4.1.5 Auditors presented reports and recommendations to Telkom Openserve

The auditors presented their draft report to Telkom Openserve on 2 September 2022, with the final report submission on 6 September 2022. The audit approach took the analysis of the documents received, other investigations that would assist, and other information necessary to assist in the process i.e., payment files, SLA, contracts, and direct engagements. The limitation of the audit was that no field visits were conducted given the period in question, and some documents could not be verified thus no assessments could be done. The auditors made it clear to both Telkom Openserve and IFTs throughout the engagements that they are independent, and the audit outcome is based

on the information received. Findings after various consultations of the auditor's report talk to the representation of the IFTs and representation of the meetings. The outcome and proceedings are captured in the auditor's report the summary of which was presented to the Committee. Table 2 below is a summary of the Auditor's recommendation. The auditor concluded that non-payable orders and FFR fines that were found to be outside the thirty (30) days period as per the agreement and understanding should be considered for payment, further investigation is to be considered for orders that fell prior to the 01 September 2017 agreement to ascertain the bulk orders, FFRs with generated references could not be audited due to reference numbers.

Table 2: Recommendations by the Auditor

IFT Name	Auditor Recommendations	OS Response
Thobela	1. **Non-payable orders:** only 0 were found outside and deemed payable. 2. **Unnecessary handover:** reason had to do with IT's claim of infrastructure failed beyond, although they could not ascertain any faults that are brought forward as "scouting dispatch" individually and thus exempts OS for any payment. 3. **FFR audited:** only 13 were found outside the 30day period. Issues with the sequencing of the order number, non-payable orders.	Accepted recommendation
Mzanzi Broadband	1. **Non-payable orders:** 0 non-payable orders without interpretable references could not be audited because of the sequencing of the order numbers generated by the systems. no non-payable orders were found to be outside the thirty (30) days SLA period stipulated in the contract no payment should be considered	Accepted recommendation

	2. **Unnecessary handover:** couldn't ascertain what is "scouting dispatch" and thus exempts OS from any reimbursement. And no FFR should be considered for payment. 3. **FFR:** no FFR Fines were found to be outside the thirty (30) days SLA period and therefore no FFR Fines should be considered for payment	
Sudane Projects	1. **Non-payable orders:** No nonpayable orders were found to be outside of the thirty (30) days SLA period and therefore they should be considered for payment. 2. **Unnecessary handover:** could not ascertain which faults could have fell under the bulk faults resulting from ''scouting dispatch'' based on the payment files provided, the clauses above exempt Openserve for a possible reimbursement	Accepted recommendations

Source: Telkom Openserve Report to Parliament (2022)

3.4.1.6 Action Steps by SCMC

The SCMC reviewed and accepted all recommendations from the auditors and all outstanding items and payments were to be actioned and processed by end of September 2022 in line with the payment run. The Committee has confirmed that this was done indeed.

3.4.1.7 Review of the recommendation and next steps

Telkom Openserve reviewed the recommendations of the auditors and prepared a report which formed the basis of the discussion in the last Committee meeting held on 7 September 2022. In the meeting, Telkom Openserve maintained that the process followed was deemed clear and unbiased to the IFT companies.

3.4.2 Presentation by IFT Companies

Telkom Openserve's presentation was followed by the IFT companies' representatives largely to give them the platform to indicate their acceptance of Telkom Openserve's approach and steps being taken. Mr. Sithembele Xolo, Project Director at Folo Arch Designs (Pty) Ltd, asked if the auditors referred to in the presentation are external or internal auditors. He narrated that when he attended the meetings with the Council, based on the questions that were posed to him, he got the sense that they were not in the meeting to find resolutions to the matter. Parliament had requested Telkom Openserve to resolve the matter internally. He believed that would be the case given the working relationship that had been established over the years between the service providers and Telkom Openserve. It became frustrating in the meeting when he was asked the same questions that had been asked for the past five years. The dispute arose in 2017 with the introduction of the Service Level Agreement. The SLA had never been accepted by any of the contractors. Whether the work done is payable or not depends on where one is sitting. The contention had always been that Telkom Openserve requested the contractors to procure resources such as vehicles, and tools, train employees, and make them available for Telkom Openserve which all came at a high cost.

Mr. Xolo said that when he started working on the project in 2016 they figured out that the network infrastructure was in a bad state. This prompted him to start engagements with Telkom Openserve management in writing and meetings. He highlighted to management that the infrastructure caused the services sold to customers not to be on par with what was being offered by competitors. For example, when a customer has a streaming service, the internet connection kept on buffering and being faulty. The customer would then report the fault and the IFTs would have to go and assist the customer. Sometimes due to bad connectivity, they would have to revisit a customer more than three times a month. Due to the line failing, when the SLA was adopted, that line would be declared non-payable. Telkom's infrastructure had many joints between the exchange and the customer and because the cables were underground they had corroded – this was the cause of the failure. As service providers, they did not have access to the infrastructure as they were prohibited from working on it. When tests were conducted, it became clear that the problem was with the line which affected the quality. It should be noted that in the many instances where the IFTs tried to get the problems fixed, it usually took them a day or two to get the job done. Non-payables refer to when there is a failure within a thirty-day period, which was not fair.

The second respondent Ms. Evelyn Smith, Director at Sudane Projects and Services, commented that Telkom did not cover the value of the fault. She asked that the unfairness of the non-payables be noted. She argued that the jobs were completed, tested by Telkom systems, test references provided, and passed references issued by Telkom Openserve. She was of the view that the debate was not necessarily about the completion of the job but rather the fact that Telkom Openserve would not pay for things outside the control of IFT companies such as acts of God, theft and vandalism. Therefore, what was discussed with the auditors in the meetings was not what IFT companies were experiencing on the ground. The meeting with the Council was not to resolve the issues but rather they were asked if they had signed the service level agreement under duress.

The third respondent Mr. Madimabe Mohlaloga, Managing Director: of Thobela Communications, said that during a meeting with Telkom Openserve to try and resolve the dispute, Telkom Openserve conceded that his company had spent money to reconnect a customer's line when line was down. Ordinarily, when Telkom Openserve's lines go down, the IFTs are sent to go and fix the problem. This meant that IFTs spend money with the expectation that Telkom Openserve would pay them back for restoring the line but this hardly ever happens, as some of these callouts are considered repeat faults. The Acting Chairperson asked IFT company representatives in the meeting what they propose as a way forward. Mr. Xolo, on behalf of the IFT companies, said that it is concerning that bulk of the work done on behalf of Telkom Openserve had not been paid for. This caused their businesses to lose a lot of money. They requested that all jobs that have been completed, tested and for which a reference has been issued be paid.

3.4.3 Remarks by Members of the Committee

Following submissions by both Telkom Openserve and Independent Field technicians, it was left to the Members of the Committee to give direction and a way forward. The Acting Chairperson asked Committee members to engage with the presentation. Mr. H Kruger (DA) reiterated his earlier position that he was not pleased with how Telkom Openserve has decided to conclude the dispute. He contended that this was a typical case of corporate bullying. He found it quite extraordinary that Telkom Openserve had spent a lot of money acquiring auditors to do auditing when instead that money could have been used to assist IFT companies. Small businesses cannot afford a lawyer to go over the audit. Looking at the repeat faults and their definition of it, the

problem was when Telkom Openserve signed off the job from their side that it has been completed. So if there is a comeback after Telkom gave the reference that the job is done satisfactorily and something happens after, this is a different job from the previous job that was signed off.

Ms. K Tlhomelang (ANC) concurred with the previous speaker that this was indeed a case of victimisation of small businesses. She postulated that the Portfolio Committee has the daunting task to put an end to this injustice. She was also concerned about the cost of procuring external auditors. Mr. D Mthenjane (EFF) agreed that this is a case of bullying. Telkom was bullying small businesses and the Committee cannot allow that to happen. Many things were said by the IFTs and it made a lot of sense that one cannot do a job for someone and not get paid for it – especially after it was approved that indeed the job was done. Not taking action against Telkom Openserve would be failing small businesses and South Africans. As a State Owned Company ("SOC"), Telkom Openserve must not be allowed to intimidate small businesses. There are many SMMEs and small businesses that are suffering under the same bullying tactics. A programme must be established where all state-owned enterprises are invited to the Committee to account for their relationship with small businesses.

Mr. H April (ANC) noted the submissions and the fact that some IFTs decided not to be part of the collective of IFTs before Parliament. It would be beneficial to look into whether these IFTs have not been intimated or threatened. He bemoaned the behavior of Telkom Openserve as unbecoming of a SOC. How the contracts had been structured such that only Telkom Openserve may derive maximum benefit at the expense of small businesses. The contracts were missing an element of 'development'. The Acting Chairperson remarked that the meeting was not the first on the matter and he felt disrespected by Telkom Openserve. Mr. Jacobs did not appreciate the fact that both companies had sent in junior staff as they had expected the CEOs.

The representatives present in the meeting should report back to their seniors that the Committee had expected that they would be present for the presentation and accountability. The senior executives are paid exorbitant salaries to solve problems within their companies. However, Telkom and Openserve decided to outsource this matter by getting external auditors. Again what were the procurement process and the cost of this exercise? This shows that it was a futile and

wasteful exercise as it did not come with a resolution, and did not engage meaningfully and respectfully with the service providers. This was a simple contractual dispute, a dispute around the payment. The Committee gave them the mandate to go and listen to the IFTs and provide solutions to this problem.

The Acting Chairperson further said that he called Dr. Mahlangu [Telkom Group Executive: Regulatory Affairs and Government Relations] and asked him not to outsource the accountability and responsibility. It became clear that they continually undermine this House of Parliament. He was frustrated and stated that he did not want broken stories anymore. The Committee needs to table its report in Parliament and ask Parliament to exercise oversight. Mr. Kruger, the sponsor of the petition, concluded that this was not an individual crusade but rather a collective effort. The Committee agreed that the secretariat must go ahead and compile a report for consideration and adoption before being referred to the Speaker of Parliament.

4. OBSERVATIONS

The Portfolio Committee on Small Business Development, having considered the Petition against Telkom Openserve from the Directors of Sundane Projects, Mzanzi Broadband, ACCS Telecoms and Folo Electricals, alternatively, Independent Field Technicians with reference to contractual disputes and allegations of corporate bullying referred to the Portfolio Committee on Small Business Development by the Speaker of the National Assembly, hereby record the following observations –

4.1 The Committee notes that parties could not find common ground on several issues stemming from the revised contract (2017). Equally, it is observed that there are areas where parties registered progress including the extension of the contract(s) to 2023. The Committee is mindful that facilitating disputes between big and small businesses is part of its broader mandate. It is inevitable. The Committee noted from the beginning that owing to its limited powers, it may not be feasible to achieve all the predetermined outcomes due to the complexity of the issues.

4.2 Throughout its engagement with Telkom Openserve and IFT companies, the Committee noted that fundamental intents of the Enterprise and Supplier Development ("ESD") were completely omitted in Telkom Openserve's approach to IFT companies. Telkom

Openserve treated IFT companies like any other big business. The developmental approach is missing. It remains unclear to the Committee how or the nature of support Telkom Openserve provides to its subcontractors, particularly IFT companies.

4.3 The Committee notes that during the fifth Parliament, the telecom sector was engaged extensively owing to the growing number of complaints that the Committee had received at the time – there had also been complaints leveled against Telkom. A sizeable number of small enterprises have over time resolved to approach Parliament to intervene in various commercial disputes.

4.4 The effort by the former Member of the Committee Mr. Toby Chance, that of introducing the Small Enterprises Ombud Service Bill [B14 – 2018] is noted by the Committee. The Private Members Bill had been introduced in the National Assembly as a section 75 and was published in the Government Gazette Number 41623 on 10 May 2018.

4.5 Furthermore, as the Committee remarked in its recent budget review and recommendations report that in light of a variety of challenges bedevilling the sector, a segmented approach to the bill should be given priority. The Department of Small Business Development's failure to refer the National Small Enterprise Amendment Bill to Parliament as pledged in its consecutive annual performance plans since 2015 should not be accepted nor used as an excuse. The small business sector is vulnerable and prone to big business manipulation. The Committee must explore alternative options to cushion the sector.

5. RECOMMENDATIONS

5.1 Having noted the growth in the number of grievances, disputes and one petition referred to the Committee since its inauguration, the Committee supports the fifth Parliament recommendation that the Small Enterprise Commission or Ombudsman created through an act of Parliament be fast-tracked.

5.2 As envisaged during the fifth Parliament when sessions between big and small businesses were held to ascertain the extent of corporate bullying and victimisation of small businesses, the Committee should consider the Committee Bill. The process may include synthesizing the Small Enterprises Ombud Service Bill and the component of the National Small Enterprise Amendment Bill - specific sections on the creation of the Small Enterprise Ombud Service. The bill had gone through all legal analyses including

obtaining Socio-Economic Impact Assessment System ("SEIAS") certification and was gazetted for public comments in December 2020.

5.3 At the commencement of its term in 2019, the Committee had noted and recommended that a particular focus must be given to ESD and other BBBEE codes of good practice which are currently being used to comply or a tick box exercise, adding little value to the small enterprise ecosystem. The Department of Small Business Development must reinforce internal capacity to intensify private or grow private sector partnerships, harness ESD's good intents and monitor its implementation.

5.4 Small enterprises participating in various ESD initiatives oftentimes require government support. For instance, costs incurred by IFT companies i.e. hiring of vehicles, could have been avoided if the Department was working closely with Telkom Openserve.

5.5 Having noted its limitations e.g. powers to enforce contracts – the Committee will nonetheless continue to monitor developments between IFT companies and Telkom Openserve.

6. Appreciation

The Portfolio Committee thanked the Independent Field Technicians for having taken time and effort to lodge the dispute in the form of a Petition.

Report to be considered.

Report of the Portfolio Committee on Agriculture, Land Reform and Rural Development; and Portfolio Committee on Employment and Labour on the joint oversight on the living and working conditions in farming communities, Dated 04 November 2022.

The Portfolio Committee on Agriculture, Land Reform and Rural Development jointly with the Portfolio Committee on Employment and Labour, having concluded a joint oversight programme on the living and working conditions in farming communities as mandated by the National Assembly, reports as follows:

1. Introduction

1.1 Background to the joint oversight on the living and working conditions on farms

On 10 November 2020, the National Assembly instructed the Portfolio Committee on Agriculture, Land Reform and Rural Development and the Portfolio Committee on Employment and Labour to conduct joint oversight activities with regard to the living and working conditions in farming communities. Whilst farms can be associated with large-scale commercial agriculture linked to export markets and generation of wealth, they are also places where some of the most vulnerable people in our society live and work. The government has since 1994 introduced wide ranging policy and legislative instruments to improve the living and working conditions on farms. Despite plethora of legislative and policy formulations and interventions, farm dwellers as part of the vulnerable people in South Africa, continue to encounter a number of challenges including tenure insecurity, threatened livelihoods, and violation of their human and labour rights. The motion passed by the National Assembly outlined in Box 1 (below) tasks the two Portfolio Committees to conduct joint oversight to assess government interventions to improve the conditions, report on progress, or lack thereof, and to make recommendations for consideration by the National Assembly.

1.2 Membership and delegation to oversight visits

The Members of the two Portfolio Committees, listed in Table 1 below, fully participated in the oversight activities, especially briefing sessions. Participation of members during oversight visits across the country varies as not all members could attend all the visits.

Table 1: Membership and delegation to oversight visits

Portfolio Committee on Agriculture, Land Reform & Rural Development	**Portfolio Committee on Employment and Labour**
Inkosi Mandela, ZMD (ANC) - Chairperson	Dunjwa, Ms ML (ANC) – Chairperson
Tlhape, Ms MME (ANC)	Nontsele, Mr M (ANC)
Mahlatsi, Ms KD (ANC)	Makhubele, Ms PP (ANC)
Mahlo, Ms NP (ANC)	Mdabe, Mr SW (ANC)
Capa, Mr N (ANC)	Wolmarans, Mr M (ANC)
Tshwete, Ms B (ANC)	Zuma, Ms AS (ANC)
Steyn, Ms A(DA)	Hinana, Mr NE (DA)
Mbabama, Ms T (DA)	Mkhonto, Ms NC (EFF)
Masipa, Mr NP* (DA)	Ngcobo, Mr SL (IFP)
Matiase, Mr S (EFF)	
Montwedi, Mr M (EFF)	
Inkosi Cebekhulu, NR (IFP)	
Breedt, Mrs T (FF PLUS)	

The Portfolio Committees were supported by a team of committee secretaries, content advisers, researchers, committee assistants, communication officials, and protection services.

1.3 Terms of reference, scope and limitations

The motion agreed to by the National Assembly, hereafter referred to as the House resolution, sets out a coordinated oversight on cross-cutting issues (see Box 1). Those issues include the nexus between the terms of employment and land tenure rights on farms as well as legal protection of independent tenure rights on privately owned land. It also acknowledges that farmworkers and farmers are important role players in the economy of South Africa. Its reference to various pieces of land tenure and labour legislation was a useful starting point in the delineation of the scope of focus for the joint oversight; it instructed the two Committees to assess the implementation and impact of relevant pieces of legislation; and it also advised that the Portfolio Committees should also consider work done by various state agencies, departments and social partners.

1.3.1 Defining the scope

On 19 March 2021, the two Portfolio Committees met for the first time since the adoption of the House Resolution on the joint oversight to map its way forward. Having reviewed the House Resolution, the Portfolio Committees agreed on four broad focus areas that define the scope of the joint oversight. These focus areas are as follows:

- *Land access and secure land tenure*: To understand factors underpinning farm evictions and human rights violations on farms in spite of legislative protections. This area of focus foregrounded the role of government, including municipalities, during and after evictions in relation to securing the rights of occupiers. Key legislation identified for oversight was the Extension of Security of Tenure Act No. 62 of 1997 (ESTA) and Land Reform (Labour Tenants) Act No. 3 of 1996 (LTA).
- *Farm employment and labour dynamics*: To assess the extent of compliance with various labour legislation and regulations; and how implementation of these pieces of legislation contributes towards a better life for farmworkers and decent work (fair income, security in the workplace and social protection, freedom to organize, equal opportunities and treatment for all women and men). Key legislation identified for oversight, amongst others, was the Basic Conditions of Employment Act,1997; Sectoral Determination 13: Farm worker Sector(SD13); Employment Equity Act,1998 (EEA), Occupational Health and Safety Act,1993 (OHSA), Compensation for Occupational and Injuries and Diseases Act,1993 (COIDA) and Unemployment Insurance Act,2001(UIA)
- *The living and socio-economic conditions in farming areas:* To gain insights into the socio-economic conditions on farms, including access to adequate housing, water and sanitation, electricity and a range of social services. Key question posed was: what role is played by government and private sector players to promote better living conditions on farms? Focus was on various programmes run by the Department of Human Settlement, Department of Social Development, Municipalities and other social partners.
- *Rural Safety Strategy and Plans:* To document the safety and security challenges confronting farm dwellers in general and farmers due to their geographic location. How has law enforcement and security agencies responded to the safety and security concerns to

date. Key focus for oversight was on the Rural Safety Strategy and Rural Safety Plans and the role of South African Police Services (SAPS).

Box 1: National Assembly Resolution, 10 November 2020

The House —

1. acknowledges legislative and policy progress made in terms of improving the living and working relations between the farmers, farm workers and farm dwellers since the advent of democracy in 1994, such as the Labour Relations Act, Extension of Security Tenure Act (ESTA), Unemployment Insurance Fund, Compensation for Occupational Injuries and Diseases Act and Occupational Health and Safety Act;
2. notes that despite progress made since 1994 towards the overall improvement of the working and living conditions of the farming community, farm workers and farm dwellers, and farmers are faced with persistent challenges of crime, violence, gross violations of human rights, lack of adequate housing facilities, lack of access to clean running water;
3. notes the continued plight of farm workers, farm dwellers and farmers as important contributors and key role players in our economy;
4. notes historically antagonistic relations between farmers, farm dwellers and farm workers have contributed to the negative growth of the agricultural sector economy and that in parts of the country these relations continue;
5. acknowledges the work done by the two Departments of (i) Employment and Labour and (ii) Agriculture, Land Reform and Rural Development in improving the living and working conditions in the farming communities;
6. notes that the Department of Employment and Labour has in the past carried out successful blitz inspections in farming communities;
7. further notes the work done by various others state agencies and departments related to investigations and studies conducted on the gross violations of human rights within the farming communities;
8. takes note of the successful implementation of the progressive Sectoral Determination 13 that deals with the farming sector and provisions related to prescription of minimum wage for farm workers;
9. acknowledges the collaborative work within the farming sector, involving various social partners, farmers, farm workers and farm dwellers in seeking solutions to the challenges faced by farming communities;
10. recommends that both the Portfolio Committee on Employment and Labour and the Portfolio Committee on Agriculture, Land Reform and Rural Development as part of their annual schedule of work jointly undertake to:
    - 10.1. conduct comprehensive oversight work on the living and working conditions of farm workers, farm dwellers and farmers;
    - 10.2. monitor progress made by government's commitments towards improved living and working conditions in the farming communities, including work done by different stakeholders in the agricultural sector;
    - 10.3. conduct public hearings with key stakeholders;
    - 10.4. undertake an impact assessment of legislation affecting farm workers and make recommendations for legislative amendments;
    - 10.5. in consultation and with the express consent of the relevant Select Committee/s in the National Council of Provinces, collaborate with these Committee/s in carrying out the tasks at hand;
    - 10.6. exercise those powers in Rule 167 that may assist the Committees in carrying out their task; and

10.7. set a deadline by which the two Committees will report back to the National Assembly as on or before 30 November 2021.

Source: Extracted from Minutes of the National Assembly (No. 39 - 2020)

1.3.2 Limitations

The Terms of Reference for this joint oversight presupposes an interdisciplinary approach and a much wider scope. It involves farmworkers who may be residing on and off farm, farm dwellers and labour tenants, and farmers or farm owners. Living conditions suggest assessment of all aspects of service delivery that improves the socio-economic conditions of people in farming communities. The Portfolio Committees lacked adequate capacity and resources to conduct wider assessment of living conditions for those living off-farms and the farmers.

The National Assembly set the 30 November 2021 deadline for reporting. However, on 12 November 2021, the Committee requested an extension of the deadline to 30 November 2022 because the COVID-19 restrictions affected the oversight visits and public hearings programme. Given the limited time and available resources, oversight visits were limited to two districts in each of the nine Provinces of South Africa. The choice of districts was mainly influenced by the prevalence of evictions, threats of evictions, known tensions as well as outcomes of inspections by the Department of Employment and Labour (DEL). Farm visits and public hearings unearthed critical challenges mostly faced by farm dwellers and labour tenants and warranted follow-up joint oversight visits. However, individual committee programmes and parliamentary programme did not permit return to specific farms for follow up. The Portfolio Committees, therefore, has referred some of the matters to the relevant government departments for intervention and reporting to the Portfolio Committees. At the time of adoption of this report, not all government departments had submitted reports about their interventions on cases referred to them. The Committees agreed on continuous collaboration on these issues. The Portfolio Committees do not claim that that their oversight observations are representative of all farms in South Africa. However, the observations made in this report and patterns that fully emerged present useful insights into what happens in farming communities and present opportunities of policy interventions as well as enhancement of policy implementation.

On two occasions during the oversight visits, a delegation could not access farms in Mpumalanga and Western Cape. For Mpumalanga, the farm owner refused access to the

delegation. In the Western Cape, the delegation was invited by households facing eviction. However, the landowner blocked the road with a grader, thus preventing access by the delegation.

1.4 Structure of the report

Following this introductory section, the report proceeds in five sections as detailed below:

Section 2: Summarises the approach and methods of engagement;
Section 3: Sets the context by discussing the constitutional imperatives for secure land tenure as well as the trends in agricultural development and structural factors impacting living and working conditions on farms;
Section 4: Summarises the government's key interventions, outlining challenges and proposals to remedy the situation;
Section 5: Weaves together observations from briefing sessions and oversight visits. Where possible, corroborate information with an account of the lived experience of farm dwellers, labour tenants and farmworkers;
Section 6: Presents a summary of key conclusions; and
Section 7: Proposes recommendations to the National Assembly.

2. Approach and methods of engagements

According to the 2009 Report of the Independent Panel on Assessment of Parliament, "Parliament must continuously question the extent to which it contributes to the processes such as the establishment of a society based on democratic values, human dignity, the achievement of equality and the advancement of human rights and freedoms and in building a united and democratic South Africa". Oversight and accountability mechanisms that Parliament of South Africa put in place provide useful tools with which these ideals can be achieved. Oversight connotes "the review, monitoring and supervision of government and public agencies, including the implementation of policy and legislation". It entails "the informal and formal, watchful, strategic and structured scrutiny exercised by legislatures in respect of the implementation of laws, the application of the budget, and the strict observance of statutes and the Constitution". Accountability on the other hand can be broadly seen as "a social relationship where an actor (an individual or an agency) feels an obligation to explain and justify his or her conduct to some significant other (the accountability forum, accounted, specific person or

agency)". The ultimate goal is to assess the extent to which service delivery has led to realisation of a better quality of life for all citizens living and working on farms.

Given the mandate for this joint oversight, the Portfolio Committees foregrounded the lived experiences of farmworkers, farm dwellers and labour tenants insofar as government interventions are concerned, hence a decision to conduct oversight visits across the country. The approach also took into consideration an amplitude of knowledge about the subject from human rights perspectives as shown by, amongst many other reports, the SAHRC reports (2003 and 2007), to labour dynamics (ILO), and land tenure (2018 Parliamentary HLP and 2019 Presidential Advisory Panel reports).

The Portfolio Committees commenced engagements with briefing sessions that provided a bird's eye view of the living and working condition in farming areas and recommendations that have been made over the years. The programme on briefing sessions was followed by oversight visits that entailed provincial stakeholder meetings, farm visits and public hearings. The approach of the Committee hinged on the following essential considerations:

- Multisector and interdisciplinary approaches require engagements with other government departments and municipalities in order to obtain a holistic and cross-sectoral view of the subject under consideration.
- Public participation of farm dwellers and farmers in order to obtain their lived/ first hand experiences of life in farming areas.
- Vulnerability of some of the people and a need for immediate intervention, hence arrangement for referral of matters to government departments.
- Oversight visits by Members of Parliament would raise expectations of farming communities. Therefore, the recommendations must address their concerns and interventions of the departments on specific matters must be prioritised. There is a need for post-oversight reporting plan so that matters referred to the departments can be addressed.

With regard to the methods used, the Portfolio Committees jointly –

- Considered, through briefings, performance reports by the national and provincial departments, especially Department of Agriculture, Land Reform and Rural Development (DALRRD) and the Department of Employment and Labour (DEL).
- Received briefings by other government departments/entities; namely, the Department of Human Settlements (DHS), Department of Social Development (DSD), South African Police Services (SAPS), Legal Aid South Africa, Department of Women, Youth and Persons with Disability (DWYPD), South African Human Rights Commission (SAHRC), the Commission on Conciliation Mediation and Arbitration (CCMA).
- Engaged with members of the public, civil society organisations and academic/research institutions on various relevant reports. They also held nine (9) provincial stakeholder meetings and eighteen (18) public hearings to have conversations about their own perspectives, experiences and proposals for solutions to the existing challenges. Tables 2 and 3 below illustrate the key activities and farms that the Committees visited respectively.
- The Portfolio Committees split into two delegations in order to achieve a wider coverage of the districts within limited time.

Table 2: List of joint oversight activities

Date	**Key activities**	**Objectives**
19/03/2021	Considered the terms of reference and adopted the oversight programme	To ensure a shared understanding of the mandate and the approach.
12/11/2021	Considered the draft report to the NA	To request for an extension of the deadline of the project.
18/03/2022	Considered the revised oversight programme	To set the agenda for the joint oversight.
25/05/2022	Hosted briefing sessions on identified relevant research reports	To gain insights on what is already known about the subject
Oversight visits and public hearings:		- To gain insights into the lived experiences of target groups - To assess government interventions - To gain insight on provincial perspectives with regard to policy implementation.
28-30/05/2022	*Mpumalanga and Northern Cape*	
18-20/05/2022	*Limpopo and Free State*	
02-04/07/2022	*Gauteng and North West*	
22-24/07/2022	*Eastern Cape and Western Cape*	
13-15/08/2022	*KwaZulu-Natal*	
02/09/2022	Briefed on the recommendations of the HLP and the Presidential Advisory Panel on Land Reform	To review reports generated by experts for both government and parliament and assess implementation progress.

09/09/2022	Considered government departments policy and legislative responses to specific observations and emerging insights from the oversight.	To create plat for government to respond to some of the emerging findings and possible recommendations
16/09/2022		
28/10/2022	Considered the draft report and deliberations	To conclude the work and report to the National Assembly
04/11/2020	Adopted the final report	

Table 3: List of farms visited by the Committees

Province	**District**	**Farm Name**	**Focus**
Mpumalanga	Ehlanzeni	Tonga Mkukhu	Labour inspection
	Nkangala	Paardeplaats	Mining and farm evictions.
		Zoekop	
		Rietflei	Interventions - evictions
	Gert Sibande	Donkerhoek (Radebe)	Impact of evictions on living conditions
Northern Cape	ZF Mgcawu	Kanoneiland/Cannon Island Farm	Labour relations and inspection
		7de Laan Settlement	Tenure security
	Pixley ka Seme	Salt Lake Farms	Tenure security, Labour inspection
Limpopo	Waterberg	Denbi FP	Labour inspection
		Purekranz (Mathye)	Land access, tenure security and livelihood
		Krispy farm	Labour inspection
	Sekhukhune	Rietfontein (Mahlaela)	Labour tenants claims and tenure security
Free State	Dr Ruth Segomotsi	Dabulamanzi Farm	Tenure security
	Thabo Mofutsanyana	Rustlers Valley	Tenure security
Gauteng	City of Tshwane	Country Mushroom	Labour inspection
		Vlakfontein	Tenure security
	Mogale City	Hekpoort	Tenure security
		Nuhaverst	Labour inspection
		Delarey	Tenure security
North West	Dr Kenneth Kaunda	Hartebeesfontein	Tenure Security
		Bona-bona	Labour inspection
	Ngaka Modiri Molema	Herbenia	Land tenure security, livelihood activities.
		Ptn 0 Herbenia	
Eastern Cape	Sarah Baartman	Ventershoek Boerdery	Labour inspections
		Nuwelande	Labour inspection
	Amathole	Elton	Tenure security
		Idlewind	Tenure security
Western Cape	Cape Winelands	Soetendal	Labour inspection
		Marlenique	Labour inspection and land tenure

	West Coast	Weltevreden	Labour inspection and land tenure
		Goodemoed	Labour Inspection
KwaZulu-Natal	Uthukela	Fodo farm	Labour inspection
		Weltevrede Green Ranches	Labour inspection
		Moorside	Tenure security (CPA)
		Nkunzi Puggery	Labour inspection and land tenure

3. Context

3.1 Land tenure security

In 1994, democratic government inherited a country with a dual agrarian structure. On one hand, a small minority of mainly white farmers own an overwhelming proportion of rural land whilst on the other was a large majority of mainly black people living in communal areas (former reserves) and townships in poverty and deprivation. On those rural land (farms) predominantly white-owned are families and individuals that lived on them for generations, and is home to them. These farms are also spaces that provide jobs for many, albeit declining in terms of being decent jobs. The unequal patterns of land ownership and access is a colonial and apartheid legacy that needs redress, hence a programme of land reform enshrined in Section 25 of the Constitution of South Africa (the Constitution). The programme entails redistribution of land to promote equitable access to land, legally secure tenure for all citizens, including those living on property owned by other persons (for example, farms), and restitution of land rights dispossessed after 19 June 1913. To be specific to tenure security, section 25(6) of the Constitution states 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 for in an Act of Parliament, either to tenure which is legally secure or to comparable redress."*

Parliament passed two main pieces of legislation intended to give effect to the state's Constitutional obligations for land tenure that is legally secure for farm dwellers and farmworkers. These pieces of legislation are the Extension of Security of Tenure Act (No 62 of 1997) commonly referred to as ESTA and the Land Reform (Labour Tenants Act) (No 3 of 1996).

Apart from protection and promotion of the rights of occupiers and owners, ESTA also provides for measures to facilitate long-term security of tenure for occupiers. Section 4(1) allows for the Minister to grant subsidies to facilitate planning and implementation of on and off-farm developments and to enable occupiers and former occupiers who need long-term security of tenure to acquire land or rights in land and for further development of such land. 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. It also provides for the acquisition of land and rights in land by labour tenants or his/her successor. In similar terms to ESTA, section 26 of LTA empowers the Minister to grant advances or subsidies for acquisition of land and for the development of the land occupied or to be occupied by labour tenants. Before turning to the implementation of these pieces of legislation, it is important to briefly reflect on the socio-economic profile of farming communities.

3.2 Socio-economic profile of farming communities

Citing the 2017 Census of Agriculture, Statistics South Africa (Stats-SA) briefed the Committees that there were 40 122 commercial farming units in 2017. Most of these farms are more than just productive land or places of business, they are also places where people or communities live as oversight visits have shown. For some, farms are their only home that they have lived on for many generations whilst for some it is their secondary home because they live there as workers, they have permanent homes elsewhere. As this report will demonstrate, this combination of the place of employment and of residence can the one of the sources of landowner's control over the lives of workers and their families.

Stats-SA also reported that the General Household Survey of 2020 (GHS 2020) showed that farming areas represented around 4.2 percent of the total population (Stats-SA estimated that the South African population in 2021 was 60.1 million, increasing by 604 281 or 1.01%). With regard to the dwellings, about 15.8 percent of dwellings in farm areas was informal and additional 16.4 percent was traditional whereas 67 percent was formal. Access to improved water sources in farm areas was at 83.2 percent of households, lower than the SA average of 92.1 percent whereas urban areas access was 98.1 percent. About 82 percent of households in farm areas had access to electricity whereas in urban areas 94.5 percent had access. Between 2019 and 2020, there has been an improvement in access to improved sanitation in farm areas,

i.e. from 66.1 to 73 percent. Compared to traditional areas where in 2019 it was 62.8 with a slight increase to 63.6 percent in 2020, access to improved sanitation was better.

As at 30th June 2018, the total number of persons employed in commercial agriculture 757 628 and 39 percent of workers were part-time, casual or seasonal. This shows a decline in farm employment from 769 594 on 28 February 2017. It must be noted, however, that farm dwellers like most rural people have other income generation mechanisms, including informal trading amongst members of the farmworker communities.

Stats-SA also briefed the Committees about income inequality and poverty dynamics in farming areas using the South African Multidimensional Poverty Index (SAMPI). It uses four dimensions; namely health, education, living standards and economic activity. The findings can be summarised as follows:

- The 2016 multidimensional poverty in farm areas was 9.5 percent which was more than the South African average of 7 percent.
- The mean annual income in farm areas in 2015 was R26 112,84 whereas in urban formal is R59 674,34. It means that persons in farm areas earned about half of income of those in urban areas. It is even lower than the national average of R39 747,34
- Households in farm areas have the lowest access to a range of household assets (TV, Satellite, computer, fridge, electric stove, microwave oven) when compared to those in traditional and urban areas.
- Salary was the main source of income (62 percent), grants (22.3 percent), Remittances (5.2 percent) pension (8.6 percent) and negligible other sources. Compared to traditional, salary was 28.4 percent, grants were 5.5 percent, remittances 14 percent and pension 5.9 percent.

3.3 Structural factors that impact on working conditions on farms

On the basis of the International Labour Organisation (ILO) study, Ms Visser - one of the authors of the report, briefed the committee about farm labour dynamics and working conditions on farms. She reported that there are two main regulatory streams that impact on agricultural working conditions in South Africa, and elsewhere. Firstly, public regulation involves enactment of laws and regulation as well as enforcement by the State. It includes land

tenure legislation and agricultural policies. Secondly, private regulations entails imposition of regulatory requirements on producers by private bodies.

In terms of public regulation, South African land and agricultural policy has changed significantly since the mid-1990s. Government extended labour and tenure legislation in full to farmworkers, thus giving them rights that they previously did not enjoy; for example, a right to strike, minimum wage *et cetera*. Government also deregulated the agricultural sector, resulting in closing of marketing boards thus diminishing producers' collective bargaining power in key markets and rolling back of the State's extensive direct and indirect support to producers. The unintended consequence of these interventions was an uneven playing field between South African producers and their competitors elsewhere. So, the changing regulatory environment of the sector post-1994 is just one of the many the factors impacting on farm labour as well as the working and living conditions on farms, especially the effect of pressures on producers and how the cost is passed on to labour and consumers.

With regard to private regulation, the farms supplying supermarkets have to negotiate individually with the powerful, consolidated players such as Walmart (global), Shoprite, SPAR, Pick 'n Pay and Woolworths. Most of these supermarkets enforce their own strict product and food safety standards upon their suppliers, including producers. Food safety standards entail codes that include a system of identifying and monitoring the Hazzard Analysis Critical Control Points (HACCP). Some of the international supermarkets, and some local ones too, require that HACCP must be backed up by a global standard for food safety and quality management system such as BRC (British Retail Consortium). They also require that all their producers must comply with private social standards such as the Wine and Agricultural Ethical Trade Association (WIETA) and Sustainability Initiative of South Africa (SIZA).

