

## **Tenure security of farm workers and dwellers**

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**1994-2016**

Commissioned report for High Level Panel on the assessment of key legislation and the acceleration of fundamental change, an initiative of the Parliament of South Africa

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## **1. Introduction**

### *The High Level Panel Initiative*

The High Level Panel is an initiative of the Speakers' Forum of Parliament aimed at taking stock of the impact of legislation insofar as it advances or impedes progress in addressing the triple challenges of poverty, unemployment and inequality. The mandate of the panel is to investigate the impact of legislation in respect of:

- the triple challenges of poverty, unemployment and inequality;
- the creation and equitable distribution of wealth;
- land reform, restitution, redistribution and security of tenure;
- nation building and social cohesion.

The panel will assess the possible unintended consequences, gaps and unanticipated problems in post-apartheid legislation, as well as how effectively laws have been implemented. The panel will propose appropriate remedial measures to Parliament including the amendment, or repeal of existing legislation or additional legislation where necessary.

This report on farm worker tenure security summarises key findings of reports and research findings that are in the public domain, including enquiries conducted by the South African Human Rights Commission and research work undertaken by a variety of public, private, academic and non-government organisations in South Africa.

## **2. The structure of the report**

The report provides a brief history of farm labour in South Africa tracing its roots in slavery and colonial dispossession through to the emergence of state supported commercial agriculture and the subsequent deregulation of the agricultural sector. This is with a view to contextualising the examination of tenure security and identifying the impacts on people living and working on land owned by others.

The report provides a scan of the legal reforms and measures instituted in the first decade of democracy in order to reverse the injustices of the past. It briefly examines aspects of the contemporary landscape before providing a detailed assessment of the Extension of Security of Tenure Act and its implementation and impact. This includes a focus on issues faced by farm workers to secure their rights to housing and services.

The report concludes by examining what the Department of Rural Development has characterised as a "total system failure" impacting on the implementation of ESTA and identifying elements of the complex policy and practice gridlock in the farming sector which has emerged regard to the tenure, housing and access to services of farm workers.

### 3. A brief history of farm labour

#### *Slavery in the Cape Colony*

Farm labour in South Africa has a long and conflicted history. Its earliest origins take the form of slave labour in the Cape Colony. Over the course of almost two centuries of slave-holding, enslaved people came to constitute the majority of the population of the Cape Colony, numbering more than 60,000 people.<sup>1</sup> Up until 1834 most farm labour was either locked in place by slavery or the restrictions contained within the Khoi codes which “required Khoikhoi to have certificates of residency and passes...[and which] enabled local officials to distribute Khoikhoi labour to anyone they chose”<sup>2</sup>

Even though slavery was legally abolished in 1834, all slaves were then apprenticed to their masters for six years and their work hours regulated at 45 hours a week<sup>3</sup>. Reforms, such as Ordinance 50 passed in 1828, purported to lift restrictions on the Khoesan who had been required to carry passes and whose freedom of movement had been curtailed. However it has been argued that for all practical purposes these reforms were “non-events” and made little difference to people’s lives.<sup>4</sup> The asymmetries of power long encoded in master and servant social relations on farms persist, albeit in different guises and contexts, into the contemporary era.

#### *The colonial land grab*

As the colonial advance extended throughout South Africa in the 19<sup>th</sup> century African chiefdoms and kingdoms were conquered and much of this land was surveyed into farms. Roman Dutch property law was imposed which overlooked the rights of the indigenous people, while advancing a distorted version of customary law.<sup>5</sup> While African reserves reflecting the heartlands of precolonial polities were delineated by the 1913 Natives Land Act, it is important to note that large numbers of African people remained living on land outside the reserves. As Bundy has observed:

*Families (and sometimes whole communities) lived on land settled by their ancestors, even though such land was now owned by white farmers or land companies. And on these lands they ran livestock and raised grain as their parents had before them.*<sup>6</sup>

The Act prohibited Africans from buying land in designated areas. It also sought to end sharecropping on white owned farms and exert controls on the number of labouring families allowed to live on the single farm while requiring black tenants living on farms to provide the prescribed minimum days of labour to the landowner.<sup>7</sup>

Delius and Beinart also note that for a long time after the passing of the 1913 Land Act the majority of people living on white owned land were black<sup>8</sup>. These people tried to hold onto their land in different ways – as cash tenants, as share croppers and as labour tenants.

Van der Horst has argued that the Natives Land Act “did not have the effect of confining the rural Native population to the scheduled areas, nor was this intended. It was indeed, specifically laid down ... to cause Native tenants to become in name at least, labourers and labour tenants”.<sup>9</sup> The Land Act together with the Native Service Contract Act had the effect of forcing Africans to become farm labourers.