Both WIETA and SIZA standards largely reinforces the South African State's labour, health and safety regulations and may be useful for government regulation. Increasingly, supermarkets are adopting SIZA certification on some of their in-house brands, packed fruit and vegetables. Supermarkets, both international and some South African ones, require producers to comply with the Good Agricultural Practice Standards (Global GAP). Although Global Gap does not focus on health and safety standards, it contains an extensive health and safety standard which also reinforces many aspects of South Africa's Occupational Health and

Safety standards. The advantage of these private social standards and Global GAP is that they help monitoring key labour, health and safety standards.

Enforcement of strict standards by supermarkets on producers puts producers under pressure to meet the cost of implementing increasing quality standards, especially expensive infrastructure changes, switching to new packing formats and/or paying for audits against supermarket standards. Further, supermarkets also negotiate hard on price, despite the fact that producers have to pick up bill for the costs of rising standards and labour costs. A combination of regulatory pressures on farmers (2005 – 2015) have resulted in a decrease in the number farming units by 30 percent. The regulatory pressures of farmers also have a knock-on effect on farmworkers. In 2014, for example, only 33 percent of farm workers on Western Cape fruit farms that were members of SIZA were employed on permanent contracts whereas 67 percent was employed on fixed-term contracts. While permanent workers still received fairly substantial benefits, especially on-farm housing, temporary workers received little benefit, if any at all. The combination of fixed-term jobs; migration to labour-intensive farming areas and farmers' reluctance to employ workers who live on-farm has led to exploding rural townships in certain parts of the Country. As a result, the municipalities in those areas have not coped increasing population because their housing and infrastructure budgets were far too small the increasing population. A result of infrastructural weakness is, in some cases, demonstrated by raw effluent running into rivers, lack of refuse collection and increasing informal settlements.

The ILO study on the living and working conditions on farms, concludes that private social standards, such as WIETA and SIZA as well as Global GAP, were having a positive impact on working conditions on farms. Where farms were monitored by private standard setters, conditions were generally better than on farms that were not so monitored. Yet, as mentioned before, it is mostly Northern supermarkets (specifically in the UK, EU and Scandinavian countries) that require that producer adhere to private social standards. There is however a trend of producers beginning to move away from Northern markets, not because of private social standards, but due to other factors such as technological advancement in those countries. With a few exceptions, most buyers in Africa and South Africa do not require any compliance with social standards. If South African fruit farmers are no longer obliged by the Northern retailers to implement social standards on their farms, who will monitor them? Although the DEL is supposed to enforce labour, health and safety regulations on all farms, it remains seriously under-staffed, stretching it ability to enforce legislation as will be shown in this report.

Therefore, there is a need for state-private partnership to enforce labour, tenure and health and safety regulation on farms as well as improving the monitoring of social conditions in their supply chains.

The cost of commercial pressures on farmers, together with the cost of housing and tenure regulations such as ESTA, are factors driving farmers to source off-farm seasonal labour. Farmers are increasingly reluctant to invest in on-farm housing because view Farm Workers Housing Assistance Programme (FWHAP) as too onerous and cumbersome. The biggest housing need is not for permanent farm workers, but for seasonal farm workers, yet the FWHAP does not provide financial assistance for housing for seasonal workers.

4. Policy and programme implementation

This section covers the Portfolio Committees' consideration of legislative and policy underpinnings, together with the implementation, of government programmes to address the living and working conditions on farms. It draws on the briefing sessions on the implementation of government programmes as well as inputs from different stakeholders.

4.1 Securing tenure for labour tenants through labour tenants' applications

Land Reform (Labour Tenants) Act provides for labour tenants to submit applications for the transfer of the land they occupy or use as already mentioned in section 3.1 above. By 31 March 2001, the DALRRD had received 20 460 labour tenant applications across South Africa. At the time of this report, 10 992 claims had been finalized and 9, 468 applications were outstanding. As shown in Table 4 (below), KwaZulu-Natal accounts for 55.7 percent of all the applications whilst Mpumalanga accounts for 40.5 percent. The two provinces accounts for over 95 percent of all the applications lodged with the DALRRD. Performance by Provincial Shared Services Centre (PSCC) shows that Mpumalanga finalized 57 percent of all applications, followed by KwaZulu-Natal and North West that finalized 53 percent and 45 percent respectively.

Table 4: Status Report on the finalisation of all the LTA applications

Province	Lodged	Finalised	Outstanding
Eastern Cape	4	0	4
Free State	15	1	14

Gauteng	403	65	338
KwaZulu-Natal	11 446	6 125	5 321
Limpopo	294	1	293
Mpumalanga	8 286	4 796	3 490
North West	11	5	6
Northern Cape	1	0	1
Western Cape	0	0	0
Total	**20 460**	**10 992**	**9 468**

Source: DALRRD, Report to the Joint Committees meeting of 9 September 2022

A total of 790 applications (or 7 percent) were finalized over the last three financial years, i.e. 2019/20 – 2021/22 as shown in Table 5 below. Given the total of 10992 finalized applications, it means that the DALRRD was performing at an annual average finalization rate of 523 applications. Therefore, the last two financial years saw a steady decline in the performance. This decline is worrying because it occurred under the supervision of the Special Master of Labour Tenants at the Land Claims Court (SMLT) to be discussed below. Nonetheless, the slight progress made in promoting access to some 20 000ha of land by labour tenants/farm dwellers was commendable.

Table 5: Labour Tenants Applications finalised (2019/20 – 2021/22)

	Applications Finalized	**Ha (incl. farm dwellers labour tenants)**	**Beneficiaries**	
			Females	**Youth**
2019/20	486	5 358	130	85
2020/21	196	10 529	153	43
2021/22	108	4 013	277	178
TOTALS	**790**	**19 900**	**560**	**306**

Source: DALRRD, Report to the Joint Committees meeting of 9 September 2022

The reports did not disaggregate the of farms/ha acquired in terms of Section 4 (ESTA) and Section 16 of LTA. It thus limited the extent to which the impact of LTA and ESTA could be assessed. Further, there was a concern on data credibility as the DALRRD reported that it was in the process of developing the database. Other challenges concerning processing of LTA applications were human resources and financial constraints, untraceable claimants, rejection of offers by owners, lengthy court processes *et cetera*.

Given the slow pace of processing the applications (10992 over 21 years), i.e. 53 percent finalized, labour tenants have taken the DALRRD to Court through a class action to compel the DALRRD to process all the applications and for appointment of the Special Master of

Labour Tenants to supervise the DALRRD. At the Constitutional Court, an order of the Land Claims Court that the DALRRD must process the outstanding applications and appointment of a Special Master of Labour Tenants whose role is to supervise, monitor and oversee the functions of the DALRRD in the resolution of outstanding applications was confirmed. The SMLT was also ordered to develop an Implementation Plan for the process.

Table 6: Paragraph 6 of the Court Order and Committee Assessment

Par.6 of the Court Oder	**Committee Assessment (oversight)**
Total number of claims lodged and the number not yet processed and finalized	The assessment of applications (lodged, finalised and pending) has been concluded.
An assessment of the skills pool and other infrastructure required for processing labour tenant claims	Skills pool and other requirements were assessed, a 'fit-for-purpose' structure had not been completed; human resources constraints affect the pace of finalisation of applications.
Targets for the resolution of pending LTA applications.	Set targets were being revised due to the human capacity and budgetary constraints.
A determination of the budget necessary during each financial year for carrying out the Implementation Plan; incl. the DALRRD's operating costs and funding for awards made in terms of section 16 of the Act	The Implementation Plan has detailed budget requirements but the expenditure reports did not disaggregate the budget and expenditure for ESTA and LTA.
Plans for co-ordination with the Court to ensure the rapid adjudication or arbitration of unresolved claims referred to the Court in terms of section 18(7) read with sections 19 to 25 of the Act	There were clear plans and reporting was well under way.

Any other matters which the special master may consider relevant.	Other matters were being dealt with by the SMLT and the DALRRD

The processing of outstanding applications remains unpleasantly slow. The set annual targets had to be revised downward and the DALRRD, together with the SMLT, have introduced new approaches toward processing the applications; namely, Historical and Geo-spatial research and a Multisite Accelerated Claims Resolution Initiative (MACRI) alongside development of a credible database. The Committee noted commitment to processing the applications.

The DALRRD reported that the rollout of the SMPLT Implementation Plan was still a challenge. Among the main challenges were inadequate capacity of the DALRRD to deliver on the project (only 132 posts are available and responsible for the implementation of all land tenure legislation)**;** untraceable claimants, overlapping LTA and Restitution claims, objection to labour tenancy status by landowners, illegal evictions of labour tenants, illegal waiver of labour tenant rights by landowners, capacity within the Office of the State Attorney to handle volumes of labour tenant court referrals, and rejection of OVG offers by affected landowners.

4.1.1 Budget allocation for tenure security on farms

The Portfolio Committees requested budget and expenditure reports on ESTA and LTA so that they could assess implementation of Section 4 of ESTA and Section 16 of LTA. The significance of these sections lies in that they are redistributive in nature; and empowers the State can acquire land for farm dwellers and labour tenants. As shown in Table 7 below, the budget for tenure reform falls under Land Redistribution and Tenure Reform(LRTR) which received an adjusted allocation of R128,5m and R259.5m in 2020/21 and 2021/22 respectively, representing about 5 percent and 8 percent of the adjusted allocation of Households under Programme 3. Such allocation is very low and may very well reflect the place of tenure reform in the hierarchy of priorities of the DALRRD. Other institutions, including the SAHRC in its 2003 reports, concluded that the continued marginality of farm dwellers evidenced by the living and working conditions demonstrate lack of political will to improve their conditions.

Table 7 : Tenure reform budget allocation (ESTA and LTA)

Household	**Allocations (R 000)**	**Allocations (R 000)**
	2020/21	**2021/22**

	Original	Adjusted	Share% Original	Share% Adjusted	Original	Adjusted Allocation	Share% Original	Share% Adjusted
Land Red. and Tenure Reform	**219,722**	**128,528**	**7%**	**5%**	**312,649**	**259,585**	**9%**	**8%**
Restitution and Food Security	2,995,999	2,403,859	93%	95%	3,157,804	3,018,631	91%	92%
Total	**3, 215,721**	**2,533,378**	**100**	**100**	**3,470,453**	**3,278,216**	**100**	**100**

Source: DALRRD (2022) Report to the Joint Committee's meeting of 9 September 2022

Tables 8, 9 and 10 below show Households Expenditure for tenure reform between 2019/20 and 2021/22.

Table 8 : Household Expenditure (2019/20)

PSSC	Budget Allocation R '000	Expenditure as at 31 March 2020	Budget Balance R'000	Expenditure Share %	Over/Under Expenditure R'000
Eastern Cape	15 637	43	15 594	0%	15 594
Free State	10 093	1 775	8 318	18%	8 318
Gauteng	10 188	1 294	8 894	13%	8 894
KwaZulu-Natal	40 844	83 438	-42 594	204%	-42 594
Limpopo	819	794	25	97%	25
Mpumalanga	62 843	17 906	44 937	28%	44 937
Northern Cape	1 470	173	1 297	12%	1 297
North West	31 981	20 721	11 260	65%	11 260
Western Cape	19 110	1 413	17 697	7%	17 697
TOTAL	**192 985**	**127 557**	**65 428**	**66%**	**65 428**

Source: DALRRD, Report to the Joint Committees meeting of 9 September 2022

Table 9: Household expenditure 2020/21

PSSC	Budget Allocation R '000	Expenditure as at 31 March 2021	Budget Balance R'000	Expenditure share %	Over/Under Expenditure R'000
Eastern Cape	169	4 014	-3 845	2375%	-3 845
Free State	2 138	0	2 138	0%	2 138
Gauteng	5 156	7 103	-1 947	138%	-1 947
KwaZulu-Natal	49 403	57 667	-8 264	117%	-8 264
Limpopo	933	915	18	98%	18
Mpumalanga	45 611	19 614	25 997	43%	25 997
Northern Cape	754	0	754	0%	754
North West	13 238	6 857	6 381	52%	6 381
Western Cape	11 126	41	11 085	0%	11 085
TOTAL	**128 528**	**96 211**	**32 317**	**75%**	**32 317**

Source: DALRRD, Report to the Joint Committees meeting of 9 September 2022

Table 10: Household expenditure 2020/21

PSSC	Budget Allocation R'000	Expenditure as at 31 March 2022	Budget Balance R'000	Expenditure share %	Over/Under Expenditure R'000

Eastern Cape	28 343	4 449	23 894	16%	23 894
Free State	9 000	0	9 000	0%	9 000
Gauteng	21 538	16 372	5 166	76%	5 166
KwaZulu-Natal	68 497	27 512	40 985	40%	40 985
Limpopo	334	263	71	79%	71
Mpumalanga	67 093	8 116	58 977	12%	58 977
Northern Cape	6 822	1 899	4 923	28%	4 923
North West	43 726	6 899	36 827	16%	36 827
Western Cape	14 232	5	14 227	0%	14 227
TOTAL	**259 585**	**65 515**	**194 070**	**25%**	**194 070**

Source: DALRRD, Report to the Joint Committees meeting of 9 September 2022

The total allocation decreased from R192.9m in 2019/20 to R128.5m in 2020/21, but increased to R259.5m in 2021/22. The expenditure for KwaZulu-Natal PSSC appear to have been exceeding the allocations in 2019/20 and 2020/21 financial years, thus resulting high number of acquisition of farms for tenure reform. However, Mpumalanga PSSC which has the second highest number of LTA applications appear to have struggled to spend the allocation. Its expenditure in 2019/20 was 28 percent, increasing to 45percent in 2020/21 but declining to 12 percent in 2021/22. The total expenditure for 2021/22 was 25 percent of the entire allocation. Members of the Committee expressed concerns regarding lack of urgency in the finalisation of labour tenants' applications. As oversight visits reports will show, many labour tenants and farm dwellers find themselves in dire situation with extreme deprivation and poverty.

4.1.2 Land acquisition and allocation to farm dwellers and labour tenants

Table 5 above has shown that between 2019/20 and 2021/22, the DALRRD finalised 790 LTA applications, resulting transfer of 19 999ha to the benefit of 560 women and 306 youth. However, the report did not include the number of farms acquired and allocated as well as the legal entities created. In Table 11 (below), all the tenure related land acquisitions between 2017/18 and 2021/22 were reported. In this period, a total of 83 farms, in extent of 32 226 ha, were acquired through the Land Tenure to the benefit of over 2 500 individuals; of whom 1 100 were women, over 700 were young people and 8 were people with disabilities. The total cost of land acquisition is R330.3m.

Table 11: Tenure acquisition (2017/2018 – 2021/22)

PSSC	No. of Farms	Hectares Acquired	Beneficiaries				Land Purchase Price
			No. of Individuals	No. of Females	No. of Youth	No. of PWD	

Eastern Cape	2	95	20	10	13	1	R5 605 000
Free State	1	1 964	29	13	18	0	R13 100 000
Gauteng	7	283	213	114	69	3	R19 637 000
KwaZulu-Natal	48	22 488	1 712	700	472	2	R220 163 680
Mpumalanga	15	3 964	369	198	156	2	R39 113 822
North West	9	3 414	164	78	26	0	R31 706 850
Western Cape	1	18	9	4	6	0	R1 000 000
Grand Total	**83**	**32 226**	**2 516**	**1 117**	**760**	**8**	**R330 326 352**

Source: DALRRD (2022) Report to the Joint Committees meeting of 9 September 2022

Since the advent of democracy to date, as shown in Table 12 below, government acquired 1021 farms covering 794 608 ha for farm dwellers/labour tenants. The farms have been allocated to close to 210 000 individuals, including 39 000 women, 13 000 youth and 498 are people with disabilities. The total cost of land acquisition was just over R1.5 billion. Whilst this progress is welcome, the Committee found that there was no comprehensive information about land use, the status of legal entities owning the land, and the socio-economic impact of these acquisitions on farm dwellers more broadly. The observations in this report, regarding the socio-economic conditions, are based on outcome oversight visits to selected farms.

Table 12 : Tenure land acquisitions (1994 - 2022)

PSSC	No. of Farms	Ha Acquired	No. of Individuals	No. of Females	No. of Youth	No of PWD	Land Purchase Price
Eastern Cape	76	46 672	15 533	416	42	1	R78,650,696
Free State	139	44 579	3 836	620	85	0	R89,650,438
Gauteng	59	5 112	4 459	504	116	0	R48,296,212
KwaZulu-Natal	327	213 360	58 601	10 696	7 521	86	R850,766,199
Limpopo	67	33 797	5 308	336	8	0	R59,025,070
Mpumalanga	152	116 523	25 394	2 020	827	0	R192,629,890
North West	66	26 048	78 259	20 435	1 710	378	R78,005,725
Northern Cape	41	57 203	4 472	270	79	1	R37,702,384
Western Cape	94	251 314	13 990	4 107	3 216	32	R110,924,809
Total	**1 021**	**794 608**	**209 852**	**39 404**	**13 604**	**498**	**R1,545,651,422**

Source: DALRRD (2022) Report to the Joint PC meeting of 9 September 2022

4.1.3 Regulating farm evictions and provision of legal services to farm dwellers

The reports of the DALRRD, corroborated with oral submissions during public hearings, shows that types and nature land rights violations entail cutting access to water, demolition of farm dwellers' houses, denial of burial rights, limit to a number of livestock that can be kept on the land that farm dwellers are entitled to, refusal of access to basic serves such as water and

electricity and limiting the right of access or way as well as limiting access by family or relatives. Whilst many of these can be equated with constructive evictions, there are also instances of outright evictions following court processes or unlawful evictions which often result in homelessness.

In terms of both ESTA and LTA, eviction of occupiers and/or labour tenants without following a due process is prohibited. Section 5 of the Labour Tenants Act states that *"A labour tenant or his or her associate may only be evicted in terms of an order of the Court issued under this Act".* Further, Section 7(2) states that *"No order for eviction in terms of Section 5 shall be made, unless it is just and equitable".* In terms of Section 8(1) ESTA, *"...an occupier's right of residence maybe terminated on any lawful ground, provided that such termination is just and equitable".* Section 8 further provides circumstances under which eviction of an occupier may be granted and Section 9 prohibits evictions without an order of Court. Despite these protections, labour tenants and occupiers/farm dwellers were still being evicted, lawfully or unlawfully. According to a study conducted by Nkuzi and Social Surveys, 940 000 rural dwellers were evicted between 1994 and 2003, only 1 percent of which was legal. Many farmworkers had limited knowledge of their rights and did not have legal protections.

A legal matter, *Nkuzi Development Association v The Republic of South Africa* (LCC/10/01), was brought before the Land Claims Court in 2001 to compel the State to provide legal services to farm dwellers. Since the ruling in the Nkuzi matter, legal representation of respondents in ESTA or LTA eviction matters became compulsory. In response, the DALRRD set up a Legal Services Project referred to as the Land Rights Management Facility (LRMF) whose mandate was both legal representation and mediation as an alternative dispute resolution mechanism whose performance discussed below.

4.1.4 Land Rights Management Facility and transfer of legal representation services to the Legal Aid South Africa

In terms of the judgement in the Nkuzi matter, the State is under obligation to provide legal services to the indigent farm dwellers under the LRMF as already mentioned. The DALRRD reported that it has offices in all the 44 district municipalities of South Africa which monitor evictions and make interventions when required. However, those offices are not adequately resourced and lack adequate human capacity to respond to all evictions as expected. In terms

of human capacity, the Land Tenure Unit has 132 filled posts, constituting an average of 3 officials per district. The officials have to deal with, apart from ESTA and LTA, all tenure legislation; for example, Interim Protection of Informal Land Rights Act, Communal Property Associations Act, Transformation of Certain Rural Areas Act in some areas.

Between 2016 and 2021, a total of 1135 cases were referred to a panel of attorney for legal representation. Experiences from the LRMF dealing with these cases reveal few challenges which necessitated the transfer of the legal representation services to the Legal Aid South Africa and the DALRRD retained a panel of mediators to intervene through alternative dispute resolution mechanisms prior to referral for legal representation. At the time of transfer of the legal representation to the Legal Aid South Africa, about 740 files were transferred from the DALRRD. Since 1 January 2022, a total of 68 cases have been referred to Legal Aid South Africa by the DALRRD most of which are in Mpumalanga, KwaZulu-Natal and Western Cape. There are 184 legal practitioners currently accredited on Legal Aid SA's Judicare system and compliant with the National Treasury Central Supplier Database requirements. Most of them are located in Kwazulu-Natal (55), followed by Mpumalanga (45), then Western Cape (28) and Gauteng (20) the rest are distributed in the five provinces; notably, Northern Cape has 1 and North West has 3 accredited attorneys.

The Contingent Liability for the budgets approved in all pending matters transferred to Legal Aid SA (740 matters) amounts to R123,943,272.64. To cover the costs, DALRRD and Legal Aid have in the interim funded the legal representation services under the Legal Aid South Africa. Efforts were being made to secure funding from the National Treasury. The Committee welcomed the initiatives being taken to ensure that the National Treasury commits necessary funding for legal services provision to farm dwellers. In the meantime, Legal Aid South Africa operated through its own retained fund and a transfer from the DALRRD.

Table 13: Panellists budget allocation and expenditure per year

Financial Year	**Expenditure**		
	R00.00	**Management Fees(R)**	**Payment of Panelists(R)**
2017/18	69 843 000,00	45 862 960,00	117 018 583,73
2018/19	76 760 000,00	27 878 093,35	43 981 974,26
2019/20	77 580 000,00	16 162 560,00	116 689 241.80
2020/21	93 702 000,00	32 325 120,00	57 083 856.33
2021/22	112 562 000,00	37 712 640,00	53 512 537.09
Total	**430 447 000,00**	**159 941 373,35**	**161 000 557,99**

Source: DALRRD (2022) Report to the Joint Committees meeting of 9 September 2022

There are important lessons to be taken, if security of tenure should be provided for farm dwellers. Some of those lessons from the Legal Aid South Africa, which will be discussed in detail under summary of observations and conclusions, can be summarised as follows:

- When pleading, ensure that necessary attention is adequately given to section 26 of the Constitution, the provisions of the Housing Act and National Housing Code in order to avert evictions that leaves people homeless. Provision of emergency housing or accommodation is vitally important.
- Legislation must provide for safeguards to prevent or limit the risk of homelessness of occupiers, if immediate eviction is granted. There has to be legal clarity with regard to availability of suitable alternative accommodation prior to the court granting an eviction order. Probation reports should be a central part of the proceedings prior to granting orders.
- Improve the quality of the legal services provided by some of the panelist members of the LRMF to farm occupiers, labour tenants and land claimants.

4.2 Rural Safety Strategy and Rural Safety Plans

The South African Police Services (SAPS) presented a report on the implementation of the Rural Safety Strategy (2011). In 2019, after seven years of implementation, SAPS reviewed the strategy. The revised five-year strategy (2020-2024) was approved by the National Commissioner in August 2019 and launched by the Minister of Police in October 2019.

The strategy aims to address rural safety as an integrated day-to-day policing approach in order to create a safe and secure rural environment. It promotes establishment of an integrated and multidisciplinary approach between SAPS and other government departments to improve the safety and security in rural areas. It includes the mobilisation of communities to support the implementation of the Community Policing Strategy, to which the Rural Safety Strategy is pivotal. Key stakeholders involved are the government departments such as the South African National Defence Force (SANDF), DALRRD; DCoG and DTA, DoJC&CD, Department of Forestry and Fisheries and the Environment, DSD and the National Prosecuting Authority (NPA). Stakeholders also include civil society organisations from organised agriculture and farmer associations, farm worker unions, traditional leadership structures as well as NGOs and

CBOs. In order to get the stakeholders to work together in a coordinated manner to combat crime in rural areas, Station Commanders together with Rural Safety Coordinators are required to develop Rural Safety Plans in collaboration with stakeholders. These plans ought to be updated annually to take into consideration rural communities' safety and security concerns.

Table 14: Total number of police stations and their area of focus

Province	**Urban**	***Urban/Rural Mix***	***Rural***	***Total***
Eastern Cape	36	39	123	198
Free State	8	92	11	111
Gauteng	113	30	0	143
KwaZulu-Natal	30	92	62	184
Limpopo	0	22	82	104
Mpumalanga	0	61	29	90
North West	0	39	45	83
Northern Cape	11	68	12	91
Western Cape	52	41	58	151
TOTAL	**250**	**484**	**422**	**1155**
		906		

Source: SAPS (2022) Report to the Joint PC meeting, 16 September 2022

The success of the Rural Safety Strategy is dependent on the availability of resources to implement it, personnel and the location of police stations. Table 14 above shows that there are about 1155 police stations across the Country. Of those 1155 police stations, 422 solely focus on rural areas (including farms) and 484 have a rural/urban mix. So, a total of 906 police stations conduct policing in, and support, rural areas including farmlands. At the end of 2019/2020, 877 rural and rural/urban police stations had implemented the 2011 Rural Safety Strategy. A total of 97 police stations could not implement the strategy whereas 63 stations recorded partial implementation of the strategy. Non-implementation of the Rural Safety Strategy was attributed to COVID-19 restrictions which prohibited gatherings. As a result, not all rural and rural/urban police stations could have Rural Safety meetings and integrated awareness campaigns until 22 June 2022 when restrictions were lifted.

Table 15: Number of Police Stations that failed to implement the strategy

PROVINCE	**TOTAL**
Limpopo	2
KwaZulu-Natal	43
Northern Cape	47

Free State	5
TOTAL	**97**

Source: SAPS (2022) Report to the Joint PC meeting, 16 September 2022

The Police Minister hosted a number of imbizos and summits to address rural safety issues in South Africa. Apart from summits to address rural safety, monitoring and evaluation of the implementation of the strategy in order to address the pitfalls, if any, is vitally important. The Committees welcomed that there will be monthly and quarterly monitoring of the implementation. Further, the appointment of the Rural Safety Coordinators and the development of an implementation tool kit were seen as an important step to ensure accountability relating to the implementation of the strategy.

The implementation of the Rural Safety Strategy and related plans has not been without challenges. The challenges can be summarised as follows:

- The remoteness of rural communities in farming areas have resulted in limited access to policing and service delivery in farming areas; especially experienced by farm dwellers who lack means of transport and communication to reach police stations with ease;
- The time taken to respond to crime in long due to vastness of the policing areas. This is exacerbated by inadequately resourced police stations (no enough cars and poor communication facilities, especially police stations located in farming areas). This has resulted in some rural police stations rendering services that do not to meet the expected standards;
- Rural police stations are in areas that lack of advanced technological support and development. For example, internet connectivity and cellphone coverage. Poor development is also a result of poor maintenance of infrastructure in rural areas which in turn hampers service delivery;
- Weak inter and intra-departmental cooperation, coordination and communication as well as inadequate community involvement. The challenge of lack of cooperation is also compounded by the fact that some role players do not taking full responsibility and accountability.

SAPS has developed a multidisciplinary strategy to respond to the existing challenges. In 2019, it launched a community policing strategy which entails community mobilisation for

"Community-in-Blue" volunteers to report criminal activities and any suspicious behaviour in their communities and to increase visibility in order to deter criminals. The "Community-in-Blue Concept" is being implemented in support of the Rural Safety Strategy in designated rural and rural/urban mix policing areas.

4.2.1 Stock theft, farm murder and unlawful occupation of land and evictions

Some of the known prominent criminal activities include stock theft and farm murder. Between 2020 and 2021, as shown in Table 16 below, Eastern Cape and KwaZulu-Natal, followed by Free State, Mpumalanga, North West and Limpopo experienced high numbers of stock theft. It should be noted that there are always higher number of cases reported but some of those are unfounded or accounted for. By March 2021, a total of 25 826 stock theft cases were recorded (excluding unfounded number of 2 959 cases) but in the next financial year ending March 2022, a total of 24 533 cases were recorded (excluding unfounded 2 688 cases).

Table 16**:** Stock Theft by province (2020/21 – 2021/22)

Province	**2020 /21**			**2021/22**		
	Reported	Unfounded	Total	Reported	Unfounded	Total
Eastern Cape	7 047	814	6 227	5 943	714	5 229
Free State	3 494	214	3 280	3 460	238	3 222
Gauteng	1 071	60	1 011	912	47	865
KwaZulu-Natal	6 966	1 057	5 909	6 958	1 008	5 950
Limpopo	2 104	139	1 965	2 380	131	2 249
Mpumalanga	2 944	276	2 668	2 974	234	2 740
North West	2 891	260	2 631	2 943	223	2 720
Northern Cape	1 270	60	1 210	893	34	859
Western Cape	1 004	79	925	758	59	699
TOTAL	**28 791**	**2 959**	**25 826**	**27 221**	**2 688**	**24 533**

Source: SAPS (2022) Report to the Joint PC meeting, 16 September 2022

Table 17: Stock theft statistics (first quarters of 2021/22 and 2022/23 financial years)

PROVINCE	**01/04/2021 - 30/06/2021**			**01/04/2022 -30/06/2022**		
	Reported	**Unfounded**	**Total**	**Reported**	**Unfounded**	**Total**
Eastern Cape	1 527	179	1 348	1 412	157	1 255
Free State	900	45	855	809	44	765
Gauteng	232	17	215	270	23	247
KwaZulu-Natal	1 698	253	1 445	1 462	231	1 231

Limpopo	519	27	492	663	50	613
Mpumalanga	737	61	676	680	58	622
North West	699	51	648	768	60	708
Northern Cape	237	8	229	218	3	215
Western Cape	226	16	210	174	13	161
TOTAL	**6 775**	**657**	**6 118**	**6 456**	**639**	**5 817**

Source: SAPS (2022) Report to the Joint PC meeting, 16 September 2022

In the first half of 2022, as shown in Table 17 below, a total of 5 817 cases were recorded (excluding 639 unfounded ones), a decrease from 6118 recorded in the same period in 2021. SAPS recorded an arrest of about 1 982 suspects in the same period during 2022/23 financial year. Majority of the arrests were in KwaZulu-Natal (489) and Eastern Cape (441) as shown in Table 18 below.

Table 18: Stock Theft Arrests (first quarter of 2022/23 financial year)

Province	**Arrests**
Eastern Cape	441
Free State	201
Gauteng	54
KwaZulu-Natal	489
Limpopo	159
Mpumalanga	228
North West	223
Northern Cape	104
Western Cape	83
TOTAL	**1982**

Source: SAPS (2022) Report to the Joint PC meeting, 16 September 2022

SAPS, in its attempt to deal with the challenge of stock theft, initiated policing of the livestock and wildlife outlets; for example, the National Operation Buyisi Nkomo and Gcina Imvelo which started in 2021/22. It also conducts weekly policing at auctions, feedlots, abattoirs, and taxidermists. There are also ongoing awareness campaigns within communities to encourage compliance with regard to the Animal Identification Act 6 of 2002, Stock theft Act 57 of 1959 and Game Theft Act 105 of 1991. It also facilitated the establishment of the Stock Theft Information Centres (STIC's) and Provincial Biodiversity Investigators Forums (PBIF's) as well as engagement with a variety of stakeholders and role players including communities and organised agriculture.

One of the platforms for stakeholder engagements is the National Stock Theft Prevention Forum which meets bi-annually to address stock theft and related matters. It is believed that it

creates synergies by role players (government, private sector and communities) in response to stock. There is however a need to for continuous training in order to build capacity within SAPS to deal with stock theft. A collaboration between the Detectives and Forensic Service and the Human Resource Development Division to train investigators on Stock Theft and Endangered Species will contribute to building such capacity. In 2021/2022, they conducted 2 Stock Theft Investigators Learning Programmes and 2 Endangered Species Investigator Learning Programmes.

4.2.2 Farm attacks: all forms of crime including assault, murder, and housebreaking

Between April and December 2021, as shown in Table 19 below, a total of 40 people were murdered on farms and smallholdings whereas during the same period in 2020 it was 46 and 36 in 2019. At the same time in 2020, the numbers increased to 46 but declined to 40 in 2021.

Table 19: No. of victims of murder on farms and smallholdings: April-December 2019-21

Financial Year	EC	FS	GA	KZN	LP	MP	NC	NW	WC	RSA
2019/20	4	13	2	1	5	1	0	2	3	**31**
2020/21	6	12	9	7	3	3	1	3	2	**46**
2021/22	7	11	6	4	1	6	0	4	1	**40**

At a different time from what is in Table 19 above, between January and March in 22 (last quarter of 2021/22), 15 people were murdered. During the same period in 2020/21 financial year, it was 11 (less by 4 victims) whereas in the 2019/20 financial year it was much lower at 6 victims. One should note at an increase of the number of victims.

Table 20: No. of victims of murder at farms and smallholdings: January- March 2019-2021/22

Financial Year	EC	FS	GP	KZN	LP	MP	NC	NW	WC	RSA
2019/20	2	0	2	0	2	0	0	0	0	**6**
2020/21	0	0	2	4	1	2	0	0	2	**11**
2021/22	2	2	2	1	3	2	2	0	1	**15**

Source: SAPS (2022) Report to the Joint PC meeting, 16 September 2022

If one looks at all form crimes on farms and smallholdings between April and December in three financial years shown in Table 21; there were 454 incidences were reported in 2021, whereas in 2020 and 2019 incidences were 298 and 390 respectively. One should note a decrease in incidents but reversed in the following year.

Table 21: Incidents of farm attacks – all crimes: April-December 2021

Financial Year	EC	FS	GP	KZN	LP	MP	NC	NW	WC	RSA
2019/20	39	51	67	45	87	14	3	39	45	**390**
2020/21	41	51	65	46	45	10	12	15	13	**298**
2021/22	54	54	83	30	118	53	3	40	19	**454**

Source: SAPS (2022) Report to the Joint PC meeting, 16 September 2022

Considered at different times between January and March (2019-2021), as shown in Table 22, 98 incidences were reported last quarter of 2021/22 financial year whereas during the same period in 2020/21 financial year it was 131 and in 2019/20 it was 144. The is a notable decline in the incidences of attacks during this time.

Table 22: No. of victims of attacks on farms-all incidents: January to March 2019/22-2021/22

Financial Year	EC	FS	GP	KZN	LP	MP	NC	NW	WC	RSA
2019/20	31	13	11	8	28	0	5	11	7	114
2020/21	22	12	18	20	24	15	0	13	7	131
2021/22	20	12	23	2	20	12	2	5	2	98

Source: SAPS (2022) Report to the Joint PC meeting, 16 September 2022

Are there any particular categories of people targeted during farm attacks (excluding murder)? Are certain provinces experiencing farm attacks than others? In Table 23 below, a majority of the victims were in Limpopo, i.e. 126 of the national total of 586, followed by Eastern Cape (90) and Free State (84). In terms of the categories, 208 of all the 586 victims were employees and Limpopo Province had the highest victims (67) followed by Free State (39) and North West (31). The second most prominent category of victims were occupants (everyone who is not an owner and/or employee). Majority of victims were in Gauteng (48), followed by Eastern Cape (43), Mpumalanga (27) and Limpopo (25). Attacks on farmers are the third most prominent with a total of 106 victims, most cases in Limpopo and Free State which have recorded 20 victims each. Cases of attacks on owners did not feature strongly as compared to other categories. Of all the 23 cases, the highest were in Gauteng (6), followed by Eastern Cape and Mpumalanga which recorded 5 victims each. The number of victims illustrated above were linked to 41 cases of theft of motor vehicles, 3 attempted robberies at residential premises, 21 stock theft, 13 rapes, 68 attempted murder, and 248 robberies at residential premises.

Table 23: No of victims of all farm attacks excluding murder (April – December 2021)

	EC	FS	GP	KZN	LP	MP	NC	NW	WC	TOTAL
Employee	21	39	18	14	67	15	1	31	2	208

Farmer	14	20	15	10	20	6	2	12	7	106
Manager	0	0	0	0	0	1	0	0	0	1
Occupant	43	23	48	8	25	27	0	13	14	201
Owner	5	0	6	2	3	5	0	1	1	23
Security	1	0	8	1	8	5	0	3	0	26
Visitor	6	2	2	0	3	1	0	4	3	21
TOTAL	**90**	**84**	**97**	**35**	**126**	**60**	**3**	**64**	**27**	**586**

Source: SAPS (2022) Report to the Joint PC meeting, 16 September 2022

With regard to incidents of murder on farms and smallholdings, Table 24 below shows that between January and March 2022. SAPS reported that there were 14 cases reported and they involved 15 victims. Of the 15 victims, 9 were occupants, 2 were employees, 2 farmers and 1 owner. During this period, there was no manager or security was murdered during the period under consideration.

Table 24: No. of murder incidents on farms and smallholdings (January to March 2022)

Category	**EC**	**FS**	**GP**	**KZN**	**LP**	**MP**	**NC**	**NW**	**WC**	**TOTAL**
Employee					2					2
Farmer		1		1						2
Manager										0
Occupant	2		2		1	2	1		1	9
Owner		1								1
Security										0
Visitor							1			1
Victims	**2**	**2**	**2**	**1**	**3**	**2**	**2**	**0**	**1**	**15**
No of cases	**1**	**2**	**2**	**1**	**3**	**2**	**2**		**1**	**14**

Source: SAPS (2022) Report to the Joint PC meeting, 16 September 2022

For the entire 2021/22 financial year, there were 47 cases of murder incidents with 55 victims as shown in Table 25 below. In this financial year, majority of the victims were occupants (23), followed by farmers/owners (16) and employees (13). It should be noted that Free State (13), Eastern Cape (9), Gauteng (8) and Mpumalanga (8) have accounts for most of the victims and cases. However, North West, Northern Cape and Western Cape have recorded less incidents than the other Provinces.

Table 25: No. of murder incidents on farms and smallholdings (April 2021 to March 2022)

2021/2022	**EC**	**FS**	**GP**	**KZN**	**LP**	**MP**	**NC**	**NW**	**WC**	**TOTAL**
Employee	2	3	1		3			4		13
Farmer/Owner	4	4	1	4		2			1	16
Manager										0
Occupant	3	6	5		1	6	1		1	23

Security			1	1						2
Visitor							1			1
No. of Victims	**9**	**13**	**8**	**5**	**4**	**8**	**2**	**4**	**2**	**55**
No. of Cases	**7**	**9**	**8**	**5**	**4**	**7**	**2**	**3**	**2**	**47**

Source: SAPS (2022) Report to the Joint PC meeting, 16 September 2022

Having demonstrated the extent of farm attacks and incidents of murder on farms and smallholdings, the general picture shown in Table 26 below is that there have been 2 012 incidents of farm attacks of with 203 victims of murder over the last four financial years. Despite the beginning of the decrease in the number of incidents, the Committee expressed concerns over the increasing number of victims of murder. Contrary to dominant views, not only are farmers/owners victims of murder, employees and farm occupants are too.

Table 26: No. of murder victims and No. of incidents

Period	No of Murder (victims)	No of incidents
2018/2019	47	338
2019/2020	49	558
2020/2021	52	564
2021/2022	55	552
Total	**203**	**2 012**

Source: SAPS (2022) Report to the Joint PC meeting, 16 September 2022

4.2.3 Unlawful occupation of land and evictions

SAPS is often criticised for alleged non-responsiveness to incidents of crime in farming areas. This is especially pronounced when it involves unlawful evictions and violation of human rights of people living on farms. The Committee was briefed that SAPS has compiled and circulated a National Instruction (7 of 2017) to provide a legal framework within which policing of land invasions and evictions must occur; give direction on how the SAPS must deal with illegal land invasions and evictions; and to outline the responsibilities of members of the SAPS during evictions and/or land invasions. The Instruction was first circulated in 2017 and recirculated recently. It also included capacity building sessions of Rural Safety Coordinators on all levels since 2017. As will be discussed in this report, allegations against police officers not being responsive when cases are reported by farm dwellers calls to question the effectiveness of the National Instruction (7/2017) and the related training programmes.

The SAPS believes that the tensions in farming communities, including land tenure disputes, contribute to incidents of crime. In their records, some of the examples of tensions are: conflict arising from land reform and land tenure disputes including forceful evictions of farm dwellers, denying burial rights on the farm for farm dwellers; disputes relating to the numbers of livestock that a household is allowed to keep on a farm, access to grazing and water and impounding of livestock without following proper procedure; challenges with provision of municipal services, including water, electricity and social services to people living on privately owned farms; and absence of a platform of engagement between farm dwellers and farm owners to resolve issues which may escalate to crime and violence.

4.3 Employment and Labour: Inspections and Enforcement Services on Farms

Agricultural labour has been one of the sectors that have been marginalised for a long time. Post-1994, the Agricultural Labour Act, Act 147 of 1996 extended the provisions of the Basic Conditions of Employment Act of 1983, and the Labour Relations Act of 1956, to the agricultural sector. The Unemployment Insurance Act of 1966 had already been extended to the agricultural sector in 1993. These pieces of legislation were meant to improve the working conditions of farm workers by particularly regulating their working hours and to improve farmworkers' working wages which normally would have been catered for through collective bargaining. The Committees engaged with the enforcement of legislation listed in Table 27.

Table 27: Applicable Labour Legislation.

Legislation	**Scope**	**Aim and applicability**
Basic Conditions of Employment Act, 1997 *Sectoral Determination 13: Farm Worker Sector, South Africa (SD 13)*	All workers (except the intelligence sector) and part-time workers who receive proportional rights	Minimum conditions of employment and service: working hours, age of employment, remuneration. SD13 establishes basic conditions of employment in the farmworker sector
National Minimum Wage, 2018	The National Minimum Wage is R23,19 per hour, as at 8/02/2021	All workers
Occupational Health and Safety Act, 1993	Planned and unplanned inspections.	To ensure health and safety of people at work or in connection with the use of plant and machinery; Protect other people from hazards arising from or relating to activities of people at work.

Compensation of Occupational Injuries and Diseases Act, 1993	All employers are under obligation to register with the carrier (compensation commissioner of compensation of fund)	It caters for compensation to employees who are injured or contract diseases through the course of their employment
Employment Equity Act, 1998	SANDF, NIA, and SASS excluded.	Promote equal opportunity and fair treatment in employment – eliminate unfair discrimination

The engagements focused on the Inspections Enforcement Services (IES), mainly work done around advocacy and inspections. As this report will show, there are concerns about lack of information with regard to the labour rights of farm workers as well as accusations of weak enforcement of legislation. Given the afore-mentioned, DEL conducted seminars between 2020-2022; and some of those are: seminar in the farming Sector on 24 June 2022 (132 people attended); three advocacy sessions in KZN and Northern Cape in 2022; National Occupational Health and Safety session in Agriculture and Workers Rights on 19 November 2020; and radio sessions in the Northern Cape. Stakeholders engagements and advocacy sessions in the Eastern Cape province and North West were also facilitated. Whilst there were these interventions, the lingering question is their effectiveness in the dissemination of information on labour rights for agricultural workers. As public hearings reports demonstrate, some people reported to the committee about cases of injuries on duty, alleging that the DEL has not been responsive to their requests.

With regard to inspections and enforcement, DEL reported that IES has a total of 2106 officials/inspectors specializing in BCEA, NMWA, UIA, COIDA, EEA, or OHSA. They also provide administrative support and statutory services to IES. All the inspectors were recruited and appointed in line with the required qualifications for each area of inspection.

On inspections, DEL reported that a total 0f 17 638 farms were inspected in 2021/22. Of those, 3 020 were found to be non-compliant with various pieces of legislation at first inspection. In other words, there was 17 percent non-compliance with legislation. Further, DEL issued 2951 notices of contravention of legislation (where the employer could not rectify the issues identified by the inspectors). It means that 97.7 percent of non-compliant farms were issued with notices. Non-compliance was mainly in BCEA: working hours (2), contracts (178), annual leave (1), sick leave (1) and maternity leave (5). The other cases were related to the UIF; including 95 cases about declarations and 89 cases about contributions. It should be noted

that contributions to pension or retirement funds are not regulated in terms of BCEA and similarly medical aid or health insurance are also not regulated in terms of BCEA. If one looked at a five-year period, i.e. 2018-2022, about 28 158 farms were inspected and 6361 enforcement notices were issued.

Table 28: Total number of inspections on farms in South Africa (2021/22)

PROVINCE	No. Inspected	No. Non-Compliant	No. Notices Issued
Eastern Cape	3561	325	325
Gauteng	410	55	27
Free State	5367	349	353
KwaZulu-Natal	1918	588	579
Limpopo	1390	278	280
Mpumalanga	576	107	107
Northern Cape	1147	387	382
North West	694	124	117
Western Cape	2575	807	781
TOTAL	**17 638**	**3 020**	**2 951**

Source: DEL (2022) Presentation to a joint meeting of the PCALRRD and PCEL (09/09/2022)

The Committee further considered compliance with different pieces of legislation at the national level. Table 29 below shows all the 17595 (not 17638 as reflected in Table 28 above). The Table illustrates the pieces of legislation that inspectors focus on, which could be related to capacity constraints within the Department. The majority of the inspections, i.e. 59 percent were related to the BCEA, followed by the OHSA which accounted for 32 percent. EEA, UIA and COIDA together accounted for 9 percent.

Table 29: Total number of inspections according to legislation

PROVINCE	BCEA /NMWA	EEA	UIA	COIDA	OHSA
Eastern Cape	2 160	32	31	67	1 272
Gauteng	306	25	31	8	40
Free State	3 503	54	50	60	1 700
KwaZulu-Natal	966	43	54	64	761
Limpopo	895	62	64	79	290
Mpumalanga	404	15	46	37	68
Northern Cape	537	60	241	96	213
North West	473	17	86	30	86
Western Cape	1149	30	170	97	1 123
TOTAL	**10 393**	**338**	**773**	**538**	**5553**

Source: DEL (2022) Presentation to a joint meeting of the PCALRRD and PCEL (09/09/2022)

Other challenges with regard to labour laws enforcement

- Access to farms: Sometimes officials set appointments to conduct inspections but when they arrive they are prevented from assessing the status of the farm. Denial of access is often used to hide some of the business' non-compliance.
- Farmworkers are among the most vulnerable workers in South Africa. They often do not reveal the real issues or compliance facts during interviews for fear of victimisation in case the owner discovers who uncovered the areas of non-compliance to inspectors.
- Whilst there are allegations of corruption by inspectors, and accusations of collusion between farmers and inspectors to conceal the real facts about inspections, DEL reported that during the 2021/22 financial year, it only had two cases of corruption by inspectors in the North West.
- A growing trend of casualization of labour on farms, including employment of temporary workers and undocumented foreign nationals. Undocumented workers find themselves in informal settlements in the nearby townships, transported to the farms daily. Some of them are being transported by bakkies and trucks. The National Labour Migration Policy and Employment Services Bill was yet to be passed.
- A trend of employing undocumented foreign nationals was mostly observed in Limpopo, Mpumalanga and the Western Cape provinces. Seasonal workers, who are employees of the agency, are only employed for a short period of time during harvesting or fruit picking season. These workers, more often rotate from farm to farm.
- The recruitment of farm labour through agents/labour brokers. Most farmers who use agents they relinquish their responsibilities as employers because the workers are not employed directly. The Department did not have statistics on labour brokers in the farming sector.

4.4 Access to basic services on farms (water, sanitation, and refuse collection)

The Committee was briefed by the Department of Cooperative Governance (DCoG) on provision of water and sanitation services on farms and the role that municipalities could play to improve the living conditions on farms. The input of DCoG was based on the Mshengu matter (2019) involving labour tenants who took government to Court for failure to provide

municipal services. The matter was brought in terms of sections 9, 10, 24, 27(1)*(b)*, 33, 152, 153, 193 and 237 of the Constitution to compel the Msunduzi, uMshwathi local municipalities, and uMgugundlovu municipality to provide water, sanitation and waste collection services. Municipalities often do not provide services on farms citing private property ownership as an obstacle and the fact that some land owners prevent municipalities and Eskom from providing services. In this case, Judge Mnguni rejected the 'private land' argument and ruled in favour of Mshengu. He further ordered municipalities to file a report with details of all farm dwellers in their jurisdictions, indicating if they have access to water, sanitation and a refuse collection services.

The DCoG, reflecting on the implications of this Order, reported that the obligations that this Court order highlights raises a number of challenges for municipalities. Some of those are: (i) incompetence of municipal officials to implement the court directives, (ii) unavailability of land to relocate farm dwellers or those evicted (iii) lack of budget to provide for required services such as water and sanitation; and (iv) budget constraints to provide suitable temporary shelter to the victims. Nonetheless, municipalities ought to comply with the Order and the legislation. They must also develop capacity to put an action a plan that must be filed with the report to Court, detailing how the municipalities will provide these essential services.

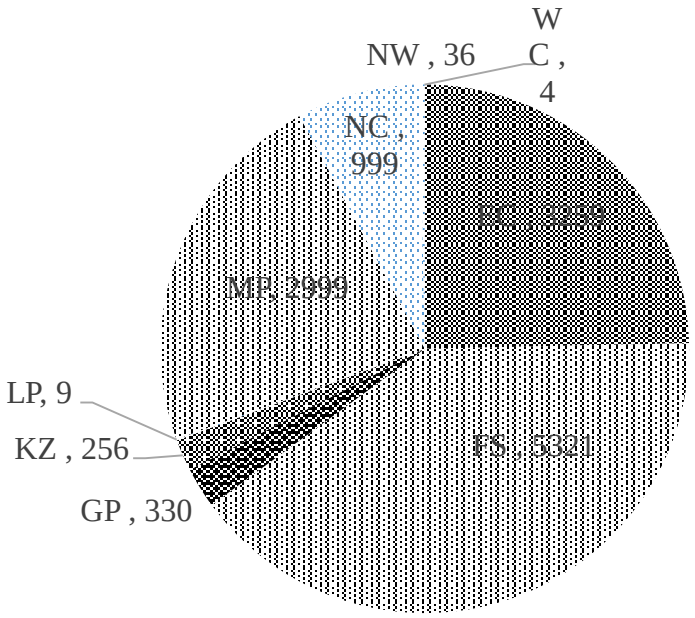
The DCoG reported that municipalities can play an active role to support farm dwellers and victims of evictions, especially provision of the temporary shelter; water provision through water truck supply and sanitation; and can achieve these obligations through partnerships with local business and NGOs for providing food and temporary shelters. Most importantly is a need to strengthen the partnerships with farmers to ensure that basic services are provided to farms through municipal support plan.

4.5 Provision of housing on private farms

According to Stats-SA (GHS, 2020), about 15.8% of dwellings in farm areas are informal and additional 16.4% are traditional dwelling types. As oversight visits reports demonstrate, most houses for farm dwellers and labour tenants are traditional mud houses that cannot withstand harsh weather conditions like heavy rains and floods. Their poor conditions are exacerbated by the fact that some landowners prohibit households to maintain these traditional houses, let alone building new structures.

The Department of Human Settlement addressed the Committee on housing needs and development in farming communities. Of the 8 priority areas for the DHS, Priority 2 Targets housing for designated groups, emergency and mud housing, asbestos and blocked projects. Mud housing are common among farm dwellers and labour tenant homesteads. From policy point of view, these categories of rural dwellers on farms are catered for under the Housing Code Programme- Vol. 6: Farm Residents Subsidies. Whilst housing for farmworkers, farm dwellers and labour tenants is covered under this Housing Code, the challenge is with registration of needs. Not many farm dwellers have registered in Housing Needs Register. Figure 1 below demonstrates the number of people registered across South Africa by September 2022.

Figure 1: Housing needs register - for farm and domestic workers on farms (Sept. 2022)



Source: DHS (2022) Report to the Joint Committee's meeting of 16 September 2022

The National Housing Needs Register for Farm Workers and Domestic Workers has a total of 13 213 persons. As Figure 1 above shows, majority of them are registered for the Free State (5321), followed by the Eastern Cape (3259), Mpumalanga (2999), and Northern Cape (999). KwaZulu-Natal and Western Cape had a total of 256 and 4 respectively, yet KZN has the highest number of labour tenants' applications.

The Housing Code Programme (Farm Housing Subsidies) seeks to provide a practical approach to the housing needs of farm residents through a range of development options, i.e. on and off farm; rental as well as ownership options, protections of land and other rights. The programme provides funding for houses and residential engineering services where required. The subsidy is granted to individual households in the context of a project based approach but it does not cover seasonal workers.

As previous sections highlighted the changes in the farm labour dynamics, there is increasing casualisation of labour which therefore suggests that a greater majority of people will not qualify if the trend continues. However, the programme has potential to improve housing on farms, including provision of basic services and enhancing people's secure tenure. There are stringent requirements to be met, though; for example, a monthly household income of R0 – R3500 guarantees one a full subsidy whereas an income of R3501 – R 22 000 puts an applicant into the "Help me Buy a Home" stream of the policy.

The programme has not been without challenges. The challenges encountered by the DHS during the implementation of the programme can be summarised as follows:

- Whilst the Sector Determination for farms is R13 625, the housing income qualification criteria as stated above is R0-R3500 and R3501-R22 000. The income criterion leaves many of the poor outside. There are proposals for a model where the DALRRD contributes towards a top up and an alternative means tested criteria where details of an applicant are confirmed on the population register, including citizenship. Other proposals include checking records at the deeds office to establish if applications do not own properties elsewhere in South Africa.

- The National Needs Register has low number of people despite a large number of people that end in informal settlements after evictions. Further, there is no system of monitoring evictions from farms. The only tool for DHS are the records of disputes between landlords and tenants through Rental Housing Tribunals whereas evictions going through Courts are not accounted for in the DHS. This therefore suggests a need for creation of digital platforms and campaigns for persons living on farms to improve access to this register. Equally a government system of monitoring evictions both legal evictions where orders are granted by the Courts and illegal ones.

- Lack of interdepartmental and inter sphere monitoring of evictions. The DALRRD must consider leading an interdepartmental forum and District Development Model interventions so that there is a government-wide monitoring of evictions.

4.6 Women and children on farms

The Committee had a meeting with the Department of Women Youth and People with Disabilities (DWYPD) on 16 September 2022. This meeting demonstrated a lack of targeted approach to women and youth on farms despite their vulnerability and marginality to the society. The Committees requested the Department to reflect on this matter and report back to the Committee. A follow up letter dated 11/10/2022 confirmed that DWYPD had not investigated, monitored, or evaluated status of women and children on farms to date. To date, its interventions have been around coordinating Sanitary Dignity Implementation Programme involving distribution of dignity sanitary pads to the quintile 1-3 schools including farms schools. Only four provinces have accounted for the distribution as shown in Table #. The Committee noted that Eastern Cape, KwaZulu-Natal, Free State, Limpopo and Mpumalanga had not accounted on this programme.

Table 30: No of participating farm schools by Province

Province	District	Number of Schools	Total
Western Cape	Overberg	9	15
	Cape Winelands	6	
North West	Bojanala	11	46
	Dr Kenneth Kaunda	20	
	Dr Ruth S Mompati	5	
	Ngaka Modi Molema	10	
Northern Cape	Francis Baard	3	16
	Namaqua	1	
	Pixley ka Seme	10	
	Z Mgcawu	2	
Gauteng	None	0	0

Source: DWYPD (2022) Report to the Joint Committee's Meeting of 16 September 2022

The other critical area of concern is gender based violence on farms. The DWYPD reported that farm dwellers are represented in the Gender Based Violence and Femicide Rapid Response Teams (GBVFRRT) through community leaders (councillors and NGOs working in those

areas). Failure to get representation by fellow farm residents was attributed to the fact that the DWYPD invited farmworkers to sessions that were held during the working hours and farmworkers could not be released from work to attend. The Committee noted that there will be work being done with the Offices on the Status of Women in the provinces where GBVFRRTs have been established to identify areas for information sessions on NSP and GBVF. A vitally important intervention proposed by the DWYD is to monitor and assess that IDPs and DDP reach farmworkers, especially youth, women and people with disabilities.

4.7 Provision on social services on farms

The Department of Social Development (DSD) is a lead government department in the provision of social services. In response to an invitation to the joint meeting of the two Portfolio Committees, the DSD presented its work and more specifically it reported that it did not have specific programmes targeting farming communities. They were being supported as part of the broader citizenry without differentiation. It cited Stats-SA data which shows that 20% of households in South Africa were considered food insecure, also stating that Covid-19, floods and other disasters may have aggravated the insecurity. In spite of the marginality and vulnerability of the farmworkers, farm dwellers and labour tenants, the report did not address the extent of the food insecurity among farmworkers and farm dwellers as anticipated by the Committee. The only statistics close to expectations from the Committee was cited during the discussion on the report of the Presidential Advisory Panel on Land Reform and Agriculture. Firstly, the food price inflation has increased exponentially in September 2022, whilst CPI has dropped, starting in February to an extent where the food inflation was higher than CPI from March 2022. Citing Statistics South Africa GHS (2022), Prof. Hall showed the national average of food insecurity in the following: child hunger, adult hunger, lacked food diversity, skipped meals, ate less food and ran out of food. In all these areas, farm dwellers' level of insecurity was much higher than the national average.

The Committee noted that one of the prominent community development intervention is the National Food and Nutrition Security Plan for South Africa. The plan seeks to significantly improve food security and reduce malnutrition in all its forms to afford South Africa's people opportunities to lead productive and healthy lives. The DSD leads on the development, implementation and report on objective 3 of the plan "Targeted Social Protection Measures", support the development of Provincial Food & Nutrition Security Plans in Provinces,

establishment of the Food & Nutrition Security Councils both at National and in Provinces. However, the food security programme does not account specifically on the households and individuals on farms accessing food through DSD services. Similarly, the NDA interventions on food and nutrition security are not differentiated and food insecurity is higher in farming areas than the national average.

The DSD reported that, in its approach of delivering its services, does conduct households and community profiling. The outcome of these profiling have shown that there was prevalence of gender based violence, substance abuse, child abuse, poverty and hunger, child neglect, orphan and vulnerable children, crime, HIV/AIDS and violation of basic human rights. Some of the interventions reported were community dialogues and stakeholder engagements; awareness campaigns; implementation of the DDM, and mobile and satellite services pointing key social development services to farming communities.

5. Overview of observations

This section weaves together observations of the two Portfolio Committees during provincial oversight visits, stakeholder engagements, briefing by government departments. It attempts to respond to the four broad questions that the oversight, outlined in the introductory section, sought to respond to. These questions centred around land tenure rights violations and evictions, promotion of human rights and improvement of rural livelihoods, agricultural labour legislation, and rural safety and security.

5.1 Insecure land tenure and farm evictions

5.1.1 The nature of, and factors underlying, farm evictions

ESTA does not prevent evictions, it regulates evictions by way of balancing the interests of landowners or those in charge of the property with the interests and rights of occupiers or farm dwellers broadly. Increasingly, landowners are using ESTA to evict farm dwellers and the cases are often heard at magistrate courts. The lawfulness of some of the eviction orders granted at magistrate courts has been questioned. It is alleged that some magistrate courts grant eviction orders without subjecting the order to review by the Land Claims Court as envisaged in ESTA. Nonetheless, there is increasing use of law to evict occupiers and/or labour tenants. Oral submissions during public hearings have also raised a number of incidents of unlawful

evictions through constructive means which appear as if occupiers left the farm on their own volition. Under such circumstances, farm dwellers get subjected to inhumane living conditions and some landowners make lives of farm dwellers and occupiers unbearable. It would appear that some owners resort to this manner of constructive evictions because it is less costly.

Table 31: Tenure rights and factors underpinning land tenure disputes

Tenure rights	**Key factors underlying land tenure disputes on farms**
Terms and conditions of stay	– Tenure rights are often based on verbal agreements and passed down from generation to generation. – When farms exchanges hand, new owners tend to question the rights of farm dwellers and impose limits on their tenure. – Where there are written terms, farm dwellers often enter into those agreements without legal representation whilst landowners/persons in charge use services of lawyers to advance the owners interests.
Livelihoods activities	– Owners tend to limit the amount of grazing area available to farm dwellers/labour tenants. – Similarly, they impose limits on the number of livestock a household can keep on the farm. – Reduction of land available to farm dweller/labour tenants' households by fencing them it, thus leaving them without any land to for home gardens and access to water for irrigation in some cases. – Tensions on land use by the farm owner and farm dwellers/labour tenants (e.g. livestock vs game farming)
Family and burial rights	– Landowner tend to limit the size of families or number of people per household on farms. – Children over 18 years not permitted to live on farms unless they are in the employ of the farm owner – Where housing for farmworkers is provided, owners tend to charge rent per person over 18 years of age not per unit. – Land owners refuse families to continue with an established practice of burying their loved ones on the farms. – The practice of evicting the elderly is widespread despite provision in Section 8(4) of ESTA for long-term tenure security for the elderly (over 60 years) to avoid further burials on farms. – Young children are often sent away to relatives or friends due closure of farm schools, and the absence of secondary schools, transport or affordable boarding facilities
Farm employment	– Farm dwellers who challenge poor working conditions and non-compliance to the NMW are expelled from work and evictions follows because landowners tend to link tenure rights to farm employment. – Children of farm dwellers/labour tenants/farmworkers who refuse to provide labour on farms gets evicted from farm. – Change of land use (from crop to game; agriculture to mining); and minimising the cost of labour and evicting excess labour.

Human settlements and basic services	– Growing households are not permitted to build or extend houses on farms/ those extending without consent are evicted. – Landowners refuse farm dwellers/labour tenants to bring construction materials on farms. – Municipalities are prevented to provide basic services such as drinking water and electricity.

Key factors underlying land tenure disputes on farms, including constructive evictions, can be summarised as follows:

- Landowners change conditions of stay without agreement/negotiation with occupiers. In some cases, this happens when farms change ownership, in some cases landowners alleging that they did not now of labour tenants or farm dwellers.
- Farm dweller/labour tenants' households being denied access to basic services such as clean drinking water, electricity, maintenance of dwellings.
- Limitations on the number of livestock households can keep on the farm or denial of access to land for subsistence farming which is central to their social reproduction.
- Denial to a right to family (limiting the number of children on the basis of age that can live on the farm). Further, denying households the right to have visitors on farms by locking access gates to their homes.
- Households are prohibited to maintain their dwellings (mainly mud houses) let alone building new ones.

Members of the public reported that the response of the DALRRD to some of the cases or request for assistance was not satisfactory. However, the DALRRD has also demonstrated to the Committees lack adequate human resources and that officials responsible for land tenure were overstretched. There was no more than three officials per district.

5.1.2 Institutional capacity constraints to implementation of the policies and legislation

Across the Provincial Land Reform Offices, commonly known as the Provincial Shared Services Centres (PSSCs), officials responsible for tenure reform as are also tasked with the support to the Communal Property Associations (CPAs). The challenges of CPAs are well documented and is not the subject of this report. It therefore means that the time of officials, limited in their numbers as they are, is split in the implementation of 6 different pieces of legislation (ESTA, LTA, IPILRA, TRANCRAA, CPA Act). Over time, the once successful

ESTA officers that used to focus on evictions are no longer in existence as they have been absorbed in other sections. The low level of staffing for farm tenure as compared to other units in the Department could be the reason why many people have complained about officials of the DALRRD. There was very minimum indication, if any, that the 'fit-for-purpose' structure will remedy this situation. As some stakeholders have put it, it might be a demonstration of lack of political will to prioritise tenure reform.

To add to the human resources constraints, budget allocation for the implementation of ESTA and LTA is minimal. The Portfolio Committees have not been able to assess a comprehensive and costed plans to implement ESTA and LTA as highlighted above. Therefore, it was difficult to determine how much funds are allocated for acquisition of land under ESTA and under LTA. The funding of the Special Master of Labour Tenants' Implementation Plan was not specific and disaggregated to show specific funding for the office, operations of the department and the allocation for awards to be made. Implementation is funded under the general allocation for farm dweller programme (See Tables 11 and 12).

Failure to prevent evictions is sometimes a result of legislative gaps and weaknesses. These gaps, often result in court orders that empowers landowners to evict elderly people, widows and children of occupiers. In this instances, inability to prevent evictions often leads to trust deficit between farm dwellers and government officials. As discussed above, trust deficit is also a result of understaffing that makes officials unable to attend to all the matters with the urgency deserved. The Committees heard, during public hearings mostly in Piet Retief and New Castle, repeated calls for expulsion of officials or closure of certain offices.

The Committee observed that there was little coordination of government interventions, especially between government departments of agencies responsible for labour and those responsible for tenure rights. Equally, DCoG also has not played a central role, through its District Development Model, to ensure that farm dwellers settlements are included in the development planning, particularly with regard to provision of water and sanitation. If there has to be change, greater effort should be put on intergovernmental coordination and integrated approach to service delivery on farms, both DCoG and DALRRD could play a significant role.

5.1.3 Legal representation

Provision of legal services to farm dwellers/labour tenants has fallen short of expectations. The Portfolio Committees received reports that the Land Claims Court has also raised concerns about the poor quality of the legal services provided to occupiers, labour tenants and land claimants under the LRMF. Oral submissions at public hearings also backed such assertion because speakers complained about failure of legal representatives to appear in court, thus leaving occupiers appearing without legal representation, or in the event that an attorney is present, he/she would be poorly prepared. As will be discussed in the next section, Legal Aid SA reported that in its analysis of the files received from the LRMF, in almost all eviction matters, section 26 of the Constitution, the provisions of the Housing Act and National Housing Code were not adequately pleaded. These pieces of legislation and policy sets out the issue of emergency housing/accommodation. If these were adequately addressed, there wouldn't be Court Orders that leave people on the street or homeless.

The Committees welcomed the transfer of the LRMF's legal representation to the Legal Aid South Africa and noted that alternative dispute resolution mechanisms, mainly mediation services through a panel of mediators, remained in the DALRRD.

The Committee welcomed the plans put together by the Legal Aid SA to address the weaknesses in the legal representation of farm dwellers who face evictions and other forms of human rights violations. Some of those interventions are as follows:

- Instructing the private a legal practitioner to challenge the constitutionality of Section 15 of the ESTA in the Land Claims Court insofar as it does not include safeguards to prevent or limit the risk of homelessness of occupiers, if immediate eviction is granted.

- Training the private legal practitioners who are providing legal services to farm occupiers, labour tenants and land restitution claimants.

- Working with the Land Claims Court to ensure that where matters involve indigent parties, legal representation be sourced from the Legal Aid SA.

5.1.4 Legislative gaps

Having conducted public hearings, listen to lived experiences of occupiers and labour tenants, the Portfolio Committees identified key areas of concerns and related gaps in the legislation as illustrated in Table 32 below.

Table 32: Legislative gaps and proposed amendments to strengthen tenure security on farms

Key problems	**Relevant Legislation**	**Proposals for legislative amendments or other interventions**
Victims of evictions are thrown by the roadside without emergency accommodation	Section 26 of the Constitution	– Recognition by Courts of the provisions of the Housing Act and the National Housing Code set out the issue of emergency housing/accommodation.
	Section 15 of ESTA	– As much as this section provides for the Court to grant an order for immediate eviction, this section needs to be strengthened to create safeguards of limits against the risks of homelessness when immediate eviction is granted. – must provide for a requirement for a court to satisfy itself with regard to an available alternative accommodation prior to an eviction order being granted (in similar vein to Sections 10 and 11.
Magistrates (and some judges of the LCC) hear eviction cases (and applications) without the probation report.	Section 9(2) and (3) of ESTA	– Create a provision for the Court to grant an eviction order only if it is satisfied that the municipality will provide alternative accommodation to an occupier facing eviction. – Courts must not be permitted to hear eviction cases in the absence of a probation report. Make probation reports mandatory
Occupiers who have been dismissed from employment often gets evicted if the owner can prove to Court that an occupier's employment has been terminated and no pending proceedings before the CCCMA	Sections 8(2) – 8(5) of ESTA	– Strengthen Sections 8(2), (3) and (4) of ESTA stronger tenure rights protection. – Provide for protections for women and children who are survivors of an occupier who falls within section 8(4) of ESTA. – Similarly, ensure protections for a spouse(s) and children of long-term occupiers.

The following are some of the cases demonstrating legislative weaknesses:

- The term “dependent” is not defined in the ESTA thought it appears in the Act. This created a gap that allows eviction of spouses/dependents of deceased occupiers. In Stellenbosch (Western Cape), a frail elderly lady was evicted through a court order after her husband who had worked as a farm manager passed away. It points to a need to define ‘a dependent’ and to provide for protection of spouses and children of the deceased.

- The women and children who are survivors of an occupier who falls within section 8(4) of the ESTA are not protected. They face the real possibility of becoming homeless after the expiration of the 12 calendar months’ period as legislated, or earlier if breach occurs.

- Linking tenure rights to employment contracts has been a key loophole resulting in eviction of many people. Unfortunately, some farm dwellers enter into contracts without understanding that it links their tenure rights to employment on a farm, hence a need for amendment of Sections 8(2) and (3) of the ESTA.

- Probation report are not being taken serious. Some magistrates grant eviction orders without due consideration of those report despite the requirement in terms of ESTA. The reports address the following: (i) availability of suitable alternative accommodation to the occupier; (ii) indication of how an eviction will affect the constitutional rights of any affected persons, including the rights of children, if any, to education; (iii) pointing out any undue hardships which an eviction would cause the occupier; and (iv) any other matter as may be prescribed.

5.1.5 Monitoring

The Portfolio Committees heard, over and over again, about farm dwellers who had faced evictions without any support of the DALRRD nor the panel of attorneys under the LRMF. In some cases, government intervenes when victims are already by the roadside and homeless. Such state of affairs points to weaknesses in evictions monitoring by government. Despite these weaknesses, there are efforts by government to keep abreast with what is happening on the ground. Such efforts are manifest in the following:

- The Rapid Response on Rural Safety: This is the Inter-Ministerial Committee of DALRRD which forms a joint task team established to monitor evictions and safety in rural areas which includes farms. The effectiveness of this committee is yet to be assessed.
- The DALRRD facilitated establishment of task teams composed of various government departments, NGO's, farm dwellers and land owners. These forums aim to ensure coordinated approach to intervening in farm eviction matters.
- District Land Reform Offices conducts land rights awareness campaigns to educate those working and staying on farms on the promotion and protection of their land rights including their rights to permanent security of tenure. They also publicise a toll free number for farm dwellers to all land rights violations, evictions and human rights abuses.
- Once the ESTA Amendment Act proclamation is signed into effectiveness, estimated to be October 2022, it would give effect to the establishment of the Land Rights Management Council (LRMC) and Boards which will, amongst others, monitor evictions.

Whilst these initiatives were welcomed, the Portfolio Committees were concerned about the effectiveness of their strategies. Evidence from the public hearings and some stakeholders including government agencies such as the CCMA had shown that some of these initiatives exist only on paper. They called for more intergovernmental collaboration as well as coordination and partnerships with civil society to address these issues.

5.2 Security of tenure and rural livelihoods for farm dweller communities

The positive land rights provided in Section 25 of the Constitution (equitable access to land/redistribution, tenure security and restitution) creates a legal basis for land reform, including land tenure security on farms. Both ESTA and LTA have redistributive components; ESTA provides for on and off-farm settlements whereas the LTA makes provision for labour tenants to acquire land. The legislation enjoins Parliament to vote funds that will make it possible to realise these legislative provisions, in particular section 4 of ESTA and section 17 of LTA.

5.2.1 Secure access to land

By March 2022, there were about 1021 farms to the extent of 794 698 acquired by the DALRRD for farm dwellers and labour tenants. These farms are home to over 209 852 individuals of which 39 404 are women and 13604 are youth and 498 are people with disabilities. Whilst there are a range of challenges with access to land and faster pace of purchase and registration of land, there were cases that demonstrated what could be achieved in the event that the programme is ramped up; some of those observations can be summarised as follows:

- Paardeplaats and Rietfontein housing project (Nkangala District Municipality, Mpumalanga) for farm dwellers has resulted in secure tenure for labour tenants' families, living with no threat of eviction.
- There are often delays between approval of the project and transfer of the farm to a legal entity chosen by the beneficiaries. In both Paardeplaats and Rietfontein, the farms approved in 2014/15 had not been transferred to Mtsweni-Letswalo and Siphumele CPAs respectively.
- Acquisition of land is but one aspect of securing tenure. As the case of Hadebe families, living at the Entombe Community Hall, Mkhondo Local Municipality since eviction on 6th November 2012 it is vitally important to ensure that the needs of families are catered for. Otherwise farms and building might become white elephants when the intended beneficiaries reject them.

The Committee noted that previous enquiries by the SAHRC revealed that Section 4 subsidies were not being awarded. During the term of this project, the Committees requested the Department to present reports on ESTA's section 4 application and related subsidies and the LTA approved applications together with budgets and expenditure. The Department was not in a position to separate the two, citing their budget system. As it stands, the Committee could not make a determination with regard to effectiveness of Section 4 of ESTA. The Department was requested to further provide such information. It corroborates the findings by other entities (SAHRC, Parliamentary HLP as well as the Presidential Advisory High Level Pane) on the unavailability of reliable data as a basis to assess the performance of the land reform programme and implementation of legislation.

Some of the proposals received can be summed up as follows:

- Government must consider using available and well-located state and public land (including commonages) to address the tenure and livelihoods need of farm dwellers, especially those that have been unwillingly driven off the farms.
- Land policy, in particular the beneficiary selection policy must prioritise farm dwellers living on the land, sometimes farming in their own right rather than bringing people from elsewhere and creating tensions among the long-term occupiers/labour tenants and PLAS beneficiaries.
- There must be a proactive and deliberate programme to implement Section 4 of the ESTA Act which clear process for triggering Section 4 process in order to attain long-term tenure security.

5.2.2 Livelihoods activities and food security

Apart from tenure as well as safety and security, farm dwellers' livelihoods and food security is another major concern. It generally accepted that livelihoods concern the capabilities, assets and activities required for people to earn money and secure a means of living whilst food security is attained when people have physical and economic access at all times to produce, buy, obtain or consume sufficient, safe and nutritious food to meet their dietary need and food preference. Secure access to land, as an important physical asset, and complementary support services to aid farm dwellers skills and knowledge about faming (capabilities) can play an important role in strengthening livelihood activities (subsistence farming and entrepreneurship) to improving food security for farm dwellers.

In similar strands, the oversight visits to farm dweller households also demonstrated that farm dweller livelihoods are characterised by multiplicity of activities, such as own farm production and consumption (mostly cattle farming), off-farm employment (wage earning activities away from the farm in which they reside, could be employment on neighbouring farm), and non-farm employment (i.e. non-agricultural activities such as setting up spaza shops, selling airtime, transport to and from town). Part of constructive evictions is putting a limit or prohibiting these livelihood activities to an extent that farm dwellers are compelled to leave the farm against their will. As some put it to the delegation by a stakeholder in Du Doorns, "*youth do not want to leave farms, they want to be able to make a living and still be able to come home on farms where their ancestors have been buried and generations within the family have lived*". Farm

workers have called on government not to make them “choose between land and jobs”, suggesting that these are all important aspects of livelihoods.