### *Indentured labour*

In addition to a range of measures to force Africans into the labour market, colonial authorities also sought to address labour shortages through recruitment of foreign indentured labour – part of a system of unfree labour, which effectively was a successor to slavery. Between 1860 and 1911 the Colony of Natal imported more than 150,000 Indians to work primarily on the sugar plantations. Indentured workers received a wage for the period of the contracts, but lived and worked “under conditions that resembled slavery”,<sup>10</sup> although once the labour period had ended the labourers were then regarded as ‘free’.

By 1936 more than a third of the African population were recorded as living on farms:

*Throughout the first half of the twentieth century the number of black people on rural land owned by whites increased rapidly. In the 1936 census 37 per cent of the total African population were counted on farms, 45 per cent in the reserves, and 17 per cent in towns.<sup>11</sup>*

### *Losing ground*

Although the 1913 Act abolished sharecropping, it is clear that sharecropping persisted for decades after the Act was passed. However this form of production was brought to an end after 1948, when the National Party came to power. Van Onselen’s biography of Kas Maine – a South African sharecropper, describes the meeting at which the new relations of production were proclaimed:

*They announced that farming on the halves was no longer to be practised. Agricultural methods had been changed and tractors had been introduced. Those who owned spans of oxen would have to sell them. ‘Rich kaffirs’ who wanted to keep their livestock were advised to leave the districts... and go to...native reserves farther north or west... All those black tenant farmers wishing to remain on the Triangle would have to dispose of their cattle and sell to the Boers either their labour or those of their sons.<sup>12</sup>*

While sharecropping was finally eliminated, labour tenant tenure relations persisted in Mpumalanga and KwaZulu-Natal, despite all the apartheid era regulation which sought to dispense with it.

### *Trends in South African agriculture 1948 - 1994*

Following World War 2 there was a move by employers to progressively limit dependence on labour by investment in agricultural mechanisation. The table below indicates the rapid increase in the utilisation of tractors for land preparation and harvesting, indicative of the substitution of labour by capital.

**Table 1: Source Houghton D.H in Schirmer (2004)<sup>13</sup>**

1937	1946	1950	1960
6019 tractors	20000 tractors	48 500 tractors	119 000 tractors

However the increase in mechanisation did not immediately result in the reduction of labour. Tractor tillage helped land owners to expand the areas under production, which meant that initially

farmers required more labour for those tasks which could not be mechanised. But over time the rapid uptake of mechanised land preparation and combine harvesting technologies contributed to the restructuring of the agricultural labour force. This was particularly marked in the grain sector. In 1968 only 16% of maize was harvested mechanically. By 1977 combine harvesters accounted for 81% of the crop in the maize triangle resulting in a steep fall in the demand for labour.<sup>14</sup>

*No longer did the majority of farmers draw the bulk of their labour from the families resident on the farm. Instead, resident workers fulfilled the function of maintaining the farm and of undertaking skilled and supervisory work. The bulk of the workforce was drawn on a seasonal basis from neighbouring reserves, urban areas and even schools.*<sup>15</sup>

This initiated the broad trend in which agricultural sector has progressively shed labour since the 1950's.

*Successive waves of dispossession and removals from farms.*

While there was an absolute increase in the numbers of Africans living in both urban and rural areas of 'white' South Africa between 1960 and 1980, there was "a very substantial relative decline in rural areas from 31.3 per cent in 1960 to 20.6 per cent in 1980".<sup>16</sup> The Surplus People Project (SPP) reports on forced removals estimated that from 1960 to 1983 1.1 million people were removed from white farms. These people were "decisively disintegrated ... from the agricultural labour market" and relocated to rural slums where they suffered "the enduring disadvantages of very little education, relative illiteracy and the non- transferability of limited skills".<sup>17</sup>

*Towards a 'labour lean' agriculture*

Simbi and Aliber note that whereas previous state policies had sought to ensure that white agriculture was ensured a supply of cheap labour, the 1973 Du Plessis Commission of Inquiry into Agriculture articulated a new direction which sought to reduce the dependency of commercial farmers on "non-white labour". The Commission's recommendations resulted in a series of measures including "income tax provisions to allow for the accelerated write-off of agricultural equipment, the encouragement of large-scale farming through the Subdivision of Agricultural Land Act of 1970, negative real interest rates on agricultural loans...to promote the development of a modern, labour-lean agricultural sector".<sup>18</sup>

The speed of labour shedding was compounded by a variety of factors such the concentration of farm ownership and the increasing intensity of production which led to the rationalisation of the labour force and the increasing demand for skilled workers.<sup>19</sup> Between 1970 and 1990, the number of people employed in the agricultural sector dropped from 1.6 to 1.2 million. Between 1985 – 1996 200 000 regular employees lost their jobs along with another 200 000 seasonal and casual workers.<sup>20</sup>

Wegerif et al<sup>21</sup> estimate that there were approximately 4.3 million black Africans living on white farms in 1984. Between 1985 and 1995 they calculate that there more than three quarters of a million people evicted or displaced from farms throughout South Africa. According to their data evictions spiked in 1992 (179 575 people evicted) linked to severe drought and associated layoffs on farms, and again in 1994 (122 626 people evicted) which Wegerif et al attribute to the promulgation

of the Restitution of Land Rights Act and general uncertainty associated with the trajectory of the transition to democracy.

#### *State support for farm worker housing*

From the 1960's the apartheid government provided subsidies to farm owners to enable them to construct houses for farm workers. In exchange for this assistance farmers had to guarantee to provide a basic level of service.<sup>22</sup> The Rural Foundation established in 1982 played an important role in improving living and working conditions on affiliated farms in the provinces where it was active.

#### *Political liberalisation and economic deregulation of agriculture*

Hall<sup>23</sup> has observed that “political liberalisation in South Africa coincided with the global demise of communist regimes and the emergence of the Washington consensus that located economic deregulation at the core of political liberalisation”. Deregulation of the agricultural sector commenced in the late 1970's and accelerated in the 1980's and 1990's. The fall of the Berlin wall in 1989, the rapid collapse of the Soviet bloc and the end of the Cold War set the stage for the rapid globalisation of capital.

State expenditure on agriculture began to decline in the mid 1980's and budgetary allocations to the white commercial farming sector were halved between 1987 and 1993. South Africa's admission into the General Agreement on Tariffs and Trade (GATT) in 1993 accelerated the economic liberalisation of agriculture.

This brought about structural changes in agriculture which would serve to secure the dominance of large scale intensive farms producing high value products for export as opposed to low value high volume commodities for domestic markets<sup>24</sup>. Costs of housing labourers on farms combined with the rising expense of housing elderly and retired labourers provided a disincentive for white farmers to maintain large work forces.

In the late 1980's and early 90's farm workers remained unprotected by any form of central labour legislation and employment contracts were governed by common law. This meant that farmers could retrench and evict farm workers at will.

#### 4. Changes in the first decade of democracy

This section briefly reviews the principal political, legislative and economic changes which took place in the period 1994 – 2004 with particular reference to measures to improve working and living conditions on farms. The first decade of democracy in South Africa was characterised by an array of new policy and legislation to regulate labour relations and conditions of employment, address land reform, housing and tenure security, and attempt to construct a 'developmental state'. This decade saw attempts to secure the tenure of farm workers and raise income levels through the introduction of minimum wages in 2003.

##### *Political and legislative change*

There were far reaching changes in the political and legislative landscapes following South Africa's first democratic election in 1994. New laws set out to protect and secure rights, but they were also shadowed by unintended consequences.

Section 8(3)(b) of the Interim Constitution (Act No. 200 of 1993) had entrenched the right to claim restitution while Sections 121 and 122 outlined criteria for lodging land claims and provided for the establishment of the Commission on the Restitution of Land Rights. This was quickly followed by the promulgation of the Restitution of Land Rights Act (No 22 of 1994).

As noted above it has been argued that the concerns and uncertainties of white farmers around the time of democratic transition drove up farm worker evictions in 1994 and contributed to a fall in farm employment.<sup>25</sup>

Section 25 of the final Constitution (No 108 of 1996) contained important clauses for rural citizens and farm workers:

- (5) The state must take reasonable legislative and other measures, within its available resources, to foster conditions which enable citizens to gain access to land on an equitable basis.
- (6) A person or community whose tenure of land is legally insecure as a result of past racially discriminatory laws or practices is entitled, to the extent provided by an Act of Parliament, either to tenure which is legally secure or to comparable redress.
- (7) A person or community dispossessed of property after 19 June 1913 as a result of past racially discriminatory laws or practices is entitled, to the extent provided by an Act of Parliament, either to restitution of that property or to equitable redress.

Likewise Section 26 has far reaching implications for farm workers given their life experience of conditional occupation and possible summary eviction from housing on land owned by others:



26. (1) Everyone has the right to have access to adequate housing.
- (2) The state must take reasonable legislative and other measures, within its available resources, to achieve the progressive realisation of this right.
- (3) No one may be evicted from their home, or have their home demolished, without an order of court made after considering all the relevant circumstances. No legislation may permit arbitrary evictions.

With reference to section 26(3) above “an eviction can be arbitrary in two respects: *procedurally arbitrary* because the procedure was unfair; and *substantively arbitrary* because they were not sufficient reasons for the eviction”.<sup>26</sup>

A raft of new policy and legislation to regulate labour relations and conditions of employment, address land reform, tenure security and housing were drafted in the first decade of democracy including:

- the Labour Relations Act (No. 66 of 1995);
- the Basic Conditions of Employment Act (No. 75 of 1997);
- the Unemployment Insurance Act (No. 63 of 2001);
- The Employment Equity Act (No. 55 of 1998);
- The Land Reform (Labour Tenants) Act (No. 3 of 1996);
- The Extension of Security of Tenure Act (No. 62 of 1997);
- The Housing Act (No 107 of 1997) which requires the development and publication of the National Housing Code which is required to be updated annually.