What happens when farm workers, farm dwellers and labour tenants are successfully allocated their own land? Experiences from Dubulamanzi (Northern Cape), Paardeplaats (Mpumalanga), Beatrix (North-West), Mengame CPA (KwaZulu-Natal) are useful in making some points about land and livelihoods. The following summarises observations:

- Labour tenant application finalised without taking into consideration of the need for productive use of land as the case of Mengame demonstrates. Despite the youthful population and their keen interest in farming and other non-farm activities, they lack access to capital and capacity to meet input costs.
- There is a clear lack of coordination of various branches within the Department. For example, land acquisition takes place yet infrastructure development, agricultural extension, and enterprise development are nowhere to be found. By their location, and levels of education as well as networks, farm dwellers end up sitting with a productive asset that does not improve their lives (see Beatrix Farm in NW and Mengame in KZN in annexures).
- Some land redistribution programmes are not effectively implemented and monitored to ensure that the benefits actually accrue to the farm workers or farm dwellers that have been given land. For example, the Dabulamanzi Project (See Annexure 1, pg.#: Dubulamanzi Farm in NC) near Bloemhof, which seems to benefit the farmer, who is also a mentor rather than the farm workers for which the farm was bought.
- There is a lack of monitoring of share equity schemes, strategic partnerships, ‘50/50’projects or any other form of empowerment schemes to ensure that farm worker are fully empowered and capacitated to understand the totality of the enterprises they are shareholders of. Capacity building includes private sector initiatives where government has not played any role. The DALRRD should consider conducting a quick survey of all schemes so that support is provided in terms of capacity building and ensuring that there is productivity as well as benefit sharing.

5.3 Safety and Security

Section 3 of this report introduced Rural Safety Strategy and the Rural Safety Plan and demonstrated the extent to which they have been implemented. No platform of engagement between farm dwellers and farm owners to resolve issues which may escalate to crime and violence including for example arson, malicious damage to property on farms and assault of farm workers or farm dwellers.

5.3.1 Stock theft

Operations Buyisi Nkomo and Gcina Imvelo started in 2021/2022 and extended to 2022/2023 are key initiatives for policing of the outlets relating to livestock and wildlife. Policing is mostly prominent in at auctions, feedlots, abattoirs, and taxidermists. SAPS also established Stock Theft Information Centres (STIC's) and Provincial Biodiversity Investigators Forums (PBIFs). The Portfolio Committees noted that much intervention was at institutional level with structures and campaigns. However, the success of these initiatives is yet to be seen. Nonetheless, some of the observations with regard to stock theft as follows:

- Comparing 2021/22 and 2022/23, there has been a slight drop in the number of stock theft incidents from 25 826 to 24 533.
- The recovery rate for the similar year also decline in the number of livestock that could not be found, from 2959 (2021/22) to 2688 (2021/22).

The Committees noted that the campaigns are, although in their infant stages, are showing signs of positive impact. The concern was that recovery of livestock in cross border cases is a costly exercise which sometimes does not make economic sense pursue because the value of livestock is sometimes way less that the cost of the recovery programme. Members of the two Committees asserted that it is vitally important that SAPS improve its visibility to ensure protection of assets of farmers, both large-scale and smallholder farmers. At the time of the oversight visit, the Committees noted that the relevant legislation (Animal Identification Act (Act 6 of 2002), Stock Theft Act (Act 57 of 1958) and Game Theft Act (Act 105 of 1991) require implementation especially branding, acquisition and transportation.

5.3.2 Farm attacks

According to SAPS, farm attacks is a general term used to refer to all criminal activities on farms. It includes robbery in residential areas, theft of vehicles, murder and attempted murder, rape, common assault with GBH, rape and stock theft. Having listened to stakeholders, SAPS presentation and oral submissions (detailed in annexures), key issues with regard to farm attacks can be summed as follows:

- Increase in incidents of farm attacks (all matters) from 390 in 2019 to 545 in 2021/22 was a concerning trend. Similarly, incidents of murder increased from 31 in 2019, then 46 in 2020/21 but dropped to 40 in 2021/22. However, it is still higher than the 2019 incidents.
- Of all the 586 incidents of farm attacks recorded between April and December 2021, about 38% (or 208) involved employees, 18% (or 106) involved farmers, and 4% (23) involved owners. A further 34% (201) involved a category referred to by SAPS as occupants.
- Limpopo Province has the highest number of incidents, i.e. 126, followed by Gauteng with 97, then Eastern Cape with 90 incidents.

Statistics presented showed that farm attacks affected both property owners and employees or occupants equally. Of great concern was that despite the Rural Safety Strategy and related plans, there was still an increase in farm attacks generally.

5.3.3 Private security companies and rural safety

In Mpumalanga, Eastern Cape and KwaZulu-Natal, there is an increase in the use of private security. Members of the Committees expressed concern with regard to private security firms, without any legal mandate, carrying out arrests and harassing private citizens, even in their own homes. As demonstrated by the case of the Ndlazi Family in Kwazulu-Natal, private security firm and SAPS went in to their homes with the property owner, assaulted elderly women and children, damaged property. There are allegations that SAPS (local areas) are often taking instructions from land owners; for example, the Kanoneiland/Canon Island Farm in Northern Cape, and private security companies. In most cases, such interventions emanate from land rights disputes and attempts to evict families of farm dwellers or labour tenants from farms. Some of the cases referred to the committee are as follows:

- Brutalisation of citizens when they are found on public roads by private security
- Impounding of livestock on allegations of trespassing (these are often disputes about legally protected land tenure rights of occupiers or labour tenants).
- Refusal to open cases brought by occupiers or labour tenants. When cases are opened, SAPS does not investigate, resulting in lack of prosecution of abusive land owners.

5.4 Basic services (Housing, water and electricity)

Despite legal requirement of municipalities to provide basic services to occupiers and labour tenants on privately owned farms, municipalities still use excuses that they cannot install infrastructure on privately owned property without consent. This is despite the court judgement (Pietermaritzburg) which quite clearly clarified this question.

Lack of access to adequate housing for many farmworkers. Members welcomed the policy provisions which allows the Department of Human Settlements to make grants available to improve the dwellings and homes on farms. However, DHS believes it is still limited by the private property rights which limits the extent to which government can make intervention. Further, the Subdivision of Agricultural Land laws (pre-1994) has not been repealed yet, and thus makes it difficult for the Department to move with speed to address housing needs.

Provision of emergency housing in some instances becomes a norm and farm dwellers continue to live under such bad conditions without water and sanitation services (Kanoneiland Farm in Northern Cape, and Sannieshof in North-West.

6. Key conclusions

In line with the NA resolution, the joint oversight framework agreed to by the Portfolio Committees at the inception of the project asked the following questions: (i) Why are there farm evictions and human rights violations on farms despite legislation that sought to protect tenure rights?; (ii) how have government initiatives to provide security of tenure and improve the rural livelihoods of farm dweller communities fared to date?; (iii) how the agricultural sector, its production and employment dynamics, contribute to the improvement of the socio-economic conditions on farms?; and (iv) what are the safety and security concerns in farming communities and how has government responded to these concerns? On the basis of these

questions and the discussion in the preceding section, the conclusions of this report can be summarised as follows:

6.1 Problem identification and remedial actions/recommendations proposed by the SAHRC (relevant enquiries), the Parliamentary High Level Panel to Assess the Impact of Legislation and Fundamental Change, and the Presidential Advisory Panel on Land Reform and Agriculture demonstrated the State's capacity to review and produce plans. It is, however, a lack of evidence of the implementation of the recommendations from these reports which contributes to continued violation of farm dwellers/labour tenants' land and human rights.

6.2 Inadequate institutional capacity to monitor and respond to threats of evictions as well as actual evictions could be among the principal factors that underlie most of the illegal evictions. Institutional weaknesses can be observed in the collapse of intergovernmental coordination forums (at least in practice) and their responses to evictions. Useful capacity in SAPS, CCMA, DEL, DHS, DoJ&CD, DSD, DCoG and Municipalities has not been fully coordinated, hence farm dwellers find themselves living along the roadsides after evictions or spending over a year or two living in emergency shelters without water and electricity, living in community halls for over almost 10 years after evictions, going to court without legal representation, and Magistrate Courts granting eviction orders without probation reports or not subjecting their orders to a review by the Land Claims Court.

6.3 The allegations that police officers at local police stations often refuse to open cases of illegal evictions from farms as criminal cases, and lack of prosecution in the event that such cases are opened points to weak or almost absent training programme for law enforcement agencies on ESTA and LTA. Despite the issuance of the National Instruction 7/2017 by SAPS clarifying that farm evictions and illegal evictions are criminal offences in line with ESTA, oral submissions to the committees about officers telling then farms are 'the farmer's property and farm dwellers ought to leave' shows lack of understanding of local level legally protected land rights. What appears as trespassing at face value could be complex contestations of legally protected land tenure rights of farm dwellers/occupiers or labour tenants. Registration of all rights on farms,

especially farm dwellers and labour tenants, could strengthen tenure rights of farm dwellers.

6.4 Legislative gaps in ESTA and LTA have resulted in evictions which often leave occupiers homeless for a range of reasons; including, lack of safeguards to limit the risk of homelessness when evictions are granted, failure of courts to satisfy itself about alternative accommodation prior to evictions, and lacking consideration of probation reports in cases. In addition, legislative gaps have resulted in widows/spouses, children of long-term occupiers being evicted after the death of the husband or parents or when long-term occupiers stop working for the landowner.

6.5 Provision of equitable access to land through section 17 of LTA, and related limitations set out in the legislation means that majority of farm dwellers, including labour tenants, cannot apply for acquisition of the land that they occupy in terms of LTA. The closing date on 31 March 2001 excludes many of them who would have wished to apply. Similarly, Section 4 of ESTA has limitations in that it mostly triggered by evictions, rather than a proactive programmatic approach to acquire land to secure their tenure. The impact of Section 4 of ESTA could not be assessed due to absence of specific information or data about farms acquired in terms of Section 4 of ESTA.

6.6 The appointment of the Special Master of Labour Tenants at the Land Claims Court, although done at the insistence of the Land Claims Court, is a welcome initiative that is likely to assist processing all labour tenants' application. However, the fact that the DALRRD could not present to Parliament a specific budget and expenditure report for the Special Master's Implementation Plan raises concerns with regard to availability of resources and prioritisation of the settlement of labour tenants' claims. Failure to speedily resolve all the applications means that labour tenants would continue living under precarious tenure conditions.

6.7 Lease of PLAS farms to emerging farmers without verifying the number of farm dwellers or labour tenants on farms leads to tensions and conflicts between emerging farmers and labour tenants or farm dwellers already living on the farm in some cases as long-term occupiers. As some emerging farmers have reported, it also contributes to failure of emerging farmers as they had to contend with difficulties of managing large number of

people who are not in their employment. In similar veins, farm dwellers/labour tenants attribute the neglect and/or non-prioritisation of their land needs to corruption and nepotism by government officials. Given the new beneficiary selection policy, the Portfolio Committees were of the view that the DALRRD would begin to prioritise those work live on, and work, the land rather than lessee part-time farmers.

6.8 Equity schemes have been touted as a success story for collaboration of private sector in land reform, yet in most cases visited by the Portfolio Committee, they did not have full understanding of the operations of the enterprises. Some of them informed the delegation that they have never received dividends from the businesses, did not know or understand their equity share, role and responsibilities hence some of them continued as farm workers. The Portfolio Committees attribute the state of affairs to lack of capacity building and empowerment programmes by the schemes or government and weak or lack of government oversight of these schemes.

6.9 Acquisition of land and transfer to farm dwellers/farmworkers/labour tenants without complimentary programme for development support that improve their livelihoods limits the success rate of land reform farms. Failure of beneficiaries (labour tenants and farm dwellers particularly) to use land productively can be attributed to the failure of the Department to coordinate various units/branches to provide needed support on farms, as well as failure to trigger intergovernmental collaboration for maximum support to communities. Whilst the District Development Model has been touted as a solution to the challenges, the land reform farms visited did not demonstrate how DDM was being implemented. If anything, branches of the DALRRD were operating in silos.

6.10 Limited funding for the programme of tenure security, including redistributive aspects of ESTA and LTA, has constrained efforts to build the necessary human resources capacity and acquisition of land for redistribution to the farm dwellers/labour tenants with the urgency it deserves. Whilst there is not adequate budget, failure to show budget for LTA applications may explain the slow pace with which the settlement of applications has taken place.

6.11 Municipalities have not yet internalised that they are obliged to provide basic services to occupiers/labour tenants living in farmers, hence the Committees heard many people

complaining about lack of access to water and electricity. The Pietermaritzburg judgement presents an opportunity for municipalities to reflect and integrate within their plans service delivery to farm dwellers/labour tenants/farmworkers' homes on private farms.

6.12 High-levels of crime in rural areas have resulted in proliferation of private security companies in farming communities. Land owners who are involved in land tenure disputes appear to use private security companies to brutalise farm dwellers by conducting raids and evicting people from farms. Lack of response when farm dwellers report cases of harassment and abuse have created an impression that SAPS and private security companies collaborate in the harassment of citizens in their own homes and public spaces. Rural Safety Strategy and Rural Safety Plans are a welcome initiative which could improve security in farming areas if implemented and resourced accordingly, thus closing the space that private security companies have occupied.

With regard to employment and labour dynamics, the Portfolio Committees concludes that -

6.13 Despite observations about the state of dwellings or houses provided by the farmer/employer on farms, as well as the hostel-type accommodation and the number of people living in one room, provision of water and electricity and the general state of the dwelling, inspectors cannot make any finding or issue enforcement orders because the dwellings are not covered under the OHSA. Noting the High Court of South Africa, Gauteng Division (Pretoria) decision on the Mahlangu matter, where exclusion of domestic workers employed in private households as employees was found unconstitutional, it is necessary to explore the inclusion of private dwellings on private farms under OHSA.

6.14 Most of the casual workers being brought on farms do not have homes of their own on the same farms. Some of them live in nearby townships or villages whereas on some farms they live in hostels for the duration of the contracts. In some cases, a total of 10 to 20 people share a hostel room without any form of privacy, enough room to move around or for proper ventilation.

6.15 The absence of any retirement plans for farm workers results in them being exploited to the extent that they leave working once they are not able to do anything. Further, they are subject to evictions once they are no longer in the employ of the farmer. There must be mechanisms to assist farm workers to attain a decent livelihood after employment on farms

6.16 Absence of statistics of labour brokers in the DEL means that they are able to operate without any form of accountability or regulation. It thus results in the possibility of abuse of farm workers and subjecting them to precarious working conditions.

6.17 The low levels of literacy on farms continue to affect how farms benefit from labour laws, and comply with safety signs on farms. This results in unwarranted injuries and exploitations on farms.

6.18 Farm owners and/or farm managers continue to show hostility towards organised labour by denying access to trade unions on farms. They also view their farms as private properties where access is controlled due to prevalent incidents of violent crime in farming areas.

7. Recommendations

Having concluded the joint oversight activities, the Portfolio Committees on Employment and Labour, and Agriculture, Land Reform and Rural Development recommends to the National Assembly that -

7.1 The House endorses the relevant findings and recommendations of the Parliamentary High Level Panel insofar as it relates farm tenure security and its proposals for legislative amendment as well as implementation of land tenure policies. Similar findings and recommendations are also contained in the Presidential Advisory Panel. Therefore**, the Minister of Agriculture, Land Reform and Rural Development** should develop a time bound action plan on the implementation of the relevant recommendations of the Parliamentary HLP and the Presidential Advisory Panel together with the minority report insofar as it addresses tenure reform on farms.

The **Minister of Agriculture, Land Reform and Rural Development** should also consider -

7.2 Ensuring that the DALRRD should, in its development of a 'fit-for-purpose' structure, revisits establishment of positions to focus on land tenure security on farms similar to erstwhile ESTA officers whose responsibilities would be to monitor and make interventions in eviction matters, information dissemination, capacity building, and coordination of services for farm workers. The Minister must also submit a component of the structure as it relates to farm tenure security on farms.

7.3 Sections 8(2) – (5); Sections 9(2) and (3) and Section 15 of ESTA must be amended as articulated in Table 32 of this report. The amendments should provide for –

7.3.1 Safeguards or limits against the risks of homelessness when immediate eviction is granted;

7.3.2 A requirement for a court to satisfy itself with regard to an available alternative accommodation prior to an eviction order being granted; and that the municipality will provide alternative accommodation to an occupier facing eviction;

7.3.3 Mandatory requirement of probation reports to any Court hearing eviction cases;

7.3.4 Strengthening of Sections 8(2), (3) and (4) of ESTA for stronger tenure rights protection, especially protections for women and children who are survivors of an occupier who falls within section 8(4) of ESTA; and

7.3.5 Protections for a spouse(s) and children of long-term occupiers by considering defining, amongst other issues for amendment, who the 'dependents' are.

7.4 Ensuring that the DALRRD consider developing a programmatic approach that triggers proactive application of Section 4 of ESTA and not be reactive to evictions. Similarly, explore mechanisms which enable labour tenants who wished missed out on an opportunity to submit applications to be assisted to acquire land and secure their land tenure rights.

7.5 Expropriating land or portions of land which labour tenants are entitled to. Further take into consideration of the legal protections of tenure rights on such land and that the landowner may not be using the land and will never use the land as long as labour tenants are on that land; therefore, notions of just and equitable compensation that may include a Nil value should be explored.

7.6 Submitting a budget and expenditure report to date with regard to the Special Master of Labour Tenants Implementation Plan and expenditure on budget allocation for awards to be made in terms of LTA. The budget must be disaggregated from the general tenure reform allocation in order to ascertain the priority accorded to the settlement of labour tenant applications. Further, submit quarterly progress reports on the same Implementation Plan, detailing how the challenges that have been identified were being overcome. Priority should also be given to clearing backlogs on targets set for finalisation of labour tenant applications in 2021/22 and 2022/23.

7.7 Ensuring that budget considerations that must be made for ESTA and LTA must give due consideration to the precarity of their tenure rights, their marginal place in our Society as well as a need to prioritise their development and improvement of their socio-economic conditions. The DALRRD must also submit a report indicating how the DDM can assist in the development and improvement of the living conditions on farms. Specifically present the DDM plans for farm dwellers in the districts where the DDM is being implemented.

7.8 Making it a requirement that when PLAS farms are acquired for lease to emerging farmers, farm occupiers or labour tenants already on the same land with potential to farm it successfully must be given first preference and supported rather than bringing in farmers from elsewhere which in turn result in tensions between the occupiers and PLAS tenants.

7.9 Developing a programme and enhance capacity to monitor strategic partnerships, mentorship and share equity schemes involving farmworkers and labour tenants with particular attention given to capacity building, shareholding (including profit sharing) and governance of the enterprises.

7.10 Conducting a survey of all farms given to farm dwellers in broad terms under ESTA, LTA or PLAS, assessing the nature and condition of land use, viability of production, and conduct further needs analysis for ongoing development support. Further, submit a report of the survey with a costed intervention plan for each farm (or an area/district-based approach) to increase production and sustain land use. Development support should also give due regard to infrastructure development, operational and production support, as well as farm-level institutional arrangements and not only CPA compliance requirements.

7.11 As a coordinator and facilitator for rural development, and in collaboration with the Minister of Cooperative Governance and Traditional Affairs, ensure that the DALRRD strengthen the implementation of rural development programmes targeting farm dwellers. Further draw on the District Development Model interventions and the Intergovernmental Relations (IGR) Framework to coordinate integrated development that improves living conditions on farms. Lack of IGR and deficient implementation of legislative prescripts manifested in the lack of tenure security, basic services and infrastructure in farming areas as well as the numerous labour related challenges across the areas visited. As farming areas are categorised as rural areas, the Minister should further ensure that farm dwellers are prioritised under the DALRRD's Rural Development Programme.

The **Minister of Police** should -

7.12 Ensure that SAPS issues a revised National Instruction that clearly articulates that any violation of land tenure rights on farms is a criminal offence in terms of ESTA; and further ensure that Police Stations serving rural and farming areas in particular must be trained land tenure rights legislation and policies. The National Instruction must also articulate the precarity of tenure on farms and caution of treating all land tenure disputes as trespass because some are not.

7.13 Ensure training of Police Officers on ESTA and LTA in general, especially those working in farming areas (rural and urban-rural mix police stations) insofar as land tenure related criminal actions are concerned and the expected response of law enforcement officers. The Minister must submit a report of all cases of evictions and human rights abuses on

farms, including livestock impounding, that have been reported in both rural and rural-urban mix police stations across South Africa, and further provide status update with regard to each case.

7.14 In liaison with other relevant Ministries and interested parties or stakeholders, review the regulatory framework for private security companies operating in farming areas and ensure that there is strict monitoring of their operations so that they do not become a law unto themselves, terrorising and brutalising private citizens in public spaces and in their homes.

The **Minister of Employment and Labour** should consider -

7.15 Amending the OHSA to provide that the Act be made applicable to private dwellings or accommodation provided by farmers/farm owners, or for those dwellings to be regarded as a workplace for the purpose of OHSA inspections;

7.16 Developing mechanisms to regulate the number of farm workers that may share a room/hostel room on a farm in order to ensure that an acceptable number of farm workers can live in a safe and comfortable place with human dignity and privacy that each individual need.

7.17 Reviewing the Sectoral Determination 13 to introduce provisions for a retirement financial product (retirement or provident fund) targeted at farmworkers. Further, conduct a comprehensive study and analysis of the circumstances must be taken into consideration so that the best suitable product can be developed.

7.18 Enhancing mechanism to regulate labour brokers, develop a credible database of labour brokers operating in farming areas, with a number of employees, types of contract, compliance of companies and labour brokers with all labour legislation. Further, produce annual reports about the impact of labour brokers on the working and living conditions on farms.

7.19 In line with the District Development Model, coordinate with the Ministers of Agriculture, Land Reform and Rural Development, Cooperative Governance, Police and

Employment to improve the delivery of services, particularly information dissemination, campaigns, training in farming communities in respect of land tenure and labour laws, as well as legal protections available to victims of violation labour and tenure rights.

7.20 Ensure that the Department of Employment and Labour must conduct regular training on labour legislation and the rights and obligations of farm workers and farm owners/managers; and the training must be extended to farmer organisations (unions and associations) and be effective with tangible outcomes with regard to unionisation and decent work in farming areas.

7.21 Together with the Minister of Home Affairs, the Minister of Agriculture, Land Reform and Rural Development, coordinate campaigns and interventions alongside improvement of border management to ensure that all farms are encouraged to follow legislation with regard to employment of undocumented foreign nationals. After information campaigns, the Ministers should further conduct inspections and enforcement of the relevant legislation and policies.

7.22 Enhance policies and programmes to foster culture of compliance with EEA insofar as employment of undocumented foreign nationals is concerned, especially the unskilled jobs that could have been done by any South African of a working age.

The **Minister of Social Development** should –

7.23 Together with the Minister of Basic Education and the Minister of Women, Youth and People with Disabilities, conduct a survey on food and nutrition levels among children in farming communities. Further, develop a programme that promote and provides nutritious food to the children of the needy indigent households in farming communities in order to ensure that children on farms are well fed and nourished;

7.24 Conduct an evaluation of the implementation of the Food and Nutrition Security Plan for South Africa (2018-2023), giving special attention to the programme reach to some of the most vulnerable groups such as communities living on commercial farms;

7.25 Submit to Parliament a comprehensive report on the implementation of the Food and Nutrition Security Plan for South Africa (2018-2023). The report should also indicate the annual budget allocation for the plan and expenditure; and

7.26 Assess the DSD's reach of social services on farms, especially programmes and interventions targeting alcohol and substance abuse on farms, gender-based violence, social impact of HIV/AIDs on children on farms; effects of evictions on children and support services provided after evictions.

The **Minister of Cooperative Governance and Traditional Affairs** should –

7.27 Taking into consideration of the Mwelase Court Order, enhance mechanisms, in both policy and practice, to ensure that municipalities produce plans regarding provision of services to all citizens living on privately owned land, i.e. farm dwellers and labour tenants to be specific.

Minister of Human Settlements should -

7.28 Designing programmes and projects that could result in fast-tracking the eradication of mud houses on farms and collaboration with farm owners to increasing registration of farm dwellers on the need register. Further, developing and submitting to Parliament a costed implementation plan of housing development in line with the Needs Register in order to improve living conditions.

Unless otherwise indicated, all responses to the above recommendations should be submitted to the National Assembly by no later than 3 months after the adoption of this report by the National Assembly.

Report to be considered.

ANNEXURE 1

OVERVIEW OF PROVINCIAL VISITS INCLUDING THE COMMITTEES' ENGAGEMENTS DURING THE OVERSIGHT VISITS

CONTENTS

Page

Eastern Cape…… 3

Free State……13

Gauteng.……. 23

KwaZulu-Natal……...33

Limpopo …….51

Mpumalanga…….....53

Northern Cape……56

North West…….67

Western Cape…….72

EASTERN CAPE: 22-24 JULY 2022

DAY 1: 22 July 2022

2.1 Stakeholder Engagement

The delegation to EC held a stakeholder meeting to gain insights into the living and working conditions in the farming communities of the Eastern Cape Province. The Committees received presentations from Agri Eastern Cape (AgriEC), Elunweleni Community Forum (ECOFO), Eastern Cape Agricultural Research Project (ECARP), Khanyisa Education and Development Trust, COSATU, SACTWU and SACCAWU.

2.1.1 Agri Eastern Cape (AgriEC) – Mr Brent McNamara (CEO of AgriEC)

AgriEC is an affiliate of AgriSA, which is a non-profit organisation that is self-funded and its primary purpose is to lobby and engage with stakeholders to create a conducive environment for agricultural development. Its membership in the province is just over 3 000, primarily commercial farmers where the AgriSA membership is approximately 15 000. Commercial farmers' primary source of income is agriculture; there are about 4 000 medium to large-scale farmers, 32 000 small-scale commercial farmers and over 500 000 subsistence farmers and of that, AgriEC represents about 70% of the medium and large-scale sector. The organisation does not condone non-compliance with any labour legislation or policies, and it always advocates for fair labour practices. It is cognisant of the fact that in any sector there would be a fringe element that does not comply and as an organisation they could not answer for those.

Through AgriSA, AgriEC is also a signatory to the Agriculture and Agroprocessing Master Plan (AAMP). They have agreed to strive towards a globally competitive agricultural and agro sector, support market oriented related and inclusive production to develop rural economies, ensure food security and create decent and inclusive employment entrepreneurship opportunities for all participants in agriculture and the value chain. They are in agreement with the AAMP strategic objective to create decent growing and inclusive employment, improving working conditions of fair wages in the sector, and to improve safety of farming community to reduce stock and crop theft and farm attacks. The responsibility of the employer/farmer is fair wages and good working or living conditions, however, employee/worker also have the responsibility to be productive, responsible and to have a good work ethic.

AgriEC also highlighted some of the challenges. The officials of DALRRD are not accessible to farmers; farmers are affected significantly by farm attacks and stock theft, which cost farmers about R2 billion a year; input costs have increased significantly in the past year; for example, fertilisers have increased by 200% and fuel by 46%. AgriEC appealed to Government to play a role and assist farmers, particularly in the extensive livestock sector, who earn less than R1 million turnover who would love to improve the conditions of their employees but cannot. The AgriEC's point of departure is legislation. In the event that its members do not comply with legislation they are forced to or expelled from the organisation; and in some cases, they leave of their own accord.

2.1.2 Elunweleni Community Forum (ECOFO) – Mr Amos Magadla

The Elunweleni Community Forum (ECOFO) was established in 2012 in Cathcart to counter the ill-treatment of farm workers/dwellers by farmers around Unwele. The organisation reported that was still prevalence of unlawful evictions and denial of access to family graves on farms. Despite minimal improvements, living conditions were still poor. Workers also pay rental for housing to farmers. There a new trend of hiring private security companies in Cathcart to operate on farms. The security companies were being used to assault and torture farm workers and farm dwellers. These challenges could be resolved if farm dwellers and farm workers were assisted by resolving their land claims or giving them the land to secure their tenure, especially those that were born on farms. The organisation also implored government to pay attention to the plight of labour tenants whose claims have not been given priority attention as compared to restitution.

Whilst commending the DALRRD for attention to restitution claims, it also advocated for capacity building of farming communities on labour and land legislation and policies. It also proposed that there could be partnerships or collaboration with NPOs who could carrying out the capacity building programmes because they were much closer to the people. The organisation does report some of the assault cases to law enforcement authorities including CCMA and sometimes also ask DALRRD (East London PSSC) to engage the employer. Farm workers were also not willing to report cases or come out openly for far of victimisation or expelled from work or being evicted. For similar reasons, they also fear to join workers' unions.

2.1.3 Eastern Cape Agricultural Research Project (ECARP) – Dr Lali Naidoot

ECARP largely works with farm workers, farm dwellers and small-scale farmers in the Amathole District. Cumulative data collected by ECARP over the years shows that although there are improvements since 1994, there were still gaps in decent working conditions across the sector. It emphasised the need to understand the international trade conditions – exporting countries/institutions and primary producers; and the labour market – the relationships and power relations between employers and workers. When discussing issues of farm workers, farm dwellers and small-scale farmers, ECARP also highlighted the need to take into account social production (e.g. the adequacy of social grants and work of relevant SETAs); regulations and institutional arrangements in the labour market; as well as the review and assessment of labour and tenure laws.

It highlighted that the Eastern Cape is diverse in terms of agricultural production, therefore, has different labour demands. The variation causes divisions and differentiation among workers. It has a segmented labour market in terms of gender and races. Agriculture is mostly low skilled, largely unorganised and pays low wages. Due to lack of collective bargaining and negotiations on wages, the minimum wage ends up being a maximum wage even for some employers who can afford more. Although there are employers that pay their workers higher than the minimum wage, women and seasonal workers hardly get anything higher than the minimum wages. The Kirkwood strike that started in April 2022 emanated from various issues that have been boiling in the area since 2016 and dialogues have not taken place. Neither party benefited from the strike, which could have been avoided had there been good dialogues and

labour relations between employers and workers. Labour needs to be treated as an essential resource in the agricultural sector and should be prioritised like production. ECARP also made an example of evictions at Glenbooi Farm in Committees Drift – owned by a Canadian who is not complying to ESTA and Labour legislation. It highlighted the need to review the implementation of the Labour Relations Act and other relevant legislation.

2.1.4 Khanyisa Education and Development Trust – Mr Simphiwe Dada

Khanyisa, an NGO based in Port Elizabeth, highlighted the issue of Equity Schemes that are not benefitting farm workers; they lack of transparency and do not pay dividends. For example, Endulini (Patensie) and Khangela Trust (Addo). It mentioned the prevalence of poor living and working conditions and constructive evictions in the Sarah Baartman District. It highlighted that CCMA offices in the District are understaffed due to budget cuts, which prolongs hearings and finalisation of cases. It mentioned a vigilante group called Amadlozi that is used by farmers in the Sundays River Valley to assault farm workers. There is even a case of a farm worker who was killed by the group. Use of poisonous and hazardous agricultural chemicals without protective gear. Some of the chemicals that are still being used in the country are banned in some countries, particularly in the EU where South Africa largely send agricultural exports.

2.1.5 COSATU – Mr Mkhawuleli Maleki (Provincial Secretary)

COSATU highlighted the difficulty in organising farm workers as unions are denied access to farms. It mentioned that employment of some of the workers is not guaranteed and dismissal is often followed by eviction. It also highlighted poor implementation of labour laws and lack of monitoring of the implementation of these laws and compliance by farmers. The situation is made worse by shortage of inspectors particularly the monitoring of minimum wage. Hours of work are not controlled and in some instances workers do not know their wages. It also highlighted lack of access to public basic services such as health facilities, social grants, SAPS, water, electricity, etc. and called for government intervention even if it's through mobile services. Transport was also reported as a serious challenge as farming communities are remotely located. Farm workers have to be transported by the same farmer to report his or her situation to the services such as SAPS. COSATU also emphasised the need for government to avail land for farm workers to ensure that they can build their own homes and be able to establish their own food gardens and keep livestock.

2.1.6 SACCAWU – Mr Simphiwe Valela

SACCAWU does not necessarily have much prevalence in farms but is mostly in the agroprocessing businesses such as abattoirs. It made mention of Sovereign Foods in Uitenhage, where the Union had to get an undercover journalist to document non-compliance to labour laws in the company. It also mentioned an egg farm in Ugie, where workers were observed having lunch in a horse stable.

2.1.7 SACTWU – Ms Nolukholo Mthongana

There are not many farms in Gqeberha so SACTWU in the District mostly organise in Cookhouse, Cradock, Graaf Reinet, Hankey, Patensie. Most employers refuse to allow Unions on their properties and intimidate Union Representatives with dogs. SACTWU reiterated issues that have been raised by COSATU and others in respect of access to basic services, poor living conditions of farm workers, labour laws issues that are being ignored by most farmers in respect of long hours of work, lack of protective clothing, non-compliance to minimum wage, employment of foreign nationals that are exploited by farmers and threatening of workers that join unions. SACTWU mentioned the following specific farms or businesses that do not comply with labour laws:

- Golden Valley Dairies (Cookhouse) owned by one family includes Leeway Farm, Dalvrug Dairy, Riverside Farm, Cookhouse Creamery. In the Cookhouse Creamery, despite being an agroprocessing facility, all the workers are categorised as general workers so that they can be paid the agricultural minimum wage.
- New Day Packing (Hankey) – employment of foreign nationals and transportation of workers on an open bakkie.
- Nuwelande (Patensie) – employment of foreign nationals and poor housing for which workers pay rent that gets deducted from their wages. If anything breaks down in the house, workers are told to fix it by themselves.

It also highlighted that Labour Inspectors sometimes fail the workers by not involving unions. Although Unions would have requested labour inspections on certain farms, when Labour Inspectors go to the farms to conduct the inspections, they do not inform or invite Union representatives.

2.2 Presentations by the Departments

2.2.1 Department of Agriculture, Land Reform and Rural Development (DALRRD)

The presentation from the Director for Tenure Reform from DALRRD's Provincial Shared Services Centre (PSSC) in the Eastern Cape, Ms Pheliwe Mntukatandwa, addressed following:

- The demographics of farm workers, farm dwellers and labour tenants in the country; the status quo regarding access to land or lack thereof; the state of land rights violations on farms; factors underlying evictions, mechanisms put in place to monitor evictions and mechanisms to defend the tenure rights of residents on farms.
- The presentation further outlined policy mechanisms to promote secure access to land by farm workers, farm dwellers and labour tenants; progress report regarding access to land by farm dwellers and tenants or people living on farms; summary of cases reported and proposals for policy and/or legislative amendments.
- It also highlighted the hotspot areas of evictions in the Eastern Cape Province, namely, Amathole and Sarah Baartman District Municipalities. The Great Kei at Amathole has the highest levels of evictions.

2.2.2 Department of Employment and Labour (DEL)

The presentation by the Chief Director for DEL's Provincial Operations in the Eastern Cape, Ms Nomfundo Douw-Jack can be summarised as follows:

- The results of the quarterly labour force survey; the performance of inspection and enforcement services; multi-disciplinary operations; reported incidents in the Province; employment equity inspection and planning and execution.
- The presentation further mentioned that most farm workers in the Province do not have protective clothing and are exposed to pesticides and other agricultural chemicals.
- The presentation concluded by providing an analysis of areas of non-compliance in the inspected areas of the agricultural sector in the Eastern Cape, which include non-payment of the minimum wage; non-provision of payslips and non-payment of overtime. It was reported that the Endulini Farm that was mentioned by one of the stakeholders has been referred for prosecution by DEL as it has failed to implement an Employment Equity Plan as required.

2.2.3 Department of Home Affairs

The presentation by the Director in the DHA's Eastern Cape Immigration Office, Mr Luyanda Mzalisi, can be summarised as follows:

- Prevalence of non-compliance with the Immigration Act and other legislation including joint operations that the DHA carries out with DEL. The Immigration Office carried 71 operations this year and in May, operations in Hankey resulted in many arrests. Of the arrests, 28 cases went to court and the illegal foreign nationals from Lesotho were successfully deported. In some cases, when the court makes a ruling, the illegal workers are given a 2 months' jail sentence or a R200 fine. As they generally opt for paying a fine, when they come out of the court, the DHA Immigration officials will be waiting to arrest them as they will still be non-compliant with the Immigration Act. In such cases, the Immigration Services has to apply for deportation.
- The presentation highlighted difficulties in successfully prosecuting farm owners for employing illegal foreign nationals as farmers will tell the officials that when they employed the workers, they had valid work permits.
- Another challenge that was highlighted was fraudulent work permits. The DHA now tells employers to always verify the validity of work permits with the DHA before employing foreign nationals. Most foreign nationals that are usually caught are from Lesotho, Zimbabwe and Malawi.

DAY 2: 23 July 2022

3. FARM VISITS AND PUBLIC HEARINGS

On the second day, the delegation visited the Vensterhoek Boerdery (Pty) Ltd and Nuwelande Farm in Patensie; and conducted public hearings at the Pink Huis Community Centre in Patensie.

3.1 Farm visits

3.1.1 Vensterhoek Boerdery (Pty) Ltd

The Vensterhoek Boerdery is located in Patensie under Kouga Local Municipality in the Sarah Baartman District and is owned by OJ Ferreira. Its primary activity is citrus farming, mainly oranges, naartjies and lemons for export. The farm uses manual labour and mechanisation; and exports to the European Union (EU), Middle East, China and Russia. Everything is done in-house after harvest and the farm has a Packing Division, which the delegation visited, from where fruit containers that are ready for export are packed. will be transported. There are 35 permanent employees in the farm (24 males and 11 females) that are moved seasonally between the orchards and the Packhouse. During the engagement on the farm, the farm manager assured the delegation that there were no foreign nationals among the employees. However, an inspection of the Register of Employees by Immigration Officials from the DHA revealed that 3 employees had passport numbers instead of ID numbers. The delegation was however, satisfied in the manner in which the farm complies with labour laws, promoting the culture of human rights and treating its workers with dignity.

The challenge that was reported by the farm manager was access to High School by farm workers' children as the school in Patensie has limited classrooms. As a result, learners are forced to go to school twice or 3 times a week and most end up dropping out of school. Some ask for part time jobs in the farm for the days that they are not at school.

3.1.2 Nuwelande Farm

The Nuwelande Farm is located in Patensie under Kouga Local Municipality in the Sarah Baartman District. Its primary activity is citrus production for export. It employs 138 employees (108 males and 30 females); and out of the 108 employees, 60 are foreign nationals from Zimbabwe. It was reported that they all have legal documents. The farm owner informed the delegation that as an exporter, he prefers to employ Zimbabweans for seasonal work as seasonal work needs to be done quickly and finished within a very short space of time. He said locals or South Africans do not want to work and are unreliable. During the engagements, one of the workers, who is a South African, reported that the farmer has disconnected her electricity and has also threatened to evict the family. This was prompted by the fact that her husband took paternity leave when she was due to give birth to their child. When the delegation was on its way to visit the workers' houses to assess living conditions, all the foreign nationals who work in the farm and live in those houses fled.

3.2 Public Hearings in Pink Huis (Patensie)

The Public Hearing was attended by members of the farming community from various farms around Hankey and Patensie including union representatives. During the public hearing, the following issues were raised:

- Constructive evictions, which become quite prevalent when a farm becomes under new ownership and/or when workers reach retirement age or are forced to retire. If they do not leave the farm, in some instances they are forced to pay rental of up to R2 200.

- Abuse of farm workers and farm dwellers, denial of access to family graves, damage to their assets during forced evictions.
- Employment of foreign nationals over locals.
- Non-compliance with labour laws in respect of UIF registration and payment, employment contracts, injury on duty, compensation for work injuries, provision of protective equipment and clothing.
- Prevalence of workers who got sick or died due to exposure to agricultural chemicals (e.g. pesticides) without PPEs; and who were never compensated.
- The need for advocacy and capacity building programmes on labour laws and ESTA as farm workers are not familiar with some of the laws.
- Lack of basic services for farm dwellers including poor housing.
- Lack of assistance from DEL when former farm workers or their next of kin enquire about UIF payments.
- The desperate need for agricultural land by young agricultural graduates and other unemployed youth who have the passion and skills to successfully make a living from agriculture; and to create employment opportunities for others.
- Registered small-scale farmers in the area struggling with assistance with business plans, mechanisation support, access to land and obtaining leases for the state farms or other government land that is available in the area. The farmers are struggling to survive and their livestock is suffering as they do not have grazing land.
- Unemployment rate in the area is very high, government is urged to provide people with land so that they can sustain themselves through agriculture.

DAY 3: 24 July 2022

4. FARM VISITS AND PUBLIC HEARINGS

On the third day, the delegation visited the Elton Farm under Amahlathi Local Municipality and Idlewind Farm under Great Kei Local Municipality in the Amathole District; and also conducted public hearings in Komga Town Hall.

4.1 Farm visits

4.1.1 Elton Farm

The Elton Farm is a livestock farm that is located in Stutterheim under Amahlathi Local Municipality. It is owned by Mr G Smith, who bought it in 2011 from the previous owner who was not using it. The farm is approximately 520 hectares (ha) in extent and has 1 300 pigs as the main business enterprise, and also 300 herd of cattle. Due to high levels of theft particularly of smallstock, there are a few sheep in the farm. The farm has 8 full time employees who are all locals and do not live on the farm. They live at nearby villages of Ndakana and Kei Road and have contract transport to and from work.

The previous owner left two families that lived in the farm and told them that the new owner will employ them, however, that was not stipulated in the agreement of sale. Sometime after the new owner has arrived in the farm, his wife was assaulted by an unknown man and he

decided to launch an eviction of the two families through his lawyers. However, the eviction did not go through the Land Claims Court as stipulated in ESTA, so it was deemed illegal and the farmer could not go through with it. The farm dwellers did not see eye to eye with the new owner as he required them to reduce the number of livestock to 4 cattle and a steer (no bulls), restricted the area they can use for their livestock and opened up the area they used as fields to his sheep.

Through various discussions with the farmer and the two families and as an intervention, the DALRRD offered the two families, who also did not get along with each other, alternative accommodation at Kei Road. The one family took the offer and left the farm while the other family that is currently fighting with the farmer refused to leave. The main reason being that the husband was born in the farm in 1960, so it is the new farm owner who must leave. The farm dweller family, represented by the wife, also indicated that her husband is deaf and so are two of their 3 sons, which was news to the farmer. It was further reported that the farmer denied them water as well as electricity connection by ESKOM as he does not want them staying in the farm permanently. The farmer explained that he was not aware of the promises that were made by the previous owner on his behalf to the farm dwellers. He further explained that ESKOM electricity from his farm is too weak and often trips when he plugs in more than 2 appliances from his house. Therefore, he is unable to provide electricity for the farm dwellers. He also reported that water availability, which is quite essential for pig farming, is a general challenge in the farm and he uses solar panels to pump water. When it gets overcast for 2-3 days, there will be no water in the farm. What makes matters worse, 6 months ago, some of his solar panels were stolen and they struggled for water.

There are a number of issues that the framer also raised that led to the breakdown of the relationship and trust between his family and the family of the farm dwellers. He mentioned that he gets along with the husband and wife but often clashes with the family's 3 adult sons who live but do not work in the farm. They have all finished school and one of them is working elsewhere; and their father is getting a SASSA grant while also employed elsewhere. The farmer also narrated various cases of livestock (cattle and sheep) theft in his farm by the farm dwellers, which he even proved through a DNA test but the Court did not rule in his favour as the family used a lawyer and a sangoma, which he was told, they paid with one of his heifers. The farmer reported that he is not planning to evict the family as he has no problem with the parents but the abuse his family has to endure at the hands of their sons is making the situation difficult.

The farmer played the delegation a Voice Note from one of the farm dwellers' sons who is using vulgar language swearing at the farmer and threatening to kill him should he steps out of his farm house.

4.1.2 Idlewind Farm

The farm is located in Kei Mouth and is a Brahman cattle breeding farm owned by Mr Miles Dicke. The delegation met with farm dwellers outside the gate of the small area of the farm that they reside in. The farm dwellers narrated their terrible living conditions and treatment they received at the hands of the farmer, who does not want them there. It was reported that

when he arrived in the farm and forcefully removed them from where they stayed before to the area they are currently in, he broke some of their furniture and burned their kraals. He took their livestock to the Pound and it has since been sold because they had nowhere to take it. They are unemployed and do not even have food gardens as the farmer will let his livestock graze on the gardens when they start some. The farmer denies them access to their family graves and does not allow them to practice their traditional rituals.

The Chief Director in the PSSC, Mr Zukile Pityi, reported that after some discussions with the farmer, Mr Miles Dicke and the farm dwellers, Mr Dicke offered to buy the farm dwellers another farm nearby, which he did. The farm's potential was assessed and an environmental impact assessment (EIA) was done and approved for an area that will be suitable for settlement. A funding application for housing was submitted to the National Department and an amount of R32 million was approved for building decent houses for the farm dwellers in the new property. The project was delayed as the Department experienced challenges with the contractor and Mr Pityi gave an assurance that their houses will be built before the end of the year.

During the engagements with the delegation, some of the farm dwellers told the delegation that they do not want to go to the new farm and leave their forefathers' graves. However, one of the farm dwellers intervened and mentioned that not all of them do not want to leave. Besides, when the idea of the alternative farm was first raised, they have all agreed to move, hence the Department going ahead to build houses.

4.2 Public Hearings at Komga Town Hall

The Public Hearing was attended by a large number of members of the farming community from Ntushuntushu, Roseday, Murrayfield, KwaSambuku, Krysman, Gable, Hartland, Wilderness (Bulurha) and Khayalabantu and other surrounding farms, including Councillors from Wards and the District. During the public hearing, the farming community members in the area raised the following issues:

- Prevalence of illegal evictions including constructive evictions in the area; and the need for government assistance when farm dwellers are evicted as they often have nowhere else to go.
- Deplorable living conditions of farm dwellers – lack of water and electricity, poor housing, lack of road infrastructure, which makes it a challenge for Health Care Services to reach some areas.
- General abuse of farm workers and farm dwellers by farmers in the area. In the Haga area, where the situation is worse, a Durban farmer who bought most of the farms in the area even dug a trench around a small area that he has put the farm dwellers, to restrict their movement and that of their livestock. Many of their livestock and a child have drowned and died in that trench.
- Mismanagement of farm leases and state land redistribution by DALRRD. For example, Murrayfield Farm in Frankfort that was successfully run by the Kema family since the 1970's and has since 2009 been given to someone else without Mrs Kema's knowledge after her husband passed away. After resisting leaving the farm, her property was vandalised and all her livestock stolen. She is still waiting for DALRRD to give her an

alternative farm that she has identified as she is scared of the people in her original farm. In another case, a group of youth had a Permission to Occupy (PTO) for a farm that was supposed to be converted to a lease so that they can run a game farming establishment. They even secured funding from the Department of Environment but are unable to implement their business case without a lease.

- Delays by the DALRRD in securing farms that are meant for farm dwellers such as the Glennouren Farm in Stutterheim that was supposed to be sold to a farm dweller family but has since been sold to a white farmer in 2011. The farmer is now using constructive eviction and has cut off water and does not allow their livestock to graze in the farm.
- A plea for government to provide land and to prioritise farm dwellers when selling or leasing state farms. When farms are taken over by new owners, they are made to pay rent while they are not even employed, denied access to basic services and grazing rights for their livestock; and often have nowhere else to go.
- Disregard of the needs and abilities of farm dwellers when redistributing land by DALRRD, which in the case of Everslie Farm in Komga, resulted in the harassment and murder of the family of a farm dweller, Mr Panyaza, by people who were put in the farm they occupied by the Department. Mr Panyaza is currently living in hiding for fear of his life; and that of his teenage son who survived the initial attack that killed his mother and brother.

FREE STATE: 17-19 JUNE 2022

DAY 1: 17 June 2022

2.1 Stakeholder Engagement

On the first day of the oversight visit, the Committees held a stakeholder engagement meeting to gain insights into the living and working conditions in the farming communities of the Free State (FS) Province. The Committees received presentations from African Poultry Producers (APP), a commodity group consisting of mostly smallholder farmers; various workers' unions, namely, COSATU, AFADWU and SACTWU, the SANAFU representing farmers and farm workers, the Mafora Commonage, a group of community members that have passion in farming and in need of the land to farm, AFGRI and the Government Departments, namely, Agriculture, Land Reform and Rural Development; Employment and Labour.

2.1.1 African Poultry Producers (APP)

The African Poultry Producers is a commodity group under the African Farmers Association of South Africa (AFASA). It mainly consists of black farmers, of which 80% are smallholder farmers and 20% are commercial farmers. Most APP members operate from backyards and have no employees. The farmers want to comply to legislation but the Department of Employment and Labour (DEL) does not capacitate farmers so that they can fully understand what is required of them. It was highlighted that for those who have employees, the registration process for UIF and Compensation for Occupational Injuries and Diseases Act (COIDA) is tedious; and farmers struggle to get assistance and support from the DEL so that they can comply. The representative from APP reported that it took her six months to receive assistance from DEL for COIDA registration; and for that, she had to drive to Pretoria. Another main challenge to smallholder farmers that was highlighted by APP is infrastructure particularly roads. The APP is of the opinion that government is more focused on established commercial farmers and appealed for assistance from government regarding infrastructure for smallholder farmers and assistance with registration for labour laws as they also contribute in building the economy. The APP further reported that it works with higher education institutions and some of their farmers accommodate agricultural students for experiential training. However, they are unable to do more due to lack of infrastructure and relevant assistance from government.

2.1.2 COSATU

COSATU highlighted that labour laws are not enforced and there is a high level of non-compliance with labour laws by some farmers in the Province. It reported that the matter is compounded by non-visibility of Labour Inspectors, who rarely visit farms; and farm workers not being knowledgeable about their rights. It emphasised that DEL needs to do more to enforce compliance with Labour laws by employers; and further embark on advocacy campaigns to educate employers and farm workers in particular, on applicable labour laws.
COSATU further highlighted the struggle that is faced by Trade Unions to access farms, which are private properties. The unions are often refused entry or access to farm workers; and in some cases are threatened with violence when seeking recruit farm workers. Farm workers

and their families are threatened with dismissal and evictions if they join Trade Unions. It also highlighted that racism is still rife in some areas. Union membership amongst farm workers in the country is about 5% due to the fear that workers have of losing their jobs and being evicted. Legislation such as the Extension of Security of Tenure Act (ESTA) only justify the process of eviction but does not provide protection for farm workers. ESTA is not appropriately implemented in respect of farm worker housing conditions, while the Act requires the farm owner to maintain farm workers' homes in decent condition, this often does not happen and conditions are bad. COSATU highlighted that farm workers need their own their own land for housing and farming so that they can be economically self-sufficient and not dependent on farm owners. It emphasised that land access and ownership for farm workers is important as 70% of farm jobs are seasonal and temporary; and in the Free State, approximately 83% of agricultural land is in the hands of white commercial farmers.

Access to basic services remains a challenge due to the geographical location and remoteness of farms. As a result, many farm workers and their families are isolated and struggling to access key public services such as schools, health facilities, social services, SAPS and transport. This has a real impact on farm workers and their families; and means that farm workers children struggle to access education to improve their lives. Additionally, electricity and water access are still a huge challenge for farm workers and farm dwellers. COSATU made an appeal for government to provide mobile services that can reach farm workers and their families including making provisions for transport to towns to access such facilities. COSATU also acknowledged that not all farmers in the Province are non-compliant and treat their farmers badly. It reported that Trade Unions have met with farmer organisations to discuss issues affecting farm workers and some have shown willingness to work with Unions. Farmer organisations have also informed COSATU that not all farmers are their members, as a result, as farmer organisations they have no control over their behaviour. COSATU stressed the need for enforcement of labour laws including a Provincial Forum that constitutes Trade Unions, DALRRD, DEL, CCMA, COGTA, AgriFS, Home Affairs, SAPS and other stakeholders.

2.1.3 SACTWU

SACTWU emphasised the need for government to avail land for farm workers to ensure that they can build homes and make a living. It reiterated most of the issues that have been raised by COSATU in respect of access to basic services and ESTA not supporting or protecting farm workers as illegal evictions are continuing. In most cases, farm workers are successfully evicted before ESTA arbitration is finalised. It also highlighted that government should ensure that it owns farm schools as in cases where farm schools are owned by farmers (e.g. Libertasi Farm), it becomes easy for them to take the learners out of school to work on farms to stand-in or replace their parents once they become incapacitated.

Health and Safety Regulations are not adhered to in some of the farms as workers are forced to work with poisonous and dangerous chemicals without protective clothing. There is also lack of compliance to labour legislation in respect of working hours where workers do not have a starting time and knock-off time. Some farm workers may start work as early as 2AM and finish at 6PM while some have to work on public holidays without overtime pay.

There is wide scale abuse of workers through the use of the term, seasonal workers, where workers will be working close to 11 months per year with different commodities, without a contract, and will be referred to as seasonal workers. This happens a lot in the Fouriesburg area. In some cases, farm workers are made to perform technical skills such as fixing farm equipment and vaccination of animals without recognition and compensation for prior learning. There is a need for provision of formal training on technical skills for farm workers including certificates that recognises prior learning so that farm workers are able to get employment elsewhere.

SACTWU also lamented inaction including lack of feedback by Parliament on matters that are raised as different Parliamentary delegations over the years have visited the Province to oversee matters of farm workers but nothing has changed.

2.1.4 Mafora Commonage

The Mafora Commonage was formed by 44 members of the community who have passion for farming. They are farming with pigs, cattle, sheep, goats, chickens and geese, etc. in a 4-hectare piece of land that is owned by someone in England who has a proxy in the country. They have been issued an eviction notice by the land owner, through the proxy, but the MEC for Agriculture in the Province intervened and negotiated with the owner to let them use the land until the Municipality finds them alternative land. The area is not safe for their livestock as it is next to a highway and their animals get killed by vehicles, and theft is also rife. They have been striving to acquire land since 2019 and have engaged with various government stakeholders including the Minister of Agriculture, Land Reform and Rural Development in a bid to acquire land but nothing has come into fruition. As emerging farmers, they reported that it is sometimes difficult for them to comply with certain labour laws as people that are assisting in their farming activities are not permanently employed. The farmers highlighted registration challenges with COIDA and UIF for their workers, who are not paid salaries but stipends. The farmers pleaded with government to fast-track the process of land acquisition so that the farming community can be able to continue farming, contribute to job creation and comply with labour laws.

2.1.5 AFADWU

AFADWU highlighted the plight of farm workers and farm dwellers in Free State; and further highlighted the prevalence of non-compliance with labour laws in some areas in the Province. In the latter case, AFADWU mentioned Willows Piggery in Sasolburg, another farm in Randfontein near Kroonstad and generally in the Bothaville area. Some farmers deny access to farms by union representatives to engage with farm workers and even go to an extent of unleashing dogs on them. Living and working conditions of farm workers in the Province are intolerable with poor housing, lack of access to basic services, physical abuse and even use of the *k*-word in some cases being prevalent. The DEL and CCMA offices are inaccessible as they are located far from farms; and farm workers have to pay a lot of money for transport to get to these offices. As a result, workers will often abandon their cases even if the prospect of a favourable outcome was highly possible.

2.1.6 South African National Farmers Union (SANAFU)

SANAFU represents smallscale farmers, farm workers, farm dwellers and labour tenants. It contends that the influx of illegal foreign nationals perpetuates illegal evictions in Free State and farmers prefer to employ foreign nationals over South Africans so as to escape compliance with certain labour laws. It emphasised the need for capacity building and advocacy programmes on all laws that affect farming communities and farm workers in particular. SANAFU highlighted wide scale lack of tenure security for farm dwellers and labour tenants; and stressed that individual land rights need to be extended to farm workers and farm dwellers. SANAFU mentioned that there are lessons to be learned from the Spatial Planning and Land Use Management Act (SPLUMA) where it is effectively implemented.

It raised a concern regarding escalation of farm related crimes e.g. in the Senekal area, which sometimes are motivated by revenge and last act of desperation on the part of farm dwellers due to gross violations of their human rights. To address eviction related and other challenges, SANAFU has created a Special Desk that deals with issues affecting farm dwellers and labour tenants to ensure that it engages both the farmer and the farm dweller on legislative matters that affects them both, whether directly or indirectly. Over and above what the organisation has initiated, it is of the view that the situation requires more than a conflict resolution approach, but a more radical approach in terms of facilitating Legislative Programmes to foster the understanding of various laws that govern the farming environment including their enforcement by responsible government departments/agencies.

2.1.7 AFGRI

AFGRI is an agricultural business company that is based in Centurion, and has offices in various parts of the country including the Free State. It provides various services to grain farmers across the entire production and storage value chain. The Free State office is working mostly with black commercial farmers; and also works closely with DEL in the Province. The company also funds framers and assist them to comply with labour laws. AFGRI highlighted that the minimum wage is far too low to provide for livelihoods. However, there are farmers that cannot even afford to pay their workers the minimum wage. In such cases, they would rather opt for payment in kind (e.g. accommodation, food, transport and other favours), which limits farm workers as their expected income is reduced.

It also reiterated the issue of poor housing conditions and lack of access to basic services by farm workers including poor road infrastructure and cellular phone reception in farming areas in general. AFRGRI further highlighted lack of safety in farming areas and emphasised that farm workers/dwellers and farmers remain at risk of farm attacks. Lack of network reception on farms makes it difficult to get urgent help when there are emergencies on the farm.

AFGRI further highlighted the risk and challenge to later generations of farm dwellers as a result of gentlemen's agreements that may have been reached between an original farm owner and farm dwellers' parents. In such cases, when both parties are deceased or the owners sell or transfer the farm to their children, often with the new owners such an agreement does not apply and the family of the farm worker gets evicted. In this regard, AFGRI highlighted the

importance of proper record keeping by farmers and workers, employment contracts and advocacy and capacity building programmes on labour laws by DEL. Where there are no employment contracts, the DEL should facilitate the drafting of a fair contract between farmers and workers. In the case of hiring foreign workers, DEL should ensure that they have the right documentation to work in the country and are registered with relevant legislation.

Through the Thabo Mofutsanyana Agricultural Forum, AFGRI is working with Agricultural Schools to get youth interested in Agriculture.

2.2 Presentations by the Departments

2.2.1 Department of Agriculture, Land Reform and Rural Development (DALRRD)

The presentation by the Acting Chief Director in Free State for Land and Rural Development, Mr S Modise, can be summarised as follows:
Contextual background on the Extension of Security of Tenure Act (ESTA), which is a key legislation that provides tenure security and outlines the process for evictions including conditions for both farm workers and farmers. The background also included the Constitutional mandate of the Department in respect of the rights and protection of farm workers, farm dwellers and labour tenants. The presentation also provided statistics on farm workers, farm dwellers and labour tenants in South Africa; the state and nature of evictions and/or threats of evictions on farms and factors underlying evictions; mechanisms that have been put in place by the Department to monitor evictions on farms; and mechanisms to defend the tenure rights of residents on farms.
DALRRD also highlighted policy directives to promote secure access to land by farm workers, farm dwellers and labour tenants. It reported on progress regarding access to land by farm dwellers and tenants or people living on farms generally; and also proposals for policy and/or legislative amendments to strengthen security of tenure. The Department is a member of the provincial Rapid Response Team on Rural Safety. On a quarterly basis, a team from each District in the Province does advocacy work on land rights.

2.2.2 Department of Employment and Labour (DEL)

The presentation by the Director from the Department of Employment and Labour in Free State, Ms Mahlangu, can be summarised as follows:
Accessibility of the DEL services in the Free State Province, which has 11 Labour Centres, 3 satellite offices, 69 visiting points and 3 Thusong Services Centres. The Department in the Province provides service related to:

- Compensation Fund
- Inspection and Enforcement Services
- Unemployment Insurance Fund
- Public Employment Services

The Department also implements an Intervention/Action Plan to improve compliance whose aim is to educate employers about their legal duty to keep records as stipulated in relevant employment laws; to increase advocacy campaigns to inform employers, employees and

organised labour about rights of workers and the requirements of labour laws on their business operations; and to perform blitz operations conducted under the instruction of the provincial Chief Inspector by waiving the requirement to issue employers with notice of inspections. To address slow response by SAPS, the Plan also encourages Deputy Directors of Labour Centre Operations to have regular engagements with Police Station Commanders in their service areas to foster relationships. It also manages Inspection and Enforcement Service (IES) to involve business associations or chambers of employer organisations to report non-compliant behaviour of their members.

DAY 2: 18 June 2022

3. FARM VISITS AND PUBLIC HEARINGS

On the second day, the delegation visited the Dabulamanzi Project near Bloemhof and conducted public hearings in Renekile Secondary School in Hoopstad.

3.1 Dabulamanzi Farm Project

The delegation visited Dabulamanzi Farm Project, which is located near Bloemhof on the border of Free State and North West Provinces to inspect houses and living conditions of farm dwellers and former farm workers. The farm was sponsored to DALRRD through the Land Redistribution and Agricultural Development (LRAD) Programme to secure long term tenure rights for farm dwellers' families, including creation of jobs for them and their children. The DALRRD acquired the farm in December 2010 under the Pro-Active Land Acquisition Strategy (PLAS). The families, who were advised by the Department to form a Communal Property Association (CPA) accepted the option of lease-hold with the DALRRD as a measure to secure their rights on the land in question. In 2019, the DALRRD sponsored a Memorandum to the National Land Acquisition and Allocation Control Committee (NLAACC) to obtain approval for the disposal of the farm to the CPA; and on 22 August 2019 approval was granted by the Minister. In the same year on 3 December 2019, Treasury granted approval for the disposal of the farm Joubertspark to Dabulamanzi. The finalisation of the CPA registration is currently underway. The Department supported the Project through the now defunct Recapitalisation and Development Programme (RECAP).

There are 13 beneficiary families that reside on the farm for which the Department has built houses and a community centre (that is also used as a church), which were inspected by the delegation. The Department supported the Project through the now defunct Recapitalisation and Development Programme (RECAP). The former owner of the farm, Mr Weideman, who has a relationship with the beneficiaries for more than 15 years and has been the mentor since the transfer of the farm to the 13 families. He supported the workers with mechanisation, additional labour and linkages to markets from his adjacent farm, "Rorich". Currently, his son, who was also present at the time of the visit, has taken over from him in mentoring the beneficiaries. It was reported that they do everything collectively with the mentor, working on their farm as well as his, which is adjacent to theirs.

The Department deemed the project a success such that the farm workers have acquired an additional farm of approximately 1 200 ha of grazing land financed through the Land Bank. It reported that the beneficiaries have a herd of 400 Tuli cattle and the future plan, with the help of the mentor, is to plant pecan nuts to expand income streams. The Dabulamanzi Project in partnership with the previous employer/owner, who is the mentor, employs around 66 workers while the combined jobs amount to 300 permanent workers. It was further reported that the partnership between the Project beneficiaries and the mentor has sent three matriculants from the farm to the University of North West, Central University of Technology as well as Glen College of Agriculture for studies in Agriculture and related support programmes. Water rights for 385 hectares (ha) have been acquired and the project will expand with an additional 300 ha of irrigation for planting of winter wheat as well as maize during the summer season. The current challenge the beneficiaries have is to obtain additional water rights for their farm.

The delegation was concerned that throughout the visit, only the Acting Chief Director from DALRRD and the mentor reported and responded to questions on what is happening on the farm. It did not seem that beneficiaries knew everything about the operations of the farm and when asked by Members of the delegation whether they are comfortable with speaking in front of their mentor, they said they were not.

3.2 Public Hearing in Renekile Secondary School

The Public Hearing that was attended by members of the farming community from various farms around Hoopstad and other stakeholders. During the public hearing, the farming community members raised the following issues:

- General discomfort and fear among farm workers in voicing their concerns and challenges during Public Hearings as their employers will know; and those workers can be fired from their jobs and get evicted from the farms. When that happens, there is no one to assist them.
- Parliament needs to look at current legislation as some is suppressive to farm workers, e.g. lack of Provident or Pension Fund. It cannot be fair for someone who has worked for 25 - 30 years in a farm that is making millions to billions of rands, to only get UIF payments when they retire or are retrenched. It should also ensure that relevant Departments are doing their work to assist farm workers, most of whom are illiterate and cannot speak for themselves. It should also involve the Human Rights Commission (HRC).
- Poor housing and lack of access to basic services such as clean water, health facilities, electricity, public transport, poor road infrastructure, etc.; factors that also contribute to teenage pregnancies and school dropouts.
- Lack of security of tenure and vulnerability of farm workers' families to evictions, which take place when the farm workers pass on.
- There was an appeal for government to assist farm workers and farm dwellers with land, tenure security, housing and bursaries for their children.
- Lack of assistance from relevant government departments in providing alternative accommodation when farm workers and/or their families get evicted from farms.
- Difficulties experienced by farm workers in making a living to supplement their wages as some farm owners refuse farm workers' livestock to graze on their land, even if they live on the same farm. In Hanover, the farmer shoots the workers' livestock.

- Labour Inspectors that are not doing their work but instead accept bribes from farmers, wherein it was reported that when they visit a farm, they only go to the main house or office and sometimes come out carrying farm produce including sheep that gets transported with government vehicles. They hardly engage with the workers or inspect their working or living conditions when they visit farms.
- Widespread non-compliance with Labour laws – workers paid below minimum wage (in Hoopstad, it was reported that only 0.5% of farmers pay minimum wage), absence of employment contracts, not registering for the UIA and COIDA,
- Farm workers losing their benefits when new owners take over irrespective of how many years they have worked in the farm. In some cases, if they are not fired or evicted, they are forced to sign new contracts with different conditions.
- Instances of illegal deductions for houses that farm workers have built themselves.
- Accessibility of the DEL and its Centres that are normally located in towns far from farming communities. For example, Hoopstad is 80km from Welkom, where the nearest DEL office is.
- DEL is not responsive to farm workers' challenges and there is a general lack of professionalism by the DEL as it often does not respond to telephone calls and e-mails. It was highlighted that the Department needs to improve Customer Service.
- The need for an investigation into a 1995 case of Isnal Farm, where a Court ordered a legal eviction of farm dwellers with a provision of alternative accommodation. However, the former Department of Rural Development and Land Reform (DRDLR) only provided the workers with yards but no houses.

The provincial representative from COSATU reported that what the Department reported about Dabulamanzi Project is not entirely true and has been disputed by the beneficiaries of the Project whom COSATU has engaged with. Some of the people that are staying in the houses that were built by Government for the 13 families are not members of those families nor are they members of the CPA or Family Trusts, but are workers of the mentor. Workers who work for the mentor, which include some beneficiaries of Dabulamanzi Project, start work at 5AM and finish at 6PM and are paid R2 000 a month. COSATU implored Parliament to investigate the Dabulamanzi Project including working conditions in the neighbouring farm that belongs to their mentor.

DAY 3: 19 June 2022

5. FARM VISITS AND PUBLIC HEARINGS

On the third day, the delegation conducted public hearings in Ficksburg and visited Rustlers Valley Project in Naledi village.

4.1 Public Hearings at Ficksburg Town Hall

The Public Hearing that was attended by members of the farming community from various farms in areas surrounding Ficksburg and other stakeholders. During the public hearing, the farming community members in the area raised the following issues:

- Loss of benefits when original employers sell or leave the farm, whereby farm workers are forced to sign new contracts, often with a lower wage; and forfeiting benefits from previous years of service.
- A farm worker working for two years at Franschoek Farm is still without an employment contract, and earning less than in the previous owner; and is also not registered for UIF.
- Poor housing conditions and lack of basic services as the Municipality is not servicing their areas and has ignored requests for services. Even after a flood disaster that affected the area, whereby most roads and some houses have been damaged by rain, there is no assistance from the Municipality.
- Farm dwellers further reported that they are still oppressed and have no freedom of movement as some farms are fenced off with electrical fences. In some cases, they have no access to roads that go through farms and are forced to take longer routes.
- Lack of livelihood means as farmers impound their livestock and an appeal for government to assist farm workers and farm dwellers with access to land.
- When there are employment opportunities in the Expanded Public Works Programme (EPWP) preference is given to township communities while farm dwellers are overlooked.
- There are no opportunities for farm workers' children to further their studies post-matric. There was an appeal for assistance with bursaries.
- Non-compliance to Labour laws by some farmers in respect of worker registration for UIF and COIDA, employment contracts, illegal deductions for electricity and housing, illegal evictions, supply of protective clothing for workers, working hours (2AM to 5PM) and working on public holidays, as well as payments below minimum wage.
- There was a case of a worker who had his thumb amputated as a result of exposure to toxic chemicals whilst working without protective gloves. He was not released from work or offered assistance but was told that it is soya harvesting time. He was only given leave after harvesting and by this time the condition of his finger was worse and he had to go to a doctor at his expense. The employer initially refused to complete his part of the Injury on Duty (IOD) form denying that the worker was injured on duty; and eventually signed the form in 2019. As a result, the worker has not received any compensation to date and the DEL has not assisted him saying that he delayed his claim. He is currently unemployed and has been struggling for the past five years since his finger got amputated and appealed for assistance from DEL.
- While Hoopstad is one of the rich farming areas in the country, farm workers are transported on the back of bakkies with farm equipment and goods.
- There was an appeal for improvement of road infrastructure, which is a challenge throughout the Province. The economy of the area has suffered as tourists do not visit the area, which is a missed opportunity in terms of tourism job opportunities and has a negative impact on employment in general.
- The DALRRD has built a Farmer Production Support Unit (FPSU) in Ficksburg, however, farm workers and farm dwellers questioned the rationale and for whose benefit is the FPSU as the majority of black people in the area do not have access to land for farming.
- Invisibility of Municipal Councillors in farming communities except during elections.

4.2 Visit to Rustlers Valley Project

After the Public Hearing, the delegation visited Rustlers Valley Project in Naledi Village, some of whose members were also at the Public Hearing. The Rustlers Valley Farm, which 22.5 km from Ficksburg, is 273.1582 hectares (ha) in extent and 42 ha of this was donated by the Earthrise Trust to the farm occupiers to secure their long-term tenure rights. There are 41 households that live on the 42-hectare farm as the Naledi Communal Property Association (CPA), and the families are both occupiers and workers. On the 42-hectare farm, there is a Primary School that was built by the Nelson Mandela Foundation and the Early Childhood Development Centre (ECDC) that was built by the Department of Social Development. They also have access to electricity and solar lighting that is supported by Phillips and the Setsoto Municipality.

The farm occupiers organised themselves and registered a cooperative called Naledi Farmers' Cooperative (Coop) in 2016, which comprises of 17 members. The Coop received assistance with vegetable seedlings from a private funder. The 42 hectares that was donated is not good for Agriculture, therefore, the Coop is leasing 48 ha from a neighbouring farm for agricultural production. The Provincial Department of Agriculture assisted the Coop with a shed, borehole pump, 10 x 5 000 litre and 2x 10 000 litre Jojo tanks, garden equipment, personal protective equipment (PPE) for workers and office equipment. There is a lodge at the Rustlers Valley Farm (not part of the donated 42 ha) on which 80% of the farm occupiers used to work but is currently not operational. As part of diversification, the Naledi Farmers Coop planted tomatoes on 10 tunnels that were allocated by their previous employer. The were no formal housing structures and the farm occupiers built their own mud structures. Their houses and the vegetable tunnels suffered some damage from heavy storms and rain, and as farmers of the Coop they are struggling as Insurance companies refuse to assist with climate related claims. As the Naledi CPA, they are desperate get the title deed to the land that has been donated, which has been delayed as owners of the Earthrise Trust live overseas so it was difficult to get their signatures. The DALRRD is assisting them to fast track the transfer of the property to the CPA. Once they get the title deed, then the CPA members will be able to build proper homes for their families. The Department is also in a process to assist the CPA with housing and other basic services once various reports have been compiled and the property registered.

GAUTENG: 01 – 03 JULY 2022

DAY 1: 01 July 2022

2.1 Stakeholder Engagement

On the first day of the oversight visit, the Committees held a stakeholder engagement meeting to gain insights into the living and working conditions in the farming communities of the Gauteng Province. The Committees received presentations from COSATU, AFADWU, SACTWU, West Rand Farmers Forum, Ward Councillor, Workers, Occupiers, Tenants, Dwellers (WOTD) Forum and from the office of the Local Economic Development (LED), Randwest City Local Municipality.

2.1.1 COSATU – Ms Louisa Modikwe

COSATU highlighted poor implementation of labour laws as the major challenge, 90% of the time. It mentioned lack of cooperation by Labour Inspectors who often fail to enforce labour laws even when Unions have made specific requests for inspections. There are high levels of non-compliance with labour laws by farmers in the Province in respect of:

- Long hours of work that are not stipulated in the contracts.
- Denial of sick, annual and maternity leave.
- Health and safety of farm workers that is not prioritised, often working without protective clothing.
- Poor housing, where 10 people who are not related will share a room, meaning that they cannot have their families with them.
- In some cases, farm workers are given expired food items, which poses a health risk.

COSATU also highlighted lack of access to public basic services such as health facilities, schools, water, electricity and public transport as farming communities are remotely located. Access to farms by Unions to organise workers remains a challenge due to threats from farm owners and some workers are also physically abused by owners. Gender-based violence (GBV) is also rife in the farming communities. COSATU emphasised that government should avail land for farm workers and also build them proper houses.

2.1.2 AFADWU – Mr Lucas Mbambo

AFADWU highlighted the prevalence of employing undocumented foreign nationals who are used by their employers to bash Union activities. It also highlighted lack of cooperation from Labour Inspectors in the Province, citing that they are not responsive to requests for inspections by Unions. It mentioned the Labour Centres of concern as Germiston and Benoni Labour Centres.

2.1.3 SACTWU – Ms Nomsa Mashaba

SACTWU emphasised the need for government to avail land for farm workers to ensure that they can build homes and make a living. It reiterated most of the issues that have been raised

by COSATU in respect of access to basic services, bad living conditions of farm workers, labour laws issues that are being ignored by most farmers in respect of long hours of work, unpaid overtime, lack of protective clothing, non-compliance to minimum wage, etc. and also Labour Inspectors that rarely visit farms.

2.1.4 West Rand Farmers Forum – Ms Thalitha Zondi

The forum represents emerging farmers including farming communities. It is currently registered as a secondary cooperative and known as Rand West City Secondary Cooperative (Coop); and comprises of more than 80 independent farmers some of which are involved in Primary Production. The Coop highlighted lack of farm safety as a major concern and farmers are not safe as there are high rates of farm killings. Another major challenge is theft, which is sometimes instigated by farm workers and is rife during load shedding. Theft include livestock, fresh produce, borehole pumps, mechanisation equipment, cable theft and electricity transformers, which negatively impacts the irrigation systems and the production process. Transformers are very expensive and farmers are not paying less than R3 000 a month for one transformer.