While the stated policy intent underpinning new legislation was to improve the lives of farm workers and secure their rights – as one of the most vulnerable segments of the labour force – the process of re-regulation had many unintended consequences.

New policy measures to raise wages and protect tenure rights have intersected with expanded compliance responsibilities required to access highly competitive commodity markets. The slashing of state support for agriculture has left producers with little alternative but to pursue aggressive cost minimisation. There is evidence to suggest that measures designed to strengthen worker rights and improve pay and living conditions have:

- created disincentives for commercial producers to provide and maintain on-farm housing;
- contributed to the displacement/eviction of low skilled workers;
- accelerated the casualisation and externalization of large segments of the agricultural workforce.<sup>27</sup>

Producers have often sought to cut costs by reducing on-farm permanent labour and replacing it with off-farm seasonal or casual labour. The consequence of this has been the ongoing displacement of farm workers and dwellers from farms and their relocation into the rapidly expanding townships and informal settlements adjoining the small towns in the rural hinterland. This creates a complex set of problems for local municipalities which are already inundated by mounting housing and service delivery backlogs.

## *Economic trends*

A new trade regime was initiated with South Africa's endorsement of multilateral trade agreements under the rubric of the World Trade Organisation (WTO), established in 1995 as the successor to the General Agreement on Tariffs and Trade (GATT).

*Within a year of the democratic government coming into power it had to accede to the World Trade Organisation (WTO). This meant that South Africa entered into an agreement that exposed its economy to global competition and had to play by global rules, both at home and internationally.<sup>28</sup>*

This exposed producers in the region to global competition without government protection for the first time. In response, producers - who wished to survive in the rapidly changing international agri-economy, had to find new ways to contain costs in order to maximise profits.

### **Deregulation in practice: The example of the wine sector**

One of the most noticeable features of the South African wine industry between 1917 and the mid-1990s was its elaborate regulatory system, presided over by the KWV<sup>1</sup> co-operative. Planting quotas, minimum prices and mechanisms of 'surplus removal' all decisively shaped the dominant features of the South African wine industry for the greater part of the 20<sup>th</sup> century.

The first step towards deregulation of the wine industry was taken in 1989. This came in the wake of deregulation in agriculture in general which had already begun in the mid-1980s. Deregulation in the wine industry itself started with the abolition of the quota system and culminated in the removal of the minimum price in the mid-1990s. With the termination of trade sanctions against South African and the opening of external markets in 1993, the need for a minimum price effectively fell away.<sup>29</sup>

Many smaller farmers felt threatened by the rapid dismantling of protectionist policies which had left them to compete unassisted in the global market place. As Ambert and Hornby noted that while there had been a 15% increase in agricultural subsidies to producers in the developed world between the late 1980's and 2004 there had been sharp reduction in South Africa's general economic tariffs which fell from 28% to 7.1%.<sup>30</sup>

## **5. Perspectives on the contemporary landscape**

### *Increasing contestation in the agricultural sector*

The contemporary period has seen a reduction in overall poverty in South Africa but widening inequality and the increasing fragmentation of political consensus. Producers continue to externalise and casualise farm labour, consistent with global trends. State effectiveness is increasingly called into question by a wide range of institutional and policy implementation failures. There is evidence of increasing contestation in the farm sector. This peaked in the 2012 farm strikes and the subsequent promulgation of a 30% increase in the

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<sup>1</sup> Koöperatieve Wijnbouwers Vereniging van Zuid-Afrika Bpkt.

minimum wage. It has been argued in the literature that this increase has had unintended consequences for farm workers including job destruction, monetisation of benefits and reduced working hours.<sup>31</sup>

#### *Disaggregating agricultural employment, farm workers and dwellers*

The ILO notes that the 2011 Census distinguished between three residential geographies:

- Urban areas
- Traditional or Tribal Areas
- Farm areas

The figure below shows overall employment data for agriculture, hunting, forestry and fishing for the past eight years. These figures show some recovery in 2015 followed by a drop in 2016.<sup>32</sup>



Source: Statistics South Africa. Quarterly Labour Force Survey. Trends from 2008. Excel spreadsheet. Downloaded in September 2016.

However these figures in summary form simplify a much more complex picture. Employment data for agriculture includes people employed in the hunting, forestry and fishing sub sectors. Agricultural workers and labourers form a subset of this data. The ILO investigation used the following criteria to define a farm worker:

- The person is working in an agricultural industry in what Stats SA defines as a farm area.
- The person is working in the formal sector.
- The occupations typically entail elementary or semi