Slow or lack of response and corruption within the South African Police Service (SAPS) in the Province, which in some cases are working and colluding with thieves to steal farm property including transformers. There is not enough intelligence to investigate cases that are reported and often there is no feedback on cases that have been reported. Access to basic services and electricity in some areas is limiting expansion of farming activities, which also has an impact on farm workers and dwellers (e.g. Leopardsvlei, Rietfontein). In most cases, emerging farmers are aware of labour laws but because of the circumstances, cannot afford certain requirements such as the minimum wage. There is also a challenge of insubordination particularly from workers who have previously worked for white commercial farmers. They tend to undermine black and female farmers and there are also behavioural problems and sense of entitlement.

There is a need for skills training for some of the farmers and farm workers; and the Gauteng Provincial Department of Agriculture and Rural Development is assisting in that regard. Skills training is also necessary for other unemployed people that live in the vicinity of farms particularly the youth, whom Government can incentivise to get them interested in Agriculture. The Coop is also partnering with white commercial farmers to fight crime as it affects all of them equally; and are also part of Community Policing Forums (CPFs). There is a need for the decentralisation of the Stock Units, which are currently based in the Vaal, far from some of the farmers. Lack of basic services in farming communities impact farmers, who also have the responsibility to support farm workers and dwellers. The Coop recommended that there should be a campaign and a dedicated hotline by both departments for reporting criminals and decisive action should be taken by SAPS.

2.1.5 Ward Councillor at Ekurhuleni Municipality – Mr Vusi Mabena

The Councillor, talking from his experience as a Ward Councillor, highlighted poor implementation and enforcement of Labour laws and ESTA. He mentioned the prevalence of constructive evictions in the Province, for example in Bronkhortspruit, where farm dwellers

are refused performance of cultural rituals or ceremonies that they were have always performed for the past 20 years in the same farm.

He highlighted the land reform failures with respect to allocation of farms. There is lack of proper consultation in the implementation of the Land Disposal Policy where bona fide farm workers and farm dwellers are not considered and farms are given to outsiders. In Kaboki Farms, government has leased the farms to outsiders while overlooking the farm dwellers who have been living and working in the farm for many years. The issue had gone through 3 different DGs from the former Department of Rural Development and Land Reform (DRDLR) and has not been resolved to date. In Kanana Village, the City initiated expropriation without compensation with the aim to develop the place into an Agri-village for the farm dwellers. However, neighbouring farmers grouped themselves and went to court to interdict the expropriation; and for the past 23 years, the farmers opposed any development in the area. To this end, government has failed to develop Kanana Village or assist the people living there.

The Ward Councillor emphasised that Parliament needs to ensure meaningful engagements to avoid and prevent land issues always going to court, where poor people do not have the means and the time to pursue those cases. Sale of farms that have people that were born and bred on the farm to new owners creates conflicts and contributes to the high rate of evictions in the province.

2.1.6 Workers, Occupiers, Tenants, Dwellers (WOTD) Forum – Mr Johannes Mokoena

WOTD Forum is a non-profit organisation (NPO) that was established in 2018. It highlighted that the DALRRD's Branch that is responsible for Tenure Security issues in the Province is doing quite well but is understaffed, with only 3 officials responsible for the Tshwane area. The Forum is working closely with the Department and have had some successes on eviction cases. However, the processing of land transfers for farm dwellers and labour tenants is taking long.

The Beneficiary Selection Policy of the Department disadvantages farm dwellers and labour tenants. Leasing of farms to outsiders and exclusion of farm dwellers and labour tenants is a serious challenge. Government needs to involve and empower dwellers that already reside in farms that they lease to outsiders. At Tetema CPA (Blesbokfontein), there is a conflict between farm dwellers and government lessees. Some of the cases are going back from the time of former Minister Nkwinti. The Forum highlighted that the Department is not responsive to stakeholder issues and does not even acknowledge correspondence. After the Forum did not receive responses from the Department, it took the Tetema CPA matter to the Public Protector.

2.1.7 Local Economic Development Officer (LED), Randwest City LM – Ms Kelebogile Tlharipe

The LED Officer reiterated the poor socio-economic conditions that have already been referred to by other stakeholders, including substance abuse, poor access to education and lack of information. Also highlighted was non-compliance to Labour laws such as lack of payslips, workers not registered with UIF, lack of entitlement to leave including sick leave, etc. Farm

evictions were highlighted as quite prevalent in the West Rand. The LED Officer also highlighted fragmentation of assistance and lack of IGR as government programmes are not well coordinated. It was recommended that there should be awareness programmes and campaigns for the farming community about available assistance programmes by various Government departments and agencies. Government needs to review existing legislation that deals with farm workers and farm dwellers issues including policies; as well as the proposal for the development of an AgriHub in the West Rand.

2.2 Presentations by the Departments

2.2.1 Department of Cooperative Governance and Traditional Affairs

The presentation by the Director for Municipal Integrity Management and Traditional Institutional Management, Ms Jacqueline Obanda can be summarised as follows:

Legislative mandate, based on Chapter 12 of the Constitution of the Republic of South Africa Act 108 of 1996, which include recognition and role of traditional leaders, the National House of Traditional Leaders Act and the Traditional and Khoi San Leadership Act. Gauteng Traditional Leadership and Government Act, pending review and alignment with the Traditional and Khoi San Leadership Act. Overview of the Amandebele Ndzundza Sokhulumi Traditional Community, key challenges and support. Overview of the Amandebele Ba Lebelo Traditional Community, key challenges and support. Petitions related to land management.

2.2.2 Department of Agriculture, Land Reform and Rural Development (DALRRD)

The presentation by the Chief Director for Agriculture from the Gauteng Department of Agriculture and Rural Development, Ms Kgari Manotwane, can be summarised as follows:
Contextual background on the Gauteng Department of Agriculture and Rural Development (GDARD); and its vision of an economically transformed agricultural sector, sustainable environmental management for healthy, food secure, developed rural and urban communities in Gauteng.
According to the census of commercial agriculture 2017, the total number of person employed in commercial agriculture was 757 628 and Gauteng had the lowest number of commercial agriculture employees (36 517 or 4.8%). The GDARD programmes focus mainly on farmers and not much on farm workers, it works closely with DALRRD on many programmes that support farmers such as CASP, Ilima-Letsema and LandCare. There is a need for GDARD to work with other stakeholders to support farm workers and partnerships with other departments to support farm workers and workers' organisations to be encouraged to participate in the Rural Social Compact Plan.

The presentation by the Chief Director for Rural Development and Land Reform, Mr Samfana Mahlangu can be summarised as follows:

The demographics of farm workers, farm dwellers and labour tenants in South Africa and status quo with regard to access to land and lack thereof. The state and nature of evictions and/or threats of evictions on farms, factors underlying evections, mechanisms put into place in order

to monitor evictions on farms and mechanisms to defend the tenure rights of residents on farms. Policy mechanisms to promote secure access to land by farm workers, farm dwellers and labour tenants. 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; and proposals for policy and/or legislative amendments such as the Provision of Land and Assistance Act (PLAA), ESTA, etc.

2.2.3 Department of Employment and Labour (DEL)

The presentation by the Director from the Department of Employment and Labour in Gauteng, Mr Tsepo Mokomatsidi, can be summarised as follows:

The total number of inspections conducted in Gauteng from April to June 2022 is 178. From the inspected farms, compliance was checked against the following:

- Basic Conditions of Employment Act (BCEA)
- Occupational Health and Safety Act (OHSA)
- Unemployment Insurance Fund (UIF)
- Employment Equity Act (EEA)
- Compensation for Occupational Injuries and Diseases Act (COIDA)

The presentation concluded by providing an analysis of areas of non-compliance in the inspected areas of the agricultural sector.

DAY 2: 02 July 2022

3. FARM VISITS AND PUBLIC HEARINGS

On the second day, the delegation visited the Mushroom farm in Bapfontein, Portion 25 (Portion of portion 3) of farm Vlakfontein 523 JR and Portion 3 Vlakfontein 523 JR in Bronkhorspruit and conducted public hearings at Bronkhorspruit Sports Centre Hall.

3.1 Farm visits

3.1.1 Country Mushroom Farm

The Mushroom farm is situated in Bapfontein and is importing soil from Holland to grow the mushrooms. On site, the delegation was taken through the production, processing and packaging sections. The farm workers reported that they work from 06:00 to 18:00 and work night shift without shift allowance. There are no formal dwellings on the farm, however, some of the workers have farm houses in the older farm from where the agribusiness used to operate. Most workers live in informal structures outside the farm with no toilets, they buy electricity from Eskom and they have 3 communal water taps. There are two Workers Unions that the workers belong to. Their payslips show deductions for PAYE, UIF, Provident Fund, LEWUSA (Workers Union) and transport. The payslip also shows allowance/rates for Saturday, Sunday and Public Holiday work.

3.1.2 Vlakfontein Farm

The portion 25 (portion 3) of the Vlakfontein from is situated approximately 10 km for Bronkhorspruit town with 576 5819 hectares of land and is operated as a commercial Arabian horse farm including equestrian training facilities. The current owner purchased the farm in 2005. There are currently seven (7) households residing on the farm. The farm dwellers are long-term occupiers of the farm, with the current household heads having been born on the farm, their families initially living on the farm when their grandparents lived and worked on the farm. The graves of the deceased family members (parents and grandparents) are on the farm.

The process on the farm initially started several years ago in terms of the Extension of Security of Tenure Act (ESTA), 62 of 1997 following complaints of the occupiers' cattle grazing without restriction on the farm. The owner complained that the occupiers were not vaccinating their livestock and they were grazing in the same area as his prized horses and infecting them with diseases. The owner also accused the occupiers of not closing the gates making it difficult for him to contain the horses within the farm. After some repeated engagements with the Department the owner agreed to make available eighteen (18) hectares of land acquisition by the Department for the tenure security of the occupiers. The farm owner has indicated a willingness to assist with fencing the 18 ha, which he has done; and also with a manual borehole.

Of the seven families, 3 are not willing to relocate and one of them is a cattle owner, who says his cattle will not have grazing in the new area. Negotiations for all occupiers to move to the new area are ongoing as the area where they are currently residing is prone to flooding when it's raining hard. The Rural Development Directorate will assist with infrastructure provision once negotiations with the farm occupiers for relocation have been finalised including seeking approval for electricity and assistance with agricultural initiatives and housing from the Department of Human Settlements section of the municipality. The Department plans to establish a legal entity to ensure that all the 7 families including the 3 that are not willing to relocate, benefit.

3.2 Public Hearing in Bronkhorspruit Sport Centre Hall

The Public Hearing was attended by approximately 92 members of the farming community from various farms around Bronkhorspruit including union representatives. During the public hearing, the following issues were raised:

- Employment of illegal foreign nationals (approximately 70% of farm workers), whom farm owners hide when Labour Inspectors visit. Stakeholders implored Labour Inspectors to do unannounced visits and also include Union representatives where possible.
- Speeding up of land reform and ensuring access to land for farm workers and farm dwellers in particular those who are interested in working the land; and also assist them with the necessary farming support and equipment. Government should also assist farm dwellers with proper housing and provision of basic services.
- Illegal and constructive evictions.

- In some farms, farm workers or dwellers' livestock is not allowed to graze and some farmers will go to the extent of burning down grazing land or poison the farm workers' livestock.
- Poor housing and lack of access to basic services such as clean water, health facilities, electricity, public transport, proper toilets, etc.
- Lack of security of tenure and vulnerability of farm workers' families to evictions when the farm worker is no longer employed or is deceased.
- Denial of farm workers and farm dwellers' burial rights on the farms when they pass on. Although they live in the City of Tshwane, they are forced to bury their loved ones at Ekurhuleni.
- The CPA Model is not working and not benefiting black farmers. A major challenge is the grouping of people with different interests into CPAs where some are not interested in farming and will even stay in townships but will demand a share from proceeds of other people's hard work as they are members of the CPA.
- The struggle and the protracted process in getting title deeds when property is transferred or an owner passes on and the land has to be transferred to a next of kin.
- There is a need to strengthen Labour Inspection services as some Inspectors are refused entry by farm owners while some are not enforcing labour laws as they should.
- Physical abuse of farm dwellers in Nooitgedacht, Plot No. 9 by white farmers in front of their children. Even when cases are reported to SAPS, the Police do not pay attention and sometimes are also involved in the abuse.
- Lack of response on a land claim that was lodged in Inkangala area, where people were removed from their ancestral land and put in a wetland with no service delivery and grazing for their livestock.
- Emerging farmers being given land without infrastructure and provision of basic services; and lack of consultation with farmers when the Department appoints contractors to build on-farm infrastructure. As a result, farmers end up getting sub-standard infrastructure that they cannot even use.
- Poor management of land leases by government. Most farmers leasing state land have no formal leases, which creates conflicts with neighbouring township residents. Some of the leases expired in 2002.
- The problem with use of agents by DALRRD during disasters to source farming equipment and production inputs using Department vouchers on behalf of farmers. Most of the money ends up going to the agent and the supplier, not the farmer.
- Abuse of farm dwellers by government lessees, who also happen to be black people.
- Challenge with government's policies prioritising only while overlooking people in their 40s and 50s who grew up in farms and are interested in farming. Most youth are not even interested in farming.
- Lack of feedback from Parliament as it has visited the area before and communities have raised the same issues but nothing has happened.

DAY 3: 03 July 2022

6. FARM VISITS AND PUBLIC HEARINGS

On the third day, the delegation visited the Nuhaverst Farm, Hekpoort Farm and Delarey Farm; and also conducted public hearings in Glen Burn Lodge.

4.1 Farm visits

4.1.1 Nuharvest Farm

The Nuharvest Farm is a vegetable farm mainly focusing on green vegetables, which are cultivated, processed and packaged on site. The farm is approximately 200 hectares and have production and packaging warehouse, chemical storage, maintenance workshop, etc. The employer has 350 permanent employees (141 females and 149 males) and out of the 350 employees, 292 are foreign nationals.

During the visit, the delegation was informed by the farm workers that they are paying R450 each person per month for a small room. That means if you are a couple working on the farm, you pay R900 for the same small room. Water and electricity are included in the rental amount. The workers also pay R38 per person per month for the dustbin and refuse removal as well as R18 for the toilet paper that is provided by the owner. Only workers are allowed to stay in the compounds. For children that are 8 years or older and not going to school, parents are also expected to pay rent. Workers reported that money is deducted from their salaries for the hours that they are not working even if they are on sick leave or had to go to the clinic. Their salaries vary from R4500 to R4800 per month. Some of the foreign workers reported that they have the relevant documents while for some, the passports or work permits have expired. The workers reported that gates to the farm are closed at 8PM and everyone should be inside by then.

4.1.2 Hekpoort Farm

The farm is situated in Hekpoort and is 44.0230 hectares in extent. It was previously used for the production of flowers and vegetables and the farm owner has since abandoned the farm. It was acquired at the end of 2022 by DALRRD to secure the tenure rights of the people staying and living on the farm. The farm is under the ownership of the state and the Department is in the process of transferring it to the Local Municipality for rezoning into a settlement area so that basic services such as water, roads, electricity and other developments can be brought to the community. The farm dwellers will own the farm and it will be rehabilitated by the municipality.

There are formal houses that belonged to the former farm workers and informal dwellings, which were put up by other people who got evicted in the surrounding areas. There are currently no jobs on the farm and most of the people do menial jobs around the area. The farm has water for vegetable gardens. The main challenge is access to other basic services and for some of the occupiers, access to proper houses as some share the workshop building.

4.1.3 Delarey Farm

The Delarey farm is situated approximately 6.5 km south west of Magaliesburg town. The farm is 61.5090 hectares in extent and was previously used for livestock production. The former owner had an old supermarket that is located on the property to cater for the domestic needs of the residents residing in and around the farm. The farm was identified for the settlement of the eight (8) labour tenants that lodged their labour application in terms of the Land Reform Act of 1996 and also for securing the tenure rights of the occupiers that are staying on the property.

The property was acquired by DALRRD in 2019 to secure the tenure rights of the farm dwellers including labour tenants staying and living on the farm. The property is under the ownership of the state and the intention is to transfer a portion to the local municipality and the rest to the labour tenants who applied in terms of the Act. The municipality is in the process of bringing services/developments to the community.

4.2 Public Hearings at Glen Burn Lodge

The Public Hearing was attended by approximately 91 members of the farming community from Hekpoort, Delarey and surrounding farms, including Councillors from Wards 31 and 32. During the public hearing, the farming community members in the area raised the following issues:

- Lack of assistance from government when farm owners sell or abandon the farm. This, in some instances, result in the closure of farming operations, which leaves farm workers jobless and struggling to maintain the farm.
- Government Departments and municipalities do not provide assistance when farm workers or farm dwellers are evicted, either through alternative accommodation or relocating them to a safer area.
- Non-compliance with labour laws e.g. farm workers not registered for UIF and in some cases, only registered after a year of working, unlawful reduction of leave days, employment of foreign nationals over locals, illegal evictions, etc.
- Poor housing conditions, lack of access to basic services, lack of safety in the farming communities, poor road infrastructure such that even ambulances cannot access some areas and high levels of unemployment.
- Labour Inspectors not responsive to farm workers' challenges; and when they visit farms for inspections, they do not engage with farm workers.
- Challenges with payments of UIF and lack of assistance from Labour Centres.
- The DEL Satellite offices offering limited services in the area. When people want to report unfair labour practices, they have to travel to Leopardsvlei near Krugersdorp.
- Emerging farmers being made to lease or buy farms with existing farm dwellers without getting assistance from government to avoid conflict.
- Abuse of farm dwellers by new owners or lessees; and being forced to pay rent when most are unemployed, or face eviction.
- An appeal to government to assist farm workers and farm dwellers with access to land as they lack livelihood means. Some farmers poison or kill their livestock.
- Government buying land to settle farm dwellers only for the land to be given to someone else or other people when it is time to relocate the farm dwellers, for example, Wildevrede.

The farm dwellers have reported the matter first to the former DRDLR, which told them that the land was now in private hands. The community further engaged Parliament when it was in the area 10 years ago, which referred them to a Government official who took their details but nothing happened since.

- The prevalence of farm evictions is a major challenge in Hekpoort.

KWAZULU-NATAL: 12 – 14 AUGUST 2022

DAY 1: 12 August 2022

2.1 Stakeholder Engagement

On the first day of the joint oversight visit, the Committees held a stakeholder engagement meeting to gain insights into the living and working conditions in the farming communities of KwaZulu-Natal Province. The Committees received presentations from KZN Provincial Department of Agriculture and Rural Development (DARD), National Department of Agriculture Land Reform and Rural Development (DALRRD) Provincial Shared Services Centre, National Department of Employment and Labour (DEL), Regional Commission for Conciliation, Mediation and Arbitration (CCMA), Provincial Department of South African Police Services; the Legal Aid South Africa (Legal Aid SA) and the South African Human Rights Commission (SAHRC).

1.1.1. Department of Agriculture and Rural Development (DARD)

The presenter outlined the programmes of the Department as follows

- Social cohesion initiatives with landowners: planning and fencing
  - White commercial farm owners and community trusts working together to put up boundary fences that are aimed at minimising cattle impoundments, law suits, killing of cattle over trampled or grazing on crops.
  - Two farms in Groenvlei (Amajuba District) supported with 50km fencing material.
  - Previous budget was R2.7 million and there is no budget for 2022.
- Social facilitation on disputes over land: Farm dwellers (CPA, Trusts, landowners, occupants) social dynamics amongst themselves and with government departments/spheres of government (DALRRD, Municipalities, SAPS)
  - Promoting participatory development planning amongst farm beneficiaries – planning for fencing.
  - Farms supported: Langkloof and Kroomelenboog-Utrecht, Boarder farm-Newcastle, Mooiplaas-Dannhauser, Mawela-Mooi Mpofana.
- Capacity building. The following are focus areas for farm dweller organisations:
  - Land Rights and Alternative Dispute Resolution Mechanisms (DALRRD and AFRA) – 2020
  - Policy consultation: policy on the provision of basic services (DWS) and Sectoral Determination for Farm Workers (DEL, PMB)-2022
  - Good governance (DDP) and managing workplace discipline etc. (CCMA).
  - Budget: R200 000 targeting two groups in 2022.
- One-Home-One garden programme: The support focuses on farm dwellers with limited land rights/labour tenants prioritising areas with high multi-dimensional poverty index (SAMPI) stats:
  - Dannhauser and Vryheid-500 hectars, 48 farms (2020/21 FY)
  - Endumeni and Okhahlamba 430 hectars, 60 farms (2021/22 FY)
  - Planned: uMgungundlovu 450 hectars, 47 farms (2022/23 FY)
  - Budget: R1.2 million.

The following districts were identified as hotspot areas because of a number of socio-economic issues affecting people living on farms:

- Amajuba
- Zululand
- uThukela
- uMzinyathi
- iLembe
- uMgungundlovu

1.1.2. Department of Agriculture, Land Reform and Rural Development (DALRRD), Mr Mndaweni

The presentation of the Department can be summarised as follows:

- The state and nature of eviction
  - Legal and illegal – Legal evictions are those that are done through court orders. Illegal evictions are those evictions that are done without the court order and/or with Magistrate Court orders without being reviewed by the Land Claims Court in terms of the Act.
- Factors underlying evictions
  - The grazing issue – this involves limit to the grazing area; limit to the number of livestock that the farm dwellers may keep; and consent to keep the livestock – this gets disputed sometimes if the consent ever existed.
  - Lack of basic services like water and electricity.
  - Breach of terms and conditions by either side – some farm dwellers refusing to provide labour and land owners changing conditions of stay without agreement/negotiation.
  - Housing issues – farm dwellers building or extending homesteads without consent and landowners refusing farm dwellers from constructing with better building materials.
  - Working conditions and living wages – farm dwellers/workers demanding better pay and working/living conditions and farmers responding with threats of evictions or actual evictions.
  - Farm owners' attempts to limit size and number of people on the farms.

1.1.3. Department of Employment and Labour (DEL), Mr Khambula

The presenter identified ensuring compliance with applicable labour laws as the main function of the Department of Employment and Labour. The applicable labour laws were listed as follows:

- Basic Conditions of Employment Act, 1997.
- Sectoral Determination 13: Farm Worker Sector
- National Minimum Wage Act, 2018
- Employment Equity Act, 1998
- Labour Relations Act, 1995
- Occupational Health and Safety Act, 1993
- Compensation for Occupational Injuries and Diseases Act, 1993
- Unemployment Insurance Act, 2001
- Unemployment Insurance Contributions Act, 2002
- Employment Services Act, 2014

The key services of DEL to the public were listed as follows:

- Inspection and Enforcement Services
- Public Employment Services
- Unemployment Insurance Fund
- Compensation Fund

The DEL service delivery points in KZN comprise the following:

- Provincial Office
- 16 x Labour Centres
- 5 x Satellite Offices
- 33 x Visiting Points
- 17 x Thusong Services Centre
- Mobile Bus
- On-Line platforms

The total number of inspections conducted in the Agricultural Industry in 2021/ 2022 financial year amounted to 1 914 and the total number of workplaces found to be non-compliant amounted to 589 or 31%. Non-compliance was highest in UIA/UICA and EEA at 70% and 69%, respectively. The total number of inspections conducted in the Agricultural Industry in the first quarter of 2022/23 amounted to 348 and 81 or 23% of inspected workplaces were found to be non-compliant.

1.1.4. Commission for Conciliation, Mediation and Arbitration (CCMA), Mr N Dube

On 01 January 2019, the National Minimum Wage Act (NMWA) fell under the jurisdiction of the CCMA. The minimum wage is defined as the lowest wage permitted by law or by special agreement setting the floor below which no worker must be paid. The new minimum wage of R23.19 per hour which came into effect on 01 March 2022 applies across all sectors, with an exception to workers employed in Expanded Public Works Programmes (EPWP) who are paid at a lower hourly rate of R12.75. The calculation of the NMW relates to the cash component of remuneration payable for ordinary hours of work. Employees working less than four hours on any day must be paid for four hours work on that day.

Any worker or registered trade union may refer a dispute to the CCMA in terms of section 73A of the BCEA, where any money is owed in terms of the NMWA, collective agreement or sectoral determination. Only the CCMA may enforce the NMWA not Bargaining Councils. Labour Inspectors may refer disputes to the CCMA in terms of section 73 of the BCEA requesting the CCMA to make a written undertaking or compliance order an arbitration award. NMWA matters may be referred directly to the CCMA or to DEL. BCEA matters regarding non-payment can be referred directly to CCMA if earning below the ministerial threshold of R224 080.48 per annum. Employees who earn above this threshold must refer their matters to labour Court.

Employers can challenge compliance orders of the DEL within the specified date of the compliance order. In instances of failure to file on time, one has to apply for condonation. NMWA and BCEA disputes must be heard within 30 days via conciliation-arbitration process.

Agricultural Sector Referrals

The CCMA received a total of 7 176 referrals pertaining to the Agricultural Sector during the financial year 2021/22 and 2 670 referrals for the period 1 April 2022 up to 31 July 2022. The KwaZulu-Natal Province accounted for 793 or 11.1% of the 7 176 Agricultural Sector referrals during the financial year 2021/22 and 311 or 11.6% of the 2 670 referrals for the period 1 April 2022 up to 31 July 2022.

The total number of EEA referrals for KZN was recorded at 8 during the 2021/22 financial year. Four EEA referrals were received since 1 April 2022 to 31 July 2022.

- Non-compliance referrals by employers at National level were recorded as follows:
  - 01 April 2021-31 March 2022-67
  - 01 April 2022-31 July 2022-26
- Claims by employees for failure to pay amount owing (Not NMWA) at National level were recorded as follows:
  - 01 April 2021-31 March 22-634
  - 01 April 2000-31 July 2022-278
- Dismissals for Operational reasons related to NMWA (Retrenchments) at National level:
  - 01 April 2021-31 March 2022-1 case – retrenchments in terms of Section 189A
  - 01 April 2022-31 July 2022-No cases from
- Failure to pay any amount owing in terms of the NMWA at National level:
  - 01 April 2021-31 March 2022-51
  - 01 April 2022-31 July 2022-13

- A total of 837 and 344 NMWA and BCEA referrals were received at National level in 01 April 2021/22 financial year and 01 April 2022-31 July 2022, respectively.
- A total of 97 and 43 NMWA and BCEA referrals were received in KwaZulu-Natal on 01 April 2021/22 financial year and 01 April 2022-31 July 2022, respectively.

1.1.5. Legal Aid South Africa, Ms S Dlamini and Ms L Mgedezi

Legal Aid SA opted for a decentralised management model. The intention is to have regional offices with own attorneys in regions to represent farm dwellers and farm workers. Legal Aid SA is currently dealing with the following issues, as presented by Ms L Mgedezi:

- ESTA Amendments;
- Policy mechanism to promote access to legal representation;
- Putting structure for continuous training of legal practitioners;
- Suggested policy amendments in ESTA (Extension of Security of Tenure Act) and LTA (Labour Tenants Act);
- Role of Legal Aid SA is to promote access to legal services; and
- Land Claims Court to have jurisdiction on ESTA and LTA.

Advocate M Marongo presented on land, environment and right to food, covering the following issues:

- Refusal by farm owners to provide conditions conducive to human dignity;

- Failure of those who are tasked to promote access to justice for farm dwellers, including departments and legal practitioners; and
- Unfair orders granted by Judiciary against farm dwellers.

1.1.6. Provincial Commissioner of Police, Mr Mkhwanazi

The presentation by the Commissioner focused on the Implementation of the Rural Safety Strategy, which was reviewed in 2020. He reported that livestock theft is the major criminal activity affecting rural areas in KZN – uThukela is the top District where stock theft cases are reported followed by Zululand. As the Province is bordering Lesotho, sometimes livestock is taken to Lesotho and SAPS struggle to repatriate such stock. In this regard, SAPS plead with government for strengthening of Bilateral Agreements with neighbours to assist the police.

The Commissioner conceded that SAPS is not perfect; hence they have dismissed about 200 officers in the past year. Some police officials were arrested for looting that happened in KwaZulu-Natal and Gauteng last year. However, the Commissioner refuted the assertion that they are only serving white farmers. The Commissioner outlined the history of the formation of the police service from 11 agencies, including homeland police departments. He pointed out that Community Policing Forums were established for communities to hold the police accountable. Understaffing is a major challenge as reflected in 18 000 police officers monitoring 11 million community members in KZN. Therefore, as police officers cannot be everywhere it is important for communities to work with the police.

The Commissioner's presentation on progress regarding implementation of the Rural Safety Strategy covered the following:

- Implementation of Reviewed Strategy.
- Eight Pillars of the Strategy.
- 184 police stations in KZN, 30 are urban based, 62 for rural communities and others rural/urban mix.
- 45 police stations have implemented the Strategy.

The Commissioner reported on cases in KZN as follows:

- Stock theft, five districts out of 11 are affected in KZN.
- 161 cases reported, mostly in uThukela district.
- There are measures in place to prevent stock theft e.g. road blocks.
- Challenge is that KZN is neighbouring Lesotho, resulting in livestock crossing the border. However, police are working with Lesotho police on this matter.

Proposal:

- Limitation of movement of farm dwellers and their livestock grazing must be eradicated.

2.1.7 South African Human Rights Commission (SAHRC), Mr T Mbhense

SAHRC is receiving complaints from communities regarding some of the departments that are not responsive and do not address issues raised by society.

1.2. Oral submissions by other Stakeholders and Community Organisations

1.2.1. Umhlabawethu Social Movement, Mr N. Shabalala

The Movement raised a concern about the meeting not being properly communicated; and also raised an issue about the criteria used to identify farms to be visited by DEL.

Highlighted Challenges:

- Commercial farmers do not accept transformation.
- Illegal and constructive evictions in most farms.
- Police are not transformed, they are used by white farmers to victimise farm workers and farm dwellers.
- Legal system favour white farmers and racial profiling of farm dwellers.
- Refusal to access ancestral graves and burial rights.
- Ministerial visit by Minister Cele exacerbated hostility between farm dwellers and farm owners in Normandien. White famers and Themba Securities hired by farmers have become law unto themselves. Mr Mbatha was killed years ago in Normandien by a white farmer and still there is no progress in the case. One woman is kept against her will in one of the farms in Normandien but nothing is being done by authorities.
- Proposal for ESTA to be done away with.
- NMWA not being complied with in most farms.

1.2.2. Amajuba Farm Dwellers (Dannhauser, Newcastle and EmaDlangeni under aMajuba Municipality), Mr S Khumalo

Issues raised:

- Database of issues of farm workers and farm dwellers established under guidance of conciliator, Mabuyakhulu, who was appointed by former Premier Mchunu. Coordination done by Premier and support had to come from DALR, which creates financial problems.
- Illegal evictions, threat of evictions, stock theft and farm killings. However, Community Safety assist in criminal matters.
- Legislation and implementation of legislation.
- Socio-economic conditions of farm workers unacceptable.
- Restitution claims are prioritised over labour tenancy cases.

1.2.3. Landless People's Movement, Mr Mangaliso Kubheka from Ngogo

Issues raised:

- Decisions taken about labour tenants without involving them. Labour tenants work in farms without being paid. Today labour tenants are not recognised. When new owners take over farms they make labour tenants to sign farm worker agreements.
- He is the seventh generation of farm dwellers but not benefiting anything from the farm.
- Land redistribution must be done away with. People who acquire land through land redistribution displaces existing farm dwellers.
- People who kill white farmers get arrested quickly but farmers who kill black people do not get arrested. Killers of Mr Mbatha 11 years ago have not been arrested.

- Beneficiaries of land redistribution end up building shacks on farm land as they do not receive Government support.
- Someone who was not the beneficiary of land redistribution opened a trust with the Master of the High Court and brought other people who were not labour tenants.
- Departmental officials must stop accepting kickbacks from beneficiaries of land redistribution.
- Local people must be employed in government departments.
- Mr Thompson (farm owner) refused to install electricity in the houses owned by farm dwellers in the farm. (Name of farm not provided)
- There is a need to identify grazing land for farming to improve food security, as most of the land is being used for human settlements.
- Farm workers and farm dwellers must have access to land in order to produce food for their livelihoods.

1.2.4. KwaZulu-Natal Agricultural Union (Kwanalu), John Flanagan

The strategic focus of Kwanalu is to provide leadership on rural and agricultural issues, with emphasis on all aspects pertaining to economic sustainability, security, risk management, rural development and tenure. The Strategic Focus is to lead agricultural issues across the province, looking at:

- Living and working conditions on farms in KZN
- Challenges encountered by landowners
  - Economic/human challenges
- Landowner concern regarding rural settlements
  - Population explosion
  - Expanding settlement footprint
  - Lack of control and adherence to legislation
  - Lack of law and order
  - Increased security, crime risks
  - Provision of services
  - Lack of support by municipalities, government
- Potential conflict issues
  - Building expansion without permissions
  - Lack of written rules/agreement between parties
  - Lack of willingness from employees to sign employment contracts
  - Lack of clarity regarding the impact of service installations or upgrade on property rights and expense (servitude lines, rates, transformer fees, available line capacity)
  - Unending expectation placed on landowners to provide services
  - Livestock on farms uncontrolled
  - Lack of recognition of livestock legislation and best practice-overgrazing
  - Hunting with dogs

Land tenure reform issues (preventive to solutions)

- Lack of:
  - price negotiation authority at the district
  - adherence to agreed/realistic/legal timeframes

  - response to law
  - enforcement by local police
  - accountability in terms of deliverables
  - Landowner incentives in light of the unproductive process
  - Transparency- future land ownership and structure
  - Budget-state resources
- Kwanulu Activities
  - Support and facilitate farmer discussions for accelerated tenure reform
  - Promote compliance with legislation
  - Increased security on all farms
  - Demonstrating and sharing existing solutions
  - Framing solutions within transparent and sustainable agricultural environment

1.2.5. SEFA, Ms N Mthembu from Dannhauser

Poor communication regarding the meeting and use of the English language in correspondence, which creates problems for farming communities. Community leaders were not involved in the arrangements for the meeting.

Issues raised:

- CCMA to conduct awareness campaign together with DEL.
- Workers refuse to sign employment contracts for UIF deductions because of lack of knowledge.
- Labour inspectors inform the farm owners before conducting inspections but do not engage with workers, which creates a challenge as farm workers are often threatened and ill-treated by farmers.
- Farm workers pay for uniforms and personnel protective equipment.
- Farm owner shot the bull of the farm dweller in Normandien and nothing was done. (Mr Kubheka has the details of the incident.)
- The one-household-one-hectare (1H1H) project should be expanded.
- Parliament to identify Department personnel that will address and take community issues forward.

1.2.6. Landless People's Movement, Mr. J Radebe

Issues raised:

- Some of the laws that are passed in Parliament are not assisting farm dwellers and farm workers.
- Eviction and impounding of farm dwellers/workers livestock by farm owners was raised as a serious concern; and that government intervention is required.

1.2.7. Utrecht Farmers Association, Mr S Dlomo

Government bought land about 12 years ago for the farm dwellers but they still do not have title deeds. Instead, Government brought military veterans who leased the land to other people

whose livestock is destroying their crops. These people were reported to the police for arson in farms but nothing has been done.

1.2.8. COSATU, Mr P Duma, Provincial Chairperson

Issues raised:

- Concern about statistics provided by CCMA regarding issues resolved in proportion to issues investigated.
- Non-compliance with labour legislation particularly minimum wage.
- Non-compliance with labour laws should be criminalised.
- Proposed an establishment of a bargaining council for the farming sector.
- Reports of violence in the farming sector.
- Poor socioeconomic conditions – difficulty in accessing health services and education.
- Farm dwellers need access to land.
- Police must treat farming communities equally, that is farm owners, farm workers and farm dwellers.

1.2.9. COSATU, Mr Dlamini, Local Chairperson

Issues raised:

- Questioned DEL's role in addressing the reported non-compliance with labour laws.
- The owner of the drinking water company, THIRST, based in Normandien, is responsible for impounding and sale of farm dwellers' livestock but government source water from the same company.
- "Thekwane" and a "fridge company" not proving personnel protective equipment (PPE) to workers.

1.2.10. SACTWU, Andreas Nxumalo

Issues raised:

- Government should review declaring farms as private property, which renders them inaccessible to Trade Unions for organisational purposes.
- Do not agree with the Provincial Police Commissioner when he said they are implementing the laws without bias.
- Some commissioners work on a part-time basis, which means that they also work as private consultants. The Union proposed that government should employ full-time commissioners to avoid bias towards their clients.

1.2.11. Charleston Community Trust, Mr Thulani Vincent Msimango, Chairperson

Issues raised:

- 2017 Nasrec Resolution Expropriation of Land Without Compensation was not implemented.
- In 2003 land was restored to the Charleston community and they received a freehold title deed. The people established a Trust but the trust executive does not account and report on anything to the community.

- The community would like to recall the trust members but needs assistance on undertaking the task. Mr Msimango was advised to consult with officials of Legal Aid including the relevant Department and Parliament officials.
- The Provincial Head of the DALRRD reported that the Department is aware of the Charleston Trust matter and is attending to it.

2. UTHUKELA DISTRICT MUNICIPALITY

On the afternoon of 12 August 2022, the delegation visited the Fodo Farm in uThukela District Municipality.

2.1. Fodo Farm visit

The delegation met with Mr Walter Mitchel who is the manager of his family farm. The farm is a free range livestock farm and Mr Mitchel has been staying on the farm for 5 years. Mr Mitchel was accompanied by Mr Moloi who is farming one of the portions of Fodo Farm. The briefing by Mr Mitchel can be summarised as follows:

- The farmer was not aware of the visit but was informed of a labour inspection, which comprised of nine points of focus covering areas such as the business organogram, unemployment insurance fund, administration and employment contracts as communicated by the DEL. Therefore, he prepared a presentation along those lines and was expecting at least 10 people not a large delegation.
- The farm has 12 permanent employees and two families of the farm workers stay on the farm while others stay in nearby areas. There are also farm dwellers who stay on the farm. The workers and farm dwellers' houses have electricity and water; and the farm dwellers are allowed to build homes and to own livestock.
- There is a portion of land in the farm that have been set aside for use by the farm workers and dwellers, some of whom have livestock while some don't. There is a process with DALRRD to formally have the land portion subdivided for use by some of the farm workers and farm dwellers so that they can have tenure security but the process has been too slow and tedious. The farmer would also like the Department to assist with the development of the areas once demarcated for the farm dwellers.
- The farmer indicated that he was assisted by the DEL to draft the employment contracts for his workers. However, the workers refused to sign the contracts; and on further probing, he informed the delegation that the workers said that they were told not to sign the contracts. The workers have been working without contracts for several years.
- Farm dwellers' children have access to a nearby school and two clinics. There is also a mobile clinic that provides services.
- Mr Boesman Moloi, who is farming one of the portions adjacent to Fodo Farm told the delegation that they have been given land by government, which they appreciate and are grateful for. However, he highlighted challenges with farmer support, market access and veld fires and the need for assistance with firefighting equipment and resources for fire breaks. They plant maize on 175 hectares and the land portion has a river nearby but they do not have irrigation equipment.

DAY 2: 13 August 2022

On 13 August 2022 the delegation visited Weltevrede Green Ranches and Moorside Farm in Alfred Duma municipality under uThukela District Municipality.

2.2. Weltevrede Green Ranches Farm

The delegation was received by Mr Ryan Green who is the owner of the farm. The farm is situated in Bergville and it has 88 workers under its employ, which can be disaggregated as follows 70 men, 15 women and 3 Lesotho nationals. The delegation was informed that 12 of the workers are drivers. All workers are reported to be employed on a permanent basis and are registered with the UIF and COID. When workers are sick they are to a nearby private hospital. Only six families live on the farm and the rest live in surrounding areas. Those who live outside the farm are transported with the farm transport. Farm dwellers' children attend nearby schools. Mr Green proposed the establishment of a trade school on the farm. There are only men that are staying in the farm compound. Farm dwellers are allowed to have up to eight cows per household.

The delegation interacted with approximately 10 male workers who were accompanied by the female supervisor. They raised issues which included fluctuating basic salary. However, it was later explained that the basic salary is determined by the number of hours worked in a particular month. They informed the delegation that they receive pay slips and UIF deduction are reflected on their pay slips. They also informed the delegation that they have employment contracts. Their hourly rate increased from R21,69 in the previous year to R23,19 in March 2022 (copies of the payslips and employment contracts were shown to the delegation on site during the site visit). They work from 7:30 to 17:00 and have one-hour lunch break. Workers are not members of a trade union. The farm owner informed the delegation that they had a union active in the farm about five years ago but has since become unnecessary since workers are satisfied with their working conditions. One worker informed the delegation that he has not received the uniform since 2017.

The leader of the delegation asked the Occupational Health and Safety Act as well Basic Conditions of Employment Act inspectors to outline their functions.
OHS inspector highlighted the following:

- Enforcement of OHS Act and regulations
- Duty of the employer towards employees, section 8 e.g. provision of personnel protective equipment
- Machines – every rotating pat of the machine must be covered
- Types of notices i.e. Prohibition, Contravention and Medical Surveillance
- Number of days provided to comply

BCEA inspector highlighted the following:

- Responsible for enforcement of BCEA and the National Minimum Wage Act
- Notices issues for non-compliance
- Number of days provided to comply

Recommendation: The leader of the delegation requested the farm owner to assist his younger employees with matric certificates to study further, particularly in the agricultural field.

2.3. Moorside Farm in Alfred Duma Municipality

This is a 151-hectare farm situated in Alfred Duma Municipality which is under the Tugela District Municipality. Six households (initially 13) of labour tenants lodged an application under section 17 of the Land Tenure Act as a result of dissatisfaction with the manner in which they were treated by the farm owner. They were not allowed to keep more than 14 cows per household and goats were not allowed at all. The beneficiaries grew up in the farm and their parents were working in the farm. They were renting for themselves and also for their animals. Their application was successful and their settlement was made through an Order of the Court. The owner accepted the price of R800 000 that was offered by the Department. The tenants now have security of tenure. They can now own and increase the number of livestock that they want to have. The land was handed over to them five years ago. What they require now from government is post-settlement support.

The delegation interacted with the beneficiaries that were waiting close to the farm gate. These are some of the issues they raised:

- They have not received any funding since registering the CPA.
- They need fencing for their property.
- They still fetch water from the river and need access to water.
- They also need to be provided with electricity. They say they were promised electricity by Eskom but the power lines were constructed passing their farm to the other area. They resorted to vandalising the electricity infrastructure passing through their land as a form of protest.
- They also need farming implements and animal vaccines for their livestock.
- They also need assistance to acquire more land.
- They need support for their children who passed matric to further their studies in fields relevant to agriculture.

3.4 Public Hearing in Besters

Twenty-two community members made oral presentations during the public hearing, raising the following issues:

- A lady by the name of Nonhlanhla Mazibuko reported that she is from Noordgedagte and works for Mr De Jager. She stated that she was arrested with her four children in 2017 and she was shot at the back.
- Limitation of livestock that households may have e.g. Mr De Jager is alleged to have limited the number of cows each household may have to 10. Excess cows were reportedly impounded by the farm owner.
- Farm dwellers told that they have been awarded ownership of the farm but not given title deeds as proof of ownership.
- Government bought Isibonelo Farm, which is 180.88 hectares for farm dwellers but the farm owner took away their title deeds and their bank cards and are therefore not benefitting from the profit the farm is making. Government bought Njabulo Farm for farm dwellers but did not provide post settlement assistance in order for them to farm.

- Allegation of eviction from the Green Ranch Farm bur could not be determined whether it was a legal or illegal eviction.
- Allegation of no freedom of movement for the farm dwellers and their livestock in De Wet Farm, which is in Bergville. They also don't have access to water.
- Piggery Company is alleged to violet labour rights of farm workers. e.g. workers are dismissed for falling pregnant; there are no leave provisions, a young man injured on duty was given R50 and sent home without any medical attention.
- Lack of access to electricity and ablution facilities. Tholakela Ndaba from Harris Farm who is a chairperson of the Landless People's Movement (LPM) and works in Harris farm stated that they have electricity meters in their residences but the farmer sometimes refuses to sell electricity to them or they are told the farmer is away in Free State province.
- Allegation of victimisation of farm workers and biasness of labour inspectors when conducting inspections. It is alleged that labour inspectors only hear the side of the farm owner/manager. It was reported that a farm worker by the name of Fana Mbatha, was run over by a tractor in Boesman Klip Farm and his family only received R10 000 for the funeral.
- Allegations of non-compliance to labour laws such as the National Minimum Wage Act.
- It was reported that ambulances are denied access to farms when someone is injured or sick. The injured/sick person has to be taken out of the gate for the ambulance to take him/her to the hospital.
- There was report of stock theft, which has potential for blood shed as heavily armed owners of stolen livestock take the law to their own hands.
- It was reported that unknown people erect shacks in farm lands and when asked who gave them permission they say land was given to them by "izinduna".
- A request was made for assistance with further education and provision of school transport.
- Land claims that were submitted but not have been processed or paid out by the department of land affairs.
- SAPS not using the Labour Tenants Act during evictions.
- The relocation of farm labour tenants or dwellers need to be looked into.
- Challenge of road infrastructure and transport in farms need to be addressed by the government.
- Challenge of the farms that were sold under the Trust, which farm dwellers are not part of at Langalibalele farm.
- Stock theft was also raised as a concern in the farming communities.

DAY 3: 14 August 2022

7. Public Hearings in Inkunzi Piggery

On the third day, the delegation held public hearings in a school which is located in the Inkunzi Piggery Farm. The farm owner was not available to meet the delegation.
The following issues were raised at the hearing.

- There was a complaint about the land claim of two farms that was made in 1998 which were successfully purchased but the problem arose when claimants who did not reside on the farms that were bought were allegedly not allowed to go back to those farms however, the problem was resolved.

- A worker reported that he was absent from work for one day and a one-week salary deduction was effected by the employer. He reported the matter to the CCMA but did not get assistance.
- A mother who is a farm dweller being abused by the farm owner who impounds her livestock and not providing electricity for her. Another lady reported that the farmer regularly impounds their cows when they cross the fence and demand R100 per cow to release them. The farmer only provided one rope per households while the previous owner provided more ropes.
- Another farm dweller reported that her husband was working in the farm where from 1993. He was kicked by the horse and later died. The farm sold to new owners and when she applied for compensation, the new owner said he only started deduction in 2012.
- Farm owners are reported to be physically abusive towards farm dwellers and when they are reported to the police nothing is done to apprehend them.
- Non-compliance to the National Minimum Wage Age. A male farm worker reported that he works from 7h30 to 17h00 and earns R2500 per month.
- A former worker reported that he was dismissed by the farm owner and he went to DEL offices where he was given forms for the employer to complete. The employer refused to complete the forms resulting in the worker not getting what is due to him.
- Another former farmworker reported that he sustained injury on duty in 2009 and went to hospital. He was given forms that had to be completed by the employer. When he went to collect the completed forms the employer told him that he lost the forms.
- Some farm owners are not effecting UIF deductions and when workers get sick and don't go to work, money is deducted from their salaries regardless of whether absence was reported.
- Ambulance don't respond when called for sick or injured persons. Farm owners don't have a problem prohibiting access.
- A farmer by the name of Anton Ferreira has labour tenants with children who attend a nearby school but have to take a long route to attend school because he is refusing them to cross his farm on their way to school. There was also a complain of lack of school transport resulting in children "hiking" to school.
- There is reportedly no post-settlement support after farm dwellers are given land making it difficult for them to cultivate the land.
- Sipho Khulu stated that he worked at Nkunzi Piggery Farm for 21 years but the farmer claimed that he worked for 18 years. He said that he reported to DEL but was advised to leave the matter.

4.1 Visit to houses occupied by farm dwellers

The delegation conducted a walk-about to the houses occupied by farm dwellers where they interacted with dwellers. The first house was two-room house with one kitchen and one bedroom. The house has one window in the kitchen and two windows in the bedroom. However, both rooms are spacious. The family cook on open fire outside the house. The house is occupied by seven people including adults and children. Some of the houses were built by the farm owner for some of the farm workers. Farm workers/dwellers are allowed to keep any

kind of livestock but not pigs. They are also allowed to bury their families on the farm as their grandparent's graves are on the farm.

AMAJUBA DISTRICT MUNICIPALITY

5. Summary of observations during site visits to farms

This section provides an account of the farm visits by the delegation at Amajuba district. As shown in Table 3, the delegation visited Ingagane Fort, Felixstowe-onsdeel, Glen Rock, a LTA settlement, and Mtshali Family.

5.1 Ingagane Fort Farm

The DEL had conducted labour inspection prior to the visit of the Committee, and it reported about the outcomes. As part of the oversight, the DEL followed up on the previous visit by conducting further inspections with the delegation observing. Some of the key issues are:

- The farm had 20 employees and employ more workers during season time, and none of the workers were foreign nationals.
- The farm was reported to comply with all the relevant pieces of legislation.

During the interaction with workers, the delegation heard about the working conditions and benefits that workers enjoy. Workers expressed their happiness with the treatment they receive from the farmer and that they stay in quarters with running water and free electricity. They work five days a week and also have leave and sick leaves twice a year when they are off season. The delegation was, however, concerned that there were contradictory numbers of workforce. The workers reported that there were 16 employees, yet the HR Manager reported that there were18. Further contradiction came from the DEL profile of the farm which reported that there were 20 employees.

On the land tenure front, there are four households with labour tenant rights. However, only one household has submitted an application. The processing of the application was at an advanced stage but it was stuck at negotiations around settlement option due to the following:

- The claimed land(70ha) has other households who live on the land has livestock
- The land cannot accommodate all the claimant's livestock, hence the discussion about alternative land.
- The owner and the department has for a long-time attempted to find suitable alternative land. The claimant has, however, not found the land to be suitable for him and his family.
- The claim is stuck at the search of alternative land.

5.2. Felixstowe-onsdeel farm

The DEL, accompanied by the delegation, conducted inspection on the day of the visit. The role of the delegation, as the National Assembly, was oversight on the work of the DEL and to ascertain how the laws impact on the lives of the people it was meant to protect.

The farm had 10 permanent staff and it was reported that the farmer does not want them to have visitors and it was also alleged that he keeps livestock and poisoned their livestock.
Having been briefed about the outcomes of the previous inspection, the delegation split into two groups, one to follow the DEL as they conduct administrative audits/inspections to verify compliance with applicable law. The other group interacted with workers around the working conditions as well as tenure security issues. The findings and observations of the delegation can be summarised as follows:

- The farm was found not compliant with Occupational Health and Safety. One worker was driving heavy machinery that he was not licenced to drive.
- The group that looked at the living conditions heard about incidents of abuse by the farmer and that there were employees who got injured while on duty but they were not compensated because the incident was not reported to the DEL.
- There are 4 households that have been residing on the farm over a decade. There is a labour tenant application by 1 household, but the other 3 households were not included and have queried what their rights will be in the process.
- The families raised issues of uncertainty because they do not have any papers to prove neither reference number to show as proof that they submitted a land claim.

5.3 Glen Rocky farm

The delegation on its arrival, got a brief from the Department of Employment and Labour on the inspection conducted prior the visit by the delegation. The farmer employed 30 employees but only few of them were on sight during the visit by the delegation. The farmer was reported to be compliant though during the inspection there were aspects of incompliance but have since been rectified and it was confirmed that the farmer was compliant. The farmer informed the delegation that they have registered business entities with two families who have long service in the company. During the interaction with the workers, the delegation received a different picture when one of the shareholders was unable to tell how many shares he had on the equity scheme and the value of the shares while the other shareholder did not give clear responses when asked if he is happy about everything. The delegation on assumption concluded that an illegal activity (fronting) was happening to the so called shareholders in the equity scheme but wanted the matter to be investigated.

5.4 Ndlazi Household

This family has suffered immense physical and emotional abuse by the so called Themba Security by the instruction of Mr Potgieter/Boschoff. The livestock was impounded, damage to property and physical harmed in their home by unknown persons. It is alleged that their problems started after the death of their father who was a farm worker and the reason for the abuse is unknown by the family.

Table: Names of farms visited

Farm Name	**Key Issues**	
	Land Tenure	**Employment and Labour**
Ingagane Farm *(Maize fields)*	• A LTA application by one of the households is not yet resolved. The matter has been in courts for a long time and there is no agreement about the settlement option preferred by the labour tenant. • The land claimed is too little for the claimant. There are other households on the land. He opted for alternative land (but it is difficult to obtain alternative land. • The owner planted the maize on the grazing camp previously used by the farm dwellers.	• No findings with regards to employment and labour • Inspections showed that the employer was compliant with all relevant labour laws: • Owner pays more than minimum wage, has hospital benefits for the employee, the have PPEs, no reported incidences of injury or death.
Felixstowe-onsdeel farm	• No Access (gates locked): Poor logistical arrangements by the DEL	• No Access (gates locked): Poor logistical arrangements by the DEL
Glen Rocky farm *(cattle and game ranch; maize and soybeans fields)*	• No threats of evictions • Labour Tenants Application by two households. Nothing has been done on these applications yet. • Owner initiated equity schemes yet the farmworkers have no information about the schemes • Sondelani farming (partnerships with long-term workers • Xuma farming (sole propriety by Mokoena Snr. • Enterprises are limited because they need own land. Currently they lease on different farms. • Farmworkers do not know their shareholding %; no understanding of the financials and their rights and obligations in the entity.	• There are 18 employees • Inspection reports by the DEL showed 100% compliance with the relevant labour legislation. • In contrast to the labour inspections reports, the delegation found, from interviews with farmworkers, that some of them did not have PPEs, therefore it was clear that there was no compliance with the OSH
Felixstowe farm (*Livestock and maize fields*)	• Existing labour tenants' application by the Msibi household (other three did not). Concern about non-recording of the other households' rights. • Section 17 notice issued but the owner has not responded yet. • DALRRD to ensure that other families are protected as they process the application	• Not compliant with OHSA but compliant with BCEA (NNMWA) • Incidences of occupational injuries and death not reported • Workers driving heavy machinery that they are not licenced to drive. (This is despite the DEL reporting compliance.
Labour tenants farm (CPA)	• Govertment bought land to secure tenure for the labour tenants that were subjected to evictions. • CPA leasing about 202 ha in order to generate revenue that will be used to start own farming operations • No post-settlement support • Lack of coordination of units within the Department as well as the national and provincial department of agriculture.	• No inspection done (currently no agricultural enterprise operating)
Mtshali Family	• Threats of eviction • Harassment and assault by police and private security (cases opened at police station, no progress).	None

LIMPOPO (17-19 June 2022)

The Department of Agriculture, Land Reform and Rural Development in Limpopo Province indicated that it has a target to process 43 applications in Limpopo in this financial year and has allocated a budget of R217 million to finalise the 293 outstanding claims.

Public hearings Mookgopong

The Committees then held public hearings in Mookopong Local Municipality, this is where the Committees continued to hear horrific stories of farm workers being locked out of access to safe drinking water sources. Instead, they are forced to take water from contaminated rivers and which animals also drink. As in other provinces, farm workers also complained of being prevented from visiting family grave sites and, therefore, being unable to conduct their cultural rituals. The farm dwellers in Limpopo Province also complained about the lack of suitable land on which to build houses and indicated that they do not have access to water and sanitation or electricity. Farm dwellers also indicated that certain farmers in the Waterberg area pay them R50 a day to work on farms. They also have no Unemployment Insurance Fund, pension or other benefits. In addition, some farmers in the district only employ foreign nationals. The public requested speedy intervention by the committees to assist in resolving their challenges.

- **DENBI Fresh Produce Slabberts*;*** Inspection was done and the delegation noted incompliance on the living conditions with no basic needs, installation of electricity was done but the electricity is not working and no running water provided. The delegation however the delegation was impressed by the conduct of the Farm Manager who was willing to receive the delegation despite his incompliance issues. The delegation also noted that the DEL could not be able to report on certain things because they did not have the user friendly tablet used by UIF to detect the number of registered employers (both foreign nationals and South Africans).

- ***Purekrans Farm;*** the Mathye Family Security of tenure will be achieved through settlement of labour tenant application lodged with Department. Section 17 Notice has been issued and served to the owner. Owner given until 30 April to respond. Security of tenure will be achieved through settlement of labour tenant application lodged with Department. Section 17 Notice has been issued and served to the owner. Owner given until 30 April to respond. The committees visited Purekrans Farm 271 KR in Waterberg District, where they met with the Mathye family. The family indicated that they lodged a labour tenant claim with the Department of Agriculture, after receiving an eviction notice from the owner of the farm in the year 2001. The family indicated that Mr Shadrack Mathye started to work at Purekrans Farm at the age of 10, when he joined his parents who worked there. However, the Department of Agriculture, Land Reform and Rural Development started processing the claim after it received it in 2021 by serving the owner with a Section 17 notice in May 2022. The department had indicated that it expects a response from the owner by the end of June, failing which it will take the owner to court adjudication.

- ***Krispy Farm:*** The business is involved in ploughing Butternuts, sugar beans, blueberries, table grapes and cucumbers, peppers and livestock farming. The activities fall under Farm

SD 13 because the employer is performing agricultural activities and is guided by SD 13 and the NWM Act 9 of 2018. The business has 210 permanent employees and 300 seasonal. The was a number of foreign nationals that was not clearly mentioned but it is safe to say the business is in a campaign of phasing out the foreign nationals and also there is an equity scheme for the employees who have been in the business for eight years or more.

- T the farm's workers are paid R4 900 a month, slightly above the required minimum wage. The farm employed 210 South Africans and 35 foreign nationals, who are being phased out. The farm owner indicated that he will only employ South Africans in the future. The committees heard that the farm regularly sends its workers on plant production and packhouse training courses to upskill them. During the Oversight visit, it was discovered that the farm owners employed consultants to assist them to develop a shareholder scheme where employees who have worked on the farm for longer than seven years receive shares.

- ***Rietfontein;*** Mahlaela family was part of the community that was evicted after the farm was sold. The acquisition process will result in farm dwellers and labour tenants jointly taking ownership of the land, which will provide them with long-term security of tenure. The delegation noted with concern that the Mahlaela family lodged their claim in 1998 but was only considered in 2017, the delegation expressed its dissatisfaction on this and requested the DALRRD to act timeously and that the matter should be finalized at least by August 2022

2.4. Public hearings on the living conditions of farm workers

The delegation heard from approximately 90 farm workers, farm dwellers and labour tenants. The concerns that they raised can be summarised as follows:

- **Human rights violations**: Members of communities reported that farmers violate their rights by denying them access to their family graves as well as grazing land for their livestock. Further, farmers interrupt farm dwellers livelihoods through the illegal impounding of their livestock. They alleged that in some instances the police connive with farmers and accepts bribery to evict farm dwellers.
- **Incompliance with the legislation during evictions:** The farm workers are protected by the Extension of Security of Tenure Act. However, some have reported that the department was failing to implement the provisions of the Act to ensure that there are no evictions of long-term occupiers or when there are evictions notices are issued.
- **Slow pace in the processing of the labour tenants' applications:** Labour tenants have lodged their claims prior to 31 March 2001. The delegation heard from a number of applicants who have come forward to say that they have not heard from the Department about their claims, as a result they continued to live under the uncertain and insecure tenure. They are victims, or exposed, to constructive evictions attempts by the farm owners. Some also reported that the Special Master also know about the difficulties, including fencing off of the areas where labour tenants show grow their livestock. The concern was that the special master process has also not resulted in any tangible progress in the settlement of land claims in some respects.
- **Biased and unfair treatment of farm dwellers by the South Africa Police Services:** Some of the speakers that appeared before the committee alleged that some of the police officers do not take their cases (evictions, stock theft, illegal impounding of livestock) or

they refuse to issue case numbers to complainants to enable them to follow up on their cases. In some cases, farm dwellers are shot at by farm owners in front of the police officers. In some cases, evictions are carried out with the help of police officers who do not have an understanding or appreciation of the land rights of farm dwellers or labour tenants. Where the farm owners commit crime (shooting people, shooting or poisoning livestock drinking water) the police do not act accordingly. The perpetrators continue to roam the streets and commit further crimes to other dwellers on farms. The justice system protects farmers than farm dwellers/labour tenants.

- **Inadequate assistance by the Department:** Members of communities alleged that the department was not responsive to their complaints. Some of them lack courage to confront farm owners and to stop evictions.
- **Flawed processes during evictions**: There were concerns that the eviction processes, in many instances, are flawed. There are no notices issued and there is no due consideration of the age of victims as well as alternative accommodation requirements.
- **Unfair labour practice by farmers on the work place:** workers working without safety clothes, working hours as provided for in the Labour Relations Act not adhered to
- **Incompliance with the sectoral determination:** number of foreign nationals allowed to work in the farm not adhered to.
- **Foreign nationals taking space for South African citizens,** foreign nationals are the preferred workers because they accept cheap labour and do not complain about any unfair labour practices.

MPUMALANGA: 27 – 29 MAY 2022

Visits to farms

- ***Umbhaba Farm:*** The visit to this farm could not be conducted because the Department of Employment and Labour had recently conducted inspections on the farm.

- ***Tonga Mkukhu Farm:*** The delegation accompanied the DEL to monitor in labour inspection processes and procedures. Whilst there was compliance in terms of registration with UIF, the Committee observed – as found out during inspections – lack of compliance with regard to equity, particularly with employment of foreign nationals without valid permits. In other areas, there was lack of compliance by the employer with regard to occupational safety as well as implementation of sectoral determination. The farm applied for 350 permits for foreign nationals but only received about 70. Working hours, especially for those that work whilst standing, was irregular because they worked more than 4 hours with intervals in-between.

- ***Paardeplaats:*** The Department secured tenure rights of labour tenants who continued to live under threat of evictions. The committee inspected the state of the houses and enquired about the livelihood activities. It noted that the houses were completed, with solar panels for generation of electricity. They also had access to water. The Community expressed concerns about limited grazing land, lack of scholar transport, limited economic activities for the community and access to health facilities.

- ***Zoekop:*** Sindane family was part of the community that was evicted after the farm was sold to a mining company, however the family are resisting relocation on the basis that it does not cater for their needs and that the livelihoods will be negatively impacted. The community was relocated to Rietvlei and Sindane family did not move because the relocation requirements were not adhered to. They are living in the middle of the Exxaro Mine where they experience health hazards; livestock is dying and children according to the family are affected by air pollution coming from the mine and the blasting also affects their livelihood. The delegation was able to view the homestead for it to be able to make a comparison on houses built by Exxaro and to make a determination on the best recommendation that will suit both the mine and the family.

- ***Rietvlei:*** this is the area where all the community of Zoekop was relocated. The delegation walked about the house that was built for the Sindane family and had some questions as the house was big enough to accommodate the family and their belongings. The representative from the mine explained to the delegation that the eldest son of the Sizane family has his own house in the area and further explained that after failing to convince Mrs Sindane she was asked to provide the mine with her specific plan and that was met by the mine and when the time to relocate the family had new demands that were not on the initial negotiation. That new required led to the collapse of negotiations and the matter is in court and the family has been served with the court order.

- **Donkerhoek: (**Hadebe Family) - This case is about an eviction matter of a family that had lived on the farm for more than a decade. Their forefathers worked, resided, died and were buried on that farm. The family was forcefully moved to Etombe, accommodated in a community hall. They reported that they have been living there for 13 years. The Department of Agriculture, Land Reform and Rural Development built houses for the family and the cost of the houses was estimated at R16 million with rising costs for the security to guard as the Hadebe family has not yet moved to the new houses.

- **Meeting with Hadebe family:** The delegation met with the Hadebe family to hear their plight. A family representative gave the background and the reasons why they ended up living in a community hall. Their story was a very sad one in this lifetime under democratic government. What was outstanding was the fact that the perpetrators are known and that justice has not been served. The family lost 18 cattle and sheep through poisoning and their harvest was destroyed by the farmer in the presence of the South African Police referred to as SAPS. The family requested assistance from the Committee and they requested that justice be served and be compensated on their things they lost when they were evicted. The family also confirmed that they were willing to relocate to Donkerhoek if the department could full fill their promise of preparing the soil for them to plant, make land for their livestock to graze and relocate their family graves to the new homestead.

2.5. Public hearings on the living conditions of farm workers

The delegation heard from approximately 90 farm workers, farm dwellers and labour tenants. The concerns that they raised can be summarised as follows:

- **Human rights violations**: Members of communities reported that farmers violate their rights by denying them access to their family graves as well as grazing land for their livestock. Further, farmers interrupt farm dwellers livelihoods through the illegal impounding of their livestock. They alleged that in some instances the police connive with farmers and accepts bribery to evict farm dwellers.

- **Incompliance with the legislation during evictions:** The farm workers are protected by the Extension of Security of Tenure Act. However, some have reported that the department was failing to implement the provisions of the Act to ensure that there are no evictions of long-term occupiers or when there are evictions notices are issued.

- **Slow pace in the processing of the labour tenants applications:** Labour tenants have lodged their claims prior to 31 March 2001. The delegation heard from a number of applicants who have come forward to say that they have not heard from the Department about their claims, as a result they continued to live under the uncertain and insecure tenure. They are victims, or exposed, to constructive evictions attempts by the farm owners. Some also reported that the Special Master also know about the difficulties, including fencing off of the areas where labour tenants show grow their livestock. The concern was that the special master process has also not resulted in any tangible progress in the settlement of land claims in some respects.

- **Biased and unfair treatment of farm dwellers by the South Africa Police Services:** Some of the speakers that appeared before the committee alleged that some of the police officers do not take their cases (evictions, stock theft, illegal impounding of livestock) or they refuse to issue case numbers to complainants to enable them to follow up on their cases. In some cases, farm dwellers are shot at by farm owners in front of the police officers. In some cases, evictions are carried out with the help of police officers who do not have an understanding or appreciation of the land rights of farm dwellers or labour tenants. Where the farm owners commit crime (shooting people, shooting or poisoning livestock drinking water) the police do not act accordingly. The perpetrators continue to roam the streets and commit further crimes to other dwellers on farms. The justice system protects farmers than farm dwellers/labour tenants.

- **Inadequate assistance by the Department:** Members of communities alleged that the department was not responsive to their complaints. Some of them lack courage to confront farm owners and to stop evictions.

- **Flawed processes during evictions**: There were concerns that the eviction processes, in many instances, are flawed. There are no notices issued and there is no due consideration of the age of victims as well as alternative accommodation requirements.

- **Unfair labour practice by farmers on the work place:** workers working without safety clothes, working hours as provided for in the Labour Relations Act not adhered to

- **Incompliance with the sectoral determination:** number of foreign nationals allowed to work in the farm not adhered to.

- **Foreign nationals taking space for South African citizens,** foreign nationals are the preferred workers because they accept cheap labour and do not complain about any unfair labour practices

NORTHERN CAPE: 27 – 29 MAY 2022

DAY 1: 27 May 2022

2.1 Stakeholder Engagement

On the first day of the oversight visit, the Committees held a stakeholder engagement meeting to gain insights into the living and working conditions in the farming communities of the Northern Cape (NC) Province. The Committees received a number of presentations from stakeholders and government Departments as listed below:

2.1.1 Women on Farms Project (WFP)

Women on Farm Project (WFP) is a non-governmental organisation (NGO) that is actively involved in farm workers' issues particularly female farm workers, with its Head Office based in Stellenbosch. Ms Lenie Coetzee, who did the presentation for WFP is the Coordinator for the Northern Cape and her office is based in Keimoes. The presentation from WFP can be summarised as follows:

- **Poor living conditions and lack of basic services** – most farm workers still live in poor housing with no ventilation, clean water and ablution facilities. Most get water from farm canals and when farmers decide to clean the canals, workers will be without water. There is also no access to primary health care. When a farm worker gets sick, it is their responsibility to get themselves to the nearest clinic or hospital using public transport, which in most cases they cannot even afford. Where there is electricity, farm workers buy the electricity at exorbitant prices from employers, for example, paying a minimum of R250 for electricity without a clear number of units for the amount. Some farm workers are made to pay rent for farm accommodation.
- **Poor and difficult working conditions** – in most places, even in the work place, farm workers have no ablution facilities, which becomes a huge challenge for women. The conditions are reportedly worse for seasonal workers, who mostly have no employment contracts. If they do, the contracts will be in a language they do not understand and are not explained to them. Most women are usually employed as seasonal workers and conditions for them are usually far worse than for men, where in fruit farms they are expected to carry heavy crates and get paid R2 per crate. During harvesting seasons, women are forced to work overtime without being remunerated.
- **Abuse of power by employers** – workers are forced to get supplies from farm shops, where items are not priced and are generally very expensive compared to normal spaza shops or supermarket. Workers will be given items on credit from the farm shops without prices and will only know what they owe after receiving what is left on their wages, in some cases taking as little as R30 home.
- **Non-compliance with labour legislation –** the majority of employers are not compliant with Minimum Wage, which gets reviewed in March every year. There are cases where female workers will take home R200 for a week's worth of work. Some employers do not contribute to the Unemployment Insurance Fund.

- **Socio-economic challenges** – the poor conditions in farms and lack of opportunities for women create dependence on men for a living, which in some cases, perpetuates domestic violence. There are no schools on farms so farm workers' children are transported to nearest schools by the Department of Basic Education. However, due to the poor conditions in farms, there are high rates of school dropouts, teenage pregnancies and substance abuse.
- **Backyard Food Gardens** – to assist some of the women on farms, the WFP has established a Backyard Food Garden Initiative, where it supplies women with vegetable seeds and other production inputs.
- **WFP proposed that:**
    - Government should ensure that women on farms get access to land.
    - The basic income grant should be extended from 18 to 59 years.
    - The unemployment grant should be increased from R350.

2.1.2 National African Farmers Union (NAFU)

The National African Farmers Union (NAFU) represents emerging and smallscale farmers. It has approximately 31 000 members nationally and 3 780 members in the Northern Cape.

The presentation from the Chairperson of NAFU, Ms Anna De Bruyn, can be summarised as follows:

- **Access to land** – smallscale and emerging farmers would like to own land instead of leasing or farming on communal land. Most communal farms are overcrowded and farmers are forced to have fewer livestock, which limits their growth as most aspire to be commercial.
- **Conditions of leased farms** – most farms that are leased from Government do not have machinery; and Government should ensure that the machinery that comes with the farms they lease is maintained and kept intact.
- **Access to water** – most farms have no water, which defeats the purpose of leasing or farming altogether. Smallscale farmers need Government assistance with Jojo tanks and boreholes on some of these farms to ensure that they remain productive.
- **Lack of support on redistributed state farms** – it was emphasised that if Government was doing what it was supposed to do in farming areas, there would have been no need for an organisation like NAFU. There are no capacity building programmes to assist people who are given farms and have no farming knowledge. In some cases, government brings people from different areas with no farming knowledge and put them into a farm without providing the necessary assistance to ensure that the farm is productive. As a result, most of the government farms are lying fallow.
- **Poor off-farm infrastructure** – bad roads and low-lying bridges constrain the movements and subsequently development and growth of smallscale farmers. Government needs to improve and maintain roads and other infrastructure in farming areas.
- **Access to finance** – smallscale and emerging farmers struggle to get bank loans as they cannot meet some of the security requirements from commercial banks; and government intervention through liaison with the banks will be appreciated.
- **Subsidising input costs** – government should consider subsidising smallscale farmers particularly for production inputs as costs of fertilisers and stock medicines are too high.

2.1.3 Commission for Conciliation, Mediation and Arbitration (CCMA)

The CCMA Regional Office for the Province is in Kimberley, where the Senior Commissioner in the Northern Cape, Mr Tsietsi Chakane, is based. The Commission uses Service Centres based at SALGA or Department of Employment and Labour offices to service the rest of the Province. The CCMA has also developed an electronic application (App) called CCMA Connect to ensure that there is wider accessibility to its services. However, it acknowledged that the App is not very helpful to people who are not technologically savvy such as farm workers. The presentation from Mr Chakane can be summarised as follows:

- **Poor working conditions** for farm workers, which were already highlighted by other stakeholders.
- **Socio-economic challenges relating to accommodation, education and primary health care** – In most cases, when farm workers are dismissed from work, they usually have nowhere else to live. The CCMA highlighted the need for the Department of Human Settlement to be involved. As CCMA also do blitz oversight visits, it found that there are challenges with access to education and primary health care for farming communities as Mobile Clinics that are often used cannot access some areas.
- **Labour issues** – Challenges to get farm workers unionised as they live and operate from privately owned properties, where sometimes it is difficult for Trade Union representatives to get access.
- **Deficiencies in tenure security legislation** – challenges with the implementation of current legislation such as the Extension of Security of Tenure Act (ESTA) including its weaknesses in preventing and abating farm evictions. There is a need to review ESTA as there are challenges with it when there are disputes at the CCMA.
- **Access to land and support for smallscale farmers** was highlighted to enable these farmers to grow into commercial scale and create jobs for local people.
- **Impact of fuel price increases** on production activities and food prices for farming communities.

2.1.4 South African Clothing and Textile Workers Union (SACTWU)

The representative of SACTWU, Mr Molefi Sephoko explained that after the Food and Allied Workers Union (FAWU) left the Congress of South African Trade Unions (COSATU), COSATU gave permission for SACTWU, which is one of its affiliates, to organise in agriculture, agroprocessing and retail. The Free State Branch of SACTWU is not fully functional in the NC Province and is still to be established. In addition to the issues that were raised by NAFU in particular, and from work that has been carried out in other provinces, SACTWU highlighted:

- **Child labour** i**s a big challenge** that is not being addressed in South Africa, where farm workers' children are often expected to stand in for their parents when their parents cannot do the work. In some cases, even children of farm owners are expected to work on farms under their parents. Child labour has an impact on the children's health and security, and also increases the rate of illiteracy in farming areas as children end up dropping out of school. This perpetuates the cycle of poverty in farming areas.
- SACTWU called for the political will and availability of resources to address child labour in the country; and for government to protect children and ensure that they remain in school.
- **Capacity of labour inspectors** needs to be enhanced to enable them to deal with cases of child labour.

2.1.5 Agricultural Food and Allied Democratic Workers Union (AFADWU) & COSATU

The presentation from Mr Thulani Klaas, who was representing both AFADWU and COSATU can be summarised as follows:

- **Disregard for labour laws** is quite prevalent in both the NC and Free State provinces.
- **Lack of capacity in government** to decisively deal with non-compliance and disregard for labour laws in the farming communities.
- **The turn-around time for CCMA cases** that are lodged on behalf of farm workers is considered too long. Some cases that are referred to the Labour Court by the CCMA can easily take 5 years. Resources and capacity are required throughout to ensure that farm worker cases are fast-tacked and finalised quicker.
- **Poor and improper housing** for farm workers is still a challenge and so is access to basic services.
- **South Africa also needs to acknowledge the International Labour Organisation (ILO)'s laws and regulations on child labour.** There is a need for government to come up with comprehensive intervention strategies to eliminate child labour including training foot soldiers to address child labour.

2.1.6 Representative of the NC Provincial House of Traditional Leaders

The presentation from Chief Lawrence W. Melito from the House of N//ntle Traditional Leadership can be summarised as follows:

- **Involvement of all stakeholders** – it highlighted the need for Parliament to involve all relevant stakeholders in dialogues about conditions in farming areas including Traditional Leaders, as such dialogues are important in shortening the distance between farmers and farm workers.
- **Transportation of farm workers** on the back of bakkies or pick-up trucks to and from places of work irrespective of the weather and road conditions, which is continuing unabated, is a violation of their basic human rights and disregard for Covid-19 protocols.
- **Lack of protective equipment and clothing** for farm workers, which puts their lives in danger.
- **Importance of involving Traditional Leaders in dialogues** – most farm workers are illiterate, and therefore, unable or uncomfortable with speaking about their problems with their employers or the Department of Employment and Labour. In such instances, the workers go to Traditional Leaders for assistance.
- **Outreach programmes** – there is a great need for government to do outreach programmes to capacitate farm workers on legislation and their rights.

2.2 Government Departments

2.2.1 Department of Agriculture, Land Reform and Rural Development (DALRRD)

The presentation from the Director, Tenure Systems, Ms Batlang Lekalake can be summarised as follows:

- DALRRD administers the Extension of the Security of Tenure Act (ESTA), which regulates evictions and living conditions of farm workers and farm dwellers.
- Farm workers and farm dwellers in the Province are still experiencing unbearable working and living conditions including illegal evictions, which are rife in the labour intensive areas along the Vaal and the Orange Rivers.
- To avoid court cases, the latest trend that farm owners use is constructive evictions, whereby they deny farm dwellers access to basic services such as water and electricity leading to the dwellers vacating the premises without being formally evicted. Where electricity is available, it is sold to farm workers and farm dwellers by owners at very high prices.
- The challenge that was highlighted is that once a court has issued an eviction order, it has to be reviewed by the Land Claims Court, which is an ESTA requirement. However, in small towns, eviction orders are rarely sent to the Land Claims Court for review due to lack of capacity and resources.
- ESTA is being reviewed and the ESTA Amendment Bill will be coming to Parliament.
- The DALRRD has established an inter-departmental structure that is led by the Provincial Department of Agriculture to address farm workers and farm dwellers' challenges.

2.2.2 Department of Employment and Labour (DEL)

The presentation from the chief director, Mr Zolile Albanie can be summarised as follows:

- The mandate of the Department is to enforce compliance to labour laws, however, there is an outcry that the Department is not visible in terms of inspections.
- In the NC Province, which is quite vast, the Department has seven Labour Centres. To address insufficient number of labour inspectors, the Department conducts blitz inspections on farms.
- In the blitz inspections that were conducted in December 2021 and April 2022, the following matters were identified:
    - High level of non-compliance with Labour legislation, namely, the Basic Conditions of Employment Act (BCEA), Unemployment Insurance Act, Occupational Health and Safety Act and the National Minimum Wage Act (NMWA).
    - In respect of non-compliance with legislation, it was found that working facilities were in poor condition and some had no ablution facilities; employers are not registering workers for Unemployment Insurance Fund (UIF); employers not providing personal protective equipment (PPE) and protective clothing; and Occupational Health and Safety (OHS) training was not offered.
    - Some employers (farmers) were not cooperating with Labour Inspectors.
    - Farm workers were not cooperating with Labour Inspectors for fear of victimisation. The situation is exacerbated by the dependence on the farm owner for employment and provision of accommodation; and the fact that farm workers are not unionised.
- Inspections also found cases of employment of illegal foreign nationals, which are reported to the Department of Home Affairs, as it is their jurisdiction.
- The DEL recognised that it needs to work with Labour Unions to do more advocacy sessions in farming areas.

2.2.3 Department of Home Affairs (DHA)

The presentation from Mr RJ Abrahams can be summarised as follows:

- The DHA regulates permit conditions for visits, work and stay in South Africa. It also conducts inspections in work places for documentation and registration of workers.
- The inspections in the Province revealed a lot of cases of unregistered workers and employment of illegal foreign nationals, which is a criminal offence. Most of the employed illegal foreign nationals are employed as cheap labour and in the Northern Cape, most were from Malawi, although there are sometimes illegal foreign nationals from other countries. For example, in one case, 21 Americans were found in a farm outside Taung (North West) with expired passports.
- The Justice System is failing to successfully prosecute non-complying and law breaking employers as most cases that the DHA bring against employers for harbouring illegal foreign nationals are thrown out of court. In such cases, what usually happens, employers can collude to move illegal workers from Farm A where the inspection took place to another farm. The owner of Farm A will say they do not know where the worker is, so when the worker cannot be found, the case is usually struck off the roll due to lack of evidence.

DAY 2: 28 May 2022

3. Farm Visits and Public Hearings

On the second day, the delegation visited the Kanoeneiland/Cannon Island Farm and Seven De Laan Settlement; and conducted public hearings at Augrabies Community Hall in Kakamas.

3.1 Kanoneiland or Cannon Island Farm

The Kanoneiland or Cannon Island farm is a river settlement situated on the largest island in the Orange River Valley at Ward 8 in Kai Gariep Local Municipality in the Northern Cape Province. The farm has three (3) residential areas with an estimated number of 25 households. The delegation visited some of the houses on the farm and spoke to the farm dwellers who used to work for the previous farm owner but do not work for the current owner, who was identified as Mr De Jager. The delegation interacted with farm dwellers and occupiers of the houses, where it was told that Mr De Jager bought the farm from Mr De Bruyn in 2008, who had bought the farm from Mr De Kok. The farm dwellers that interacted with the delegation moved to the area in 1996. The previous farm owner had provided the farm workers in the area with clean water, which they paid for monthly and used pre-paid electricity. Ever since the land was transferred to the current landowner, Mr De Jager, there has been continuous challenges between him and the families that reside on the farm.

The farm dwellers told the delegation that they were blacklisted by the current owner and therefore, cannot be employed by neighbouring farmers. The current owner is pursuing the strategy of constructive eviction by making living conditions unbearable for the dwellers. The road in front of their houses is always wet from the irrigation system in the vineyard, making it difficult for cars to pass through; and poles of the vineyard are pulled closer to their yards to minimise living space. The farmer has cut the water and electricity supply to their residential area and refuses to sell electricity to them. To get electricity, the farm dwellers buy electricity

from the farmer indirectly through other farm workers who work for him. The residents fetch water from the canal, which is not fit for human consumption. The lack of water supply was reported to the Local Municipality and the Municipality tried to resolve the matter but was prevented by the farm owner from entering his property to fix the water supply. Once a family leave the farm and go away for a long weekend away, their house will be demolished.

One of the long-term occupiers, Mr Van Rooyen took the illegal eviction case to court but he lost the case at the Magistrate Court. The matter was then taken up on appeal and he won the case at the Land Claims Court. Legally, the farm owner is required to provide alternative accommodation to the residents, if he wants to evict them. Hence the farm owner is resorting to constructive eviction to force them to leave without him formally evicting them.

The delegation went on a walk-about inspecting the houses these residents occupy. There are about ten houses most of them with three bedrooms each. The residents told the delegation that on average, each house has 7-9 occupants. One of the houses was partly demolished but the side that is not demolished still has occupants. The children attend school on the other side of the area and parents have to walk them to the bus stop that takes them to school in the dark.

The delegation also walked to the side that is occupied by workers of the current farm owner, Mr De Jager. This part of the residence is worse than that occupied by workers of the previous owner. It looks like a compound as opposed to the houses of the former employees, which are free standing houses. Each family lives in a one room with no proper windows or doors; most used old corrugated iron sheets as doors and to put on windows. There are no ablution facilities, farm workers and their families have to go to the fields to relieve themselves. The farm owner does not treat his employees any better. While they can buy electricity because they work for him, most cannot afford it as it is too expensive; and mostly make fire outside to cook. The previous farm owner used to give them some free units of electricity every month. The workers also get water from the canal, which is not very clean as sewerage from the farm owner's house sometimes flows into the canal. When the farmer cleans the canal, he has to shut the water supply, which means they will have no water. In such cases, they get water from drainage pipes, which is much cleaner than the canal water. However, the farmer has since put large boulders over the concrete slab cover of the drainage system to prevent them from drawing water. The delegation was told that when residents lay charges of abuse and illegal evictions at the local Police Station, the South African Police Services (SAPS) does not take their cases seriously. Instead, the farmer will go to the Police Station and come back with the police to chase the person who laid a charge away from the farm. The workers also told the delegation that Mr De Jager always has an upper hand and the police do as he says because the Police Station is located on his land.

3.2 Seven De Laan (Warmzand)

The Seven De Laan Warmzand is a settlement 20 km away from Keimoes within Ward 1 of Kai Garib Local Municipality. The farm, 10-15 hectares in extent, was purchased for R1.14 million on behalf of the farm dwellers in 2014 and was registered in the name of the Local Municipality on condition that the municipality will survey and issue each occupier with their own title deed. At the time of acquisition, the farm consisted of 39 households residing in brick

houses. The number has since increased to 50 households and the extensions are mainly made of corrugated iron. Provision of water is through Jojo tanks provided by the municipality as the farm does not have water rights and a pre-paid electricity. The engagements are still in progress to formalise the settlement and provide basic services.

After driving through the area, the delegation had a short meeting with the community where Members introduced themselves and outlined the purpose of the visit to the Northern Cape. At the meeting, the members of the community told the delegation that they are farmers but have no land. They pleaded with the delegation to ask government to buy the 170 hectares that is available from neighbouring farmers and standing fallow near the settlement. They said they need the 100 hectares for livestock grazing and to revive the 70 hectares of irrigation for crop farming as it was previously used. The residents reported that there is high level of youth unemployment in the settlement as neighbouring farms mostly employ Zimbabweans. When locals do get employed, farmers reduce working hours so that they can pay them very little. Most of the farmers also do not contribute to UIF. Some of the women reported that they receive assistance from Women on Farms Project with Food Gardens but they need a larger piece of land so that they can be able to feed their families and sell the surplus. Lastly, as the residents are passionate about farming, which is what they know, they would really appreciate government assistance with the 170 hectares; agricultural support with the little that they have and assistance with access to markets for crops and meat.

3.3 Public Hearings at Augrabies Community Hall in Kakamas

After opening and introduction of Members of the delegation, the Chairperson and leader of the delegation opened outlined the purpose of the hearings, giving a background including the National Assembly Resolution that led to the visit. The Chairperson further outlined house rules that are applicable to public hearings. The following community members made oral presentations:

1. Sylvia April
2. Anna Sebitswane
3. Nicolene Maweni
4. Sarel Basson
5. Duduetsang Motihanke
6. Rosaria Basson
7. Santa Potadder
8. Alida Seupe
9. Lebogang Sekamoo
10. Andreas Motlanthe

Key issues that were raised by community members included:

- Request for help to return the farm that was transferred by government back to her ownership (Sylvia April).
- Request for assistance for the father to receive pension and unemployment benefits that are due to him. The father was working for Oppie Bult Boerdery (Anna Sebitswane).

- Assistance needed for the father to receive compensation benefits for the injury sustained on duty in terms of the Compensation for Occupational Injuries and Diseases Act. (Nicolene Maweni).
- Financial support needed from government to relocate people staying close to the river, which poses a serious hazard during heavy rains (Sarel Basson).
- Complaint about job seekers being made to pay R700 in exchange for jobs (Duduetsang Motihanke).
- Challenges in getting UIF benefits (Rosaria Basson).
- Farm workers being forced to work Saturdays and Sundays without being paid overtime (Santa Potadder).
- Forced to sign a contract that does not stipulate conditions of employment (Alida Seupe).
- Violation of Health and Safety Act in farms by exposing workers to hazardous chemical such as pesticides without protective gear (Lebogang Sekamoo).
- Deduction from the salaries of both husband and wife for a house that does not even meet the required standards. A farmer who received R60 million subsidy from government to empower workers but instead gave workers a once off payment of R20 000 each (Andreas Motlanthe).

DAY 3: 29 May 2022

4. Farm Visits and Public Hearings

On the third day, the delegation visited the Salt Lake Farms in Douglas at ZF Mgcawu District Municipality where it also conducted public hearings with farm workers and farm dwellers from Salt Lake and surrounding farms namely, Fort Richmond, Olierivier, Hayfield and Vallus.

4.1 Public Hearing at Salt Lake Farms

In Salt Lake, the delegation was welcomed by the Mayor of Siyancuma Local Municipality, Mr Wim van Bergen. The Salt Lake Farms are situated in Pixley kaSeme District in Siyancuma Local Municipality near Douglas town. The land owner is Mr Kenny Dugmore and the occupier is Mr Jakob Greef. There are 54 households with farm dwellers that stay on the farms and are spread over 11 areas. Some of the occupiers have been born on the farms around the 1980s and some came and have also worked as labourers on the farm. Four of the households' members have been working for Transnet and are staying in the housing that are still owned by Transnet and do not have full ownership of the houses.

The community members raised the following issues:

- Poor condition of houses, with most of them falling apart and a health hazard to pensioners. Water gets into some of the houses when it rains, roofs are leaking and they need to put buckets everywhere. Challenges with transport, which is very expensive and unaffordable as Salt Lake is far from town (36km) and the road condition is quite bad.
- Farm workers were told that they have a 25% share on the farm as part of an Equity Scheme by the former Department of Rural Development and Land Reform (DRDLR) but were later offered a R60 000 once-off settlement. Six of the workers (including Mr

Katz) refused to sign for the offer and the farmer dismissed and removed them from the Equity Scheme and evicted them from the farm.

- Farm worker for 37 years at Salt Lakes and was a shareholder, along with others, of a Black Economic Empowerment (BEE) Programme to mine the salt pans, for which they never received dividends. Although they have contracts, the land owner, Mr Dugmore takes all the decisions and when they ask questions, they are told to pack and go. He is renting the house that he lives in and has been told to continue paying rent until age 65.
- The houses occupied by the salt pan workers are falling apart and the electricity tariff is too high. Some residents pay R1200 per month for electricity and water and the actual charge per unit is not clear because it includes payment for the transformer. There was a BEE deal concluded between the farm owner and the farm workers for mining the salt pans but they never received dividends and the farm owner make decisions on his own as if he is the sole owner of the farm. Health services are a huge challenge as residents live on SASSA grants. The local Mobile Clinic is not operating since 2021 and health services are not provided. If the clinic comes, it is only for half a day and they attend to few people.
- An aspiring livestock farmer with goats, cattle, sheep and pigs needs land so that he can be able to provide for his family; and made a request for government assistance in acquiring land to keep livestock.
- A gentleman who has worked for 36 years at Fort Richmond Safaris was made to sign a new contract by the daughter of the farm owner who took over the farm after the owner passed away last year. The terms of the contract were less favourable than the previous terms and he refused to sign based on the advice of his lawyer. The new contract stipulated that they will not receive any benefits from the years they have worked on the farm. On refusal to sign, the late farmer's daughter told them they no longer have work. They are staying in the farm without work and are denied basic services. Their lawyer assisted them to refer the matter to the CCMA. The DALRRD was informed about the matter and took statements and documents from the aggrieved farm workers but nothing has been forthcoming from them to date.
- The workers have been left alone at Hayfield farm without basic services; houses are falling apart and the mobile clinic is not serving the settlement anymore. The farm owner has moved elsewhere.
- A graduate who grew up in the farm reported the high prevalence of employment of foreign nationals to use them as cheap labour and circumvent compliance to labour laws. The farm owner has erected a fence around the houses of his former farm workers, thus restricting their movement. The owner sometimes denies them access to basic services like water and electricity. The former DRDLR has been visiting the farm since 2014 and has promised the people that they will buy the farm from the owner but that has not happened; and the municipality said it does not have land to relocate them. When the Department is asked about the offer to buy, they say the owner keeps changing the price. The farmer owns 10 other farms and does not really care about the former farm workers; and does not even allow them to grow vegetables on his land for subsistence. There is also no burial ground in the farm and people have to drive 60km to town to bury loved ones. The farmer even paid some people R3 000 to R5 000 to leave the farm and for those who refused, he is using constructive evictions. The people including the gentleman are desperate as they have the skills to make a success of farming but the Department is not

assisting with land and other necessary support. He was told by the Department that he can also not buy the farm because his name has to be on the list.

- The Department of Water and Sanitation provides bulk water infrastructure but people who live in Salt Lake do not benefit from it, where the farm owner is charging people R1 200 for water and electricity. In Olierivier farm, there was infrastructure but it was sabotaged where the farmer even went to the extent of punching holes on water tankers that are put by the Municipality for the people to get water. The Minister of Land Reform knows about what is happening at Olierivier including the sabotage of water infrastructure. Previously there was a promise from the Department to address the matter but nothing has happened. Throughout the area, where constructive evictions are not effective, the SAPS are assisting farmers to illegally evict farm dwellers and long term occupiers. Government is not doing anything to address illegal farm evictions and employment of illegal foreign nationals.

Residents at Salt Lake reported that they are paying for water that is drawn from boreholes. This problem has been going on since 2008 and various government departments were engaged to intervene on the challenges facing the occupiers at the Salt Lake Farms. This includes local municipality in terms of providing basic services like water, electricity, housing and sanitation. Labour related issues and poor working conditions of workers and non-compliance to occupational health and safety due to lack of provision of safety gear for people working on saltpans were referred to the Department of Labour. In the past, the former DRDLR had engaged with the landowner for an offer in the area where the dwellings are situated so that their tenure can be secured in terms of Section 4 of ESTA, however, he reneged from the agreement.

During deliberations the Mayor was requested to respond to the basic service delivery issues. He informed the delegation that according to the brief that he had received as a newly appointed Mayor of the Municipality (he has been in office for six (6) months), there were no water rights given to the dwellers of Salt Lake, the Municipality at the time of reporting was looking into the issue of water access for the farm dwellers. With regards to electricity, the Municipality had discussion with ESKOM, who agreed to take over electricity supply for the Salt Lake area and will install the pre-paid system. However, ESKOM has also indicated that the process can take a year or more.

4.2 Visit to dwellings

After the Public Hearings, the delegation did a walk about in the area to see the condition of some of the houses, which varied in condition and sizes.

NORTH WEST:

4.1. Stakeholder engagement

4.1.1. Department of Employment and Labour

The Department of Employment and Labour (DEL) was requested to present on its work around monitoring of compliance to the relevant pieces of labour legislation applicable to farms (and related industries), reflecting on strengths and weaknesses as well as implementation challenges. The presentation by DEL highlighted the following:

- Demographics of farmworkers in South Africa and North-West were presented to the Committee and demonstration of the extent of poverty and deprivations of the farm dwellers and farmworkers households.

- Reports on farm inspections and compliance to the Employment Equity, Basic Conditions of Employment, Compensation of Occupational Injuries and Diseases, Unemployment Insurance, Occupational Health and Safety. Of great significance with conditions of employment was with regard to compliance to Sectoral Determination for Farmworkers. It was found that there were still levels of non-compliance with legislation governing the areas referred to earlier.

- DEL also submitted reports about the sites identified for inspections and committee oversight. These farms were: Bona Game Hunting Farm in Hartebeesfontein and F Cronje farm in Herbenia (Lichtenburg).

4.1.2. Department of Agriculture, Land Reform and Rural Development

The Department of Agriculture, Land Reform and Rural Development (DALRRD) report to the Committee addressed the provincial perspectives with regard to tenure security and government interventions to secure tenure of the vulnerable groups such as farmworkers, farm dwellers and labour tenants. It further presented progress with regard to mechanisms to ensure equitable access to land, with a particular focus on farm dwellers and labour tenants.

- The North West Province received 11 labour tenant applications by 31st March 2001. Six of the total 11 applications have been settled. The Committee noted that some of the claims were settled through other programmes of land reform, thus resulting in closure of application files.

- At the time of the visit, two applications were being processed for settlement and four were under investigations and collating information to ensure that they are settled in the current financial year.

- The Agri-Village policy was reportedly under development by the Department of Human Settlements working with the DALRRD.

- There were clear hotspot areas in the province. The Department was working on plans and strategies to address the increasing number of threats of evictions and human rights violations.

4.1.3. Presentation by the Commission for Conciliation, Mediation and Arbitration

The Commission for Conciliation, Mediation and Arbitration (CCMA) reported to the Committee about the challenges of land tenure that often are presented before the CCMA and it finds itself unable to assist because those are matters outside its mandate. The presentation can be summarised as follows:

- The role of the CCMA is prescribed by law and it is unable to go beyond its mandate. In that event, they refer the matters to the relevant authorities for further processing.

- It reported that the Department of Agriculture, Land reform and Rural Development has lately not been responsive to the request for assistance to farm dwellers who lose tenure on the basis of termination of employment.

- The CCMA only deals with labour relations and compliance with the current legislation like the National Minimum Wage and other related pieces of legislations.

- The CCMA also delivered specialised training on the Agricultural Sector. They have entered into a Memorandum of Understanding with Agri-SA and it partners with them from time to time in delivering capacity building initiatives. The CCMA has identified the Agricultural sector as one of the five (5) targeted vulnerable sectors with a total of 12 410 Users accessing CCMA services from the Agri sector during the 2021/22 financial year. These Users accessed the CCMA services through its Dispute Resolution and Dispute Prevention and Workplace Outreach services and the CCMA increased access in the vulnerable areas and amongst vulnerable groups by implementing an Advocacy Campaign Plan delivered through the eight (8) Provincial offices. A total of 219 awareness raising and outreach activities were delivered in support of this campaign through 2 Users, Sectors and Stakeholder Forum meetings, Radio talk-shows and the distribution of information sheets and promotional materials as at the end of the 2021/22 financial year.

4.2. Overview of observations from site visits

2.2.1 Bona Safaris

The delegation visited Bona-Bona game farm to oversee inspections on the dynamics and conditions of labour on commercial farms. It was hosted by the officials of the Department of Employment and Labour. The following summarises the observations with regard to farm labour:

- As a hunting safari, it has 37 employees, and only 1 of the workforce is a foreign national. There are 10 males and 26 females and they also have a person with disability.

- The inspections focussed on two: (i) inspection of the books in terms of relevant legislation; and (ii) interaction with farmworkers to gain an understanding of their situation insofar as the particular areas of inspections are concerned.
- The committee found, as reported by the labour inspectors, that the establishment was incompliant with BCOE, COID, UI. DEL issued notices and agreed on further engagement with the establishment.
- All workers had protective clothing and were issued with salary advices.

2.2.2 FJ Cronje Farm

Mr Cronje had bought the farm about 7 months ago, and has been rebuilding the farm from scratch. The delegation split into two to focus on the administrative side of the inspection (i.e. look at the books) and to engage with workers separately. The observations can be summarised as follows:

- The farm employed 7 people, of which 2 were inherited from the previous owner, 3 moved in with the new owner because he was working with them on his father's farm
- All five workers are on UIF and 2 of the employees were not registered yet. All workers have homes in the township, they stay on the farm during the week.
- The workers residing on the farm were not paying any rent. There is no electricity yet but there is a room for improvement. They work for 5 days and are transported to and from their homes.
- The farm was found non-compliant with the NMW, SD14, non-compliant with UIF. The farmer has been serve with the enforcement notice and the COID reference number has not been provided.

2.2.3 Beatrix Farm

The farm Beatrix was acquired through PLAS in September 2015 for 13 families who were long-term occupiers. Acquisition of the farm came as a result of disputes between the lessee and the occupiers at the time. The affected household started living on the said farm with the permission of the previous owner dating back to 1952. These farm occupiers were working for the former owner who then leased out the farm to another white person. It was alleged that the land owner leased out his farm and the new lessee refused to provide the farm occupiers with employment, water, fire wood and access to the grave yard. The farm occupiers complained to the department and meetings were held between the farm owner, the lessee and occupiers. The land owner then decided to sell the farm to government. About 13 households were long term farm occupiers at the farm Portion 0 of the farm Beatrix 392 IP. Most farm occupiers are not working whilst few are working on the surrounding farms. The following observations were made:

- Since the acquisition of the farm, there was no post-settlement support provided to the CPA.
- The beneficiaries have been promised help but were concerned that it is years since the promise but nothing forth coming. Recently, they were made to sign papers about business plan and allocation of the service provider. Yet no development on the farm. As a result, they allege that the Department has stolen their funding.

- The Department reported that there was no grant funding released to the project yet. At the time of the visit, the Department reported that the business plan was under consideration in Pretoria and once it is approved, they will notify the community and will start with the support.

2.2.4 Sannieshof

The settlement of former farm dwellers and labour tenants arises from cases of evictions from farms. The following observations can be made:

- Government purchased a farm to house victims of evictions. The Committee found that the Department has brought in two groups of people from different farms.
- Department of Human Settlement built temporary houses on the farm for 11 households. These were small houses, without toilet, no running water, no access to facilities such as education. Families had to separate with their children in order to ensure that they are able to attend schools.
- There is brewing tension in the community because of the two groups being brought together without proper facilitation. In fact, there are allegations that on the day of arrival of the other group, there were no notice to the original group (i.e. owners).
- Most of the promises for housing and productive use of the land have not been met. As a result, the idea of an agri-village appears to be a dumping ground of unwanted/ surplus farm labour.

4.3. Public hearings on the living conditions of farm workers

The delegation heard from approximately 90 farm workers, farm dwellers and labour tenants. The concerns that they raised can be summarised as follows:

- **Human rights violations**: Members of communities reported that farmers violate their rights by denying them access to their family graves as well as grazing land for their livestock. Further, farmers interrupt farm dwellers livelihoods through the illegal impounding of their livestock. They alleged that in some instances the police connive with farmers and accepts bribery to evict farm dwellers.

- **Incompliance with the legislation during evictions:** The farm workers are protected by the Extension of Security of Tenure Act. However, some have reported that the department was failing to implement the provisions of the Act to ensure that there are no evictions of long-term occupiers or when there are evictions notices are issued.

- **Slow pace in the processing of the labour tenants' applications:** Labour tenants have lodged their claims prior to 31 March 2001. The delegation heard from a number of applicants who have come forward to say that they have not heard from the Department about their claims, as a result they continued to live under the uncertain and insecure tenure. They are victims, or exposed, to constructive evictions attempts by the farm owners. Some also reported that the Special Master also know about the difficulties, including fencing off of the areas where labour tenants show grow their livestock. The concern was that the

special master process has also not resulted in any tangible progress in the settlement of land claims in some respects.

- **Biased and unfair treatment of farm dwellers by the South Africa Police Services:** Some of the speakers that appeared before the committee alleged that some of the police officers do not take their cases (evictions, stock theft, illegal impounding of livestock) or they refuse to issue case numbers to complainants to enable them to follow up on their cases. In some cases, farm dwellers are shot at by farm owners in front of the police officers. In some cases, evictions are carried out with the help of police officers who do not have an understanding or appreciation of the land rights of farm dwellers or labour tenants. Where the farm owners commit crime (shooting people, shooting or poisoning livestock drinking water) the police do not act accordingly. The perpetrators continue to roam the streets and commit further crimes to other dwellers on farms. The justice system protects farmers than farm dwellers/labour tenants.

- **Inadequate assistance by the Department:** Members of communities alleged that the department was not responsive to their complaints. Some of them lack courage to confront farm owners and to stop evictions.

- **Flawed processes during evictions**: There were concerns that the eviction processes, in many instances, are flawed. There are no notices issued and there is no due consideration of the age of victims as well as alternative accommodation requirements.

- **Unfair labour practice by farmers on the work place:** workers working without safety clothes, working hours as provided for in the Labour Relations Act not adhered to.

WESTERN CAPE: 22 – 24 JULY 2022

The Portfolio Committee on Agriculture, Land Reform and Rural Development and the Portfolio Committee on Employment and Labour conducted oversight visits in the Western Cape on 22 – 24 July 2022.

The Department of Employment and Labour conducted inspections on five key legislation for compliance; namely, BCEA, COIDA, EEA, OHSA, and UIA/UICA. In total 2575 inspections were conducted of which 807 were not compliant whilst 107 were recommended for prosecution. As can be seen in table below, BCEA had more inspections but less non-compliance whereas OHSA had 1123 inspections whilst higher number of non-compliance, and also higher number of recommendations for prosecutions when compared to the other areas.

WC inspections 2021/22

Legislation	No. Conducted	No. Not Compliant (Initial inspection)	No. Recommended for Prosecution
BCEA	1149	55	5
COIDA	97	51	22
EEA	36	25	7
OHSA	1123	580	45
UIS/UICA	170	96	28
TOTAL	**2575**	**807**	**107**

Key areas of non-compliance were listed as follows: not issuing particulars of employment (contracts), transporting system, high volume of injuries, use of unregistered employees, unregistered labour brokers to escape Admin responsibility, and coercing employees to sign illegal contracts.

On the land tenure, the Western Cape Province did not receive labour tenant applications by 31st March 2001. The province focusses on ESTA cases. In terms of its work, there were clear tenure and labour dispute hotspot areas; i.e. in the Cape Winelands, particularly Du Doorns, Robertsons etc. The Department reported that it was working on plans and strategies to address the increasing number of threats of evictions and human rights violations on farms. The strategies included the following: (i) purchase of land to secure tenure rights of farm dwellers; collaboration with civil society organisations to monitor evictions; (iii) working with Chapter 9 institutions; and (iv) referral to a panel of attorneys at the Legal Aid South Africa.

Whilst the **Commission for Conciliation, Mediation and Arbitration** opted to demonstrate that eviction matters are outside its core mandate, it did not engage with the intricacies relating to an overlap of land rights and employment, and how termination of employment has in some instances led to evictions from farms. The **South African Human Rights Commission** on the other hand reported about previous enquiries and investigations, especially the 2003 and the 2007 reports. In general, it demonstrated lack of compliance with relevant legislation such as ESTA because unlawful evictions were rife, widespread lack of compliance with labour legislation; the vulnerability of women and seasonal workers on farms; unacceptable levels of

crime and violence experienced in farming communities limited access to services and housing on farms. There were also a number of cases that the SAHRC had referred to the DALRRD. However, interventions were sometimes too slow due to capacity constraints. The SAHRC has a case on Haartebeesfontein on the violation of human rights. The matter was referred to SAHRC by the DEL because it involved the cutting of electricity and farm workers were denied access harvest woods and they also do not have access to running water.

1.1 Stakeholder inputs: civil society organisations

- Farmers are increasingly reluctant to invest in on-farm housing because it is alleged that the Farm Workers Housing Assistance Programme comes with lot of challenges for them.
- Due to a trend of casualization of labour, there is a rising employment of seasonal workers, these then are found in informal settlements nearby. It was alleged that farmers are buying RDP houses from beneficiaries so that they can house their workers,
- Most farmers have resorted to constructive evictions. These involve denying occupiers access to basic needs such as running water, wood harvesting and cutting of electricity.
- Cases of violation of human rights involved physical abuse and assault by farm owners
- Complaints about non-responsiveness of both DEL and DALRRD. They do not provide urgent responses to the issues. In some cases, they ignore the cases referred to the.
- The offices of government are far from the farms. There was a need for moving offices closer to hotspot areas.
- The hotline number for evictions is not helpful because it was alleged that one hardly get them because evictions take place on weekends/public holidays or in the evenings.
- Lack of compliance with labour legislation by farmers. It heard that in 2021 about 300 farm workers were retrenched on one farm alone.
- A call for an intervention of Parliament in the problem of the employment of undocumented foreign nationals in the Western Cape by farmers because DEL does not conduct regular inspections on farms.
- The Commission for the Conciliation, Mediation and Arbitration(CCMA) takes the whole year to finalise cases. To which the CCMA indicated that it received 1310 complaints in the agriculture sector alone and due to a limited budget allocation in the last financial years at was not able to meet the demand.

1.2 Observations from site visits

The delegation visited **Soetendal and Marlenique in the Cape Winelands District, Welverdien and Goedemoed in the West Coast.**

- Change of land use, and development of lifestyle farms are contributing factors to evictions to give way to building of lifestyle estates on farms
- Allegations of physical and verbal abuse of farm workers by farmers.
  Some farmers charge them R620 per month and if a farm worker stays with a partner, the farm worker must pay an additional R210. Similarly, children over 18 years of age, the farm worker may pay additional rent for them or they must vacate the farm. One man, almost crying reported to the Committee *"Here at Welverdien, the farm owner instructed me to expel my pregnant daughter from the house or else he would disconnect electricity for the entire house".*

- Farm dwellers have no access to clean drinking water. They draw drinking water from an open reservoir which, during spraying of chemicals and windy days, may have dirt or chemicals blown into.
- Employment for unregistered foreign nationals. On one farm, DEL confiscated the expired passports and visas of 11 foreign nationals and handed them to the Department of Home Affairs for further action.
- One a farm called Goedemoed, which the delegation could not visit because the owner blocked the entrance to the farm with a grader and locked another gate that occupiers use, there were 23 families of occupiers in terms of ESTA and were served with Eviction notices. that stayed on the farm had received eviction notices.
- The DALRRD has indicated intension to purchase 7 ha from Welverdien and 2 ha from Marlenique and there was no further progress reported at the time of the visit.

1.3 Public hearings on the living conditions of farm workers

The delegation heard from approximately 90 farm workers, farm dwellers and labour tenants. The concerns that they raised can be summarised as follows:

- **Human rights violations**: Members of communities reported that farmers violate their rights by denying them access to their family graves as well as grazing land for their livestock. Further, farmers interrupt farm dwellers livelihoods through the illegal impounding of their livestock. They alleged that in some instances the police connive with farmers and accepts bribery to evict farm dwellers.
- **Incompliance with the legislation during evictions:** The farm workers are protected by the Extension of Security of Tenure Act. However, some have reported that the department was failing to implement the provisions of the Act to ensure that there are no evictions of long-term occupiers or when there are evictions notices are issued.
- **Biased and unfair treatment of farm dwellers by the South Africa Police Services:** Some of the speakers that appeared before the committee alleged that some of the police officers do not take their cases (evictions, stock theft, illegal impounding of livestock) or they refuse to issue case numbers to complainants to enable them to follow up on their cases. In some cases, farm dwellers are shot at by farm owners in front of the police officers. In some cases, evictions are carried out with the help of police officers who do not have an understanding or appreciation of the land rights of farm dwellers or labour tenants. Where the farm owners commit crime (shooting people, shooting or poisoning livestock drinking water) the police do not act accordingly. The perpetrators continue to roam the streets and commit further crimes to other dwellers on farms. The justice system protects farmers than farm dwellers/labour tenants.
- **Inadequate assistance by the Department:** Members of communities alleged that the department was not responsive to their complaints. Some of them lack courage to confront farm owners and to stop evictions.
- **Flawed processes during evictions**: There were concerns that the eviction processes, in many instances, are flawed. There are no notices issued and there is no due consideration of the age of victims as well as alternative accommodation requirements.
- **Unfair labour practice by farmers on the work place:** workers working without safety clothes, working hours as provided for in the Labour Relations Act not adhered to

Case 1: Soetendal (Cape Winelands)

The farm employs 450 farmworkers in season. Of the 450, 350 are seasonal and 85 are foreign nationals whose status in terms of documentation was subject of further enquiry with the Department of Home Affairs. The farm was not compliant to the Unemployment Insurance Fund (UIF), employees had contracts but in the farm records, only 29 employees were found to be permanent farmworkers in contrast to the reported 85. However, the farm was compliant with the National Minimum Wage (NMW). A number of farmworkers were dismissed after complaining about the TERS fund. Dismissed workers reported that the employer had claimed it on their behalf but they were not paid until they started complaining and involving unions.
Dismissed workers still live on the farm, in housing quarters that they lived in for many years. The houses did not have running water, no electricity because it was cut due to non-payment and the farm owner refuses to give the households their meter numbers so that they can purchase electricity on their own, some houses had asbestos roof. The occupiers were denied to pick firewood on the farm. In summary, the owner is violating the tenure rights of the occupiers and is using constructive eviction tactics by making the lives of occupiers difficult to the extent that they would leave the farm as if it is a voluntary relocation. The SAHRC and the DALRRD were collaborating to address the land tenure issues and DEL was engaging the workers and the owner on labour matters.

Case 2: Marlenique

About 50 households living on about 2 ha of Marlenique have been served with eviction notices. Households have lived on the land for many years, in other households it was third generation of farm dwellers. Many of the occupiers do not work for the farm owner, they live their own life independently of the owner. However, Marlenique is the only place they call home. Because of their fight against eviction, through support of the civil society organisation collaborating with the DALRRD, the owner has resorted to constructive eviction tactics. He has fenced the households in, restricting their movement and limiting the extent of their involvement in livelihood activities such as vegetable gardens, keeping small stock etc. The DALRRD indicated an intention to purchase the land and were waiting for the owner to revert with a response to their offer. The houses have no access to running water and electricity. They use firewood but the owner has restricted access so that are unable to fetch firewood from the farm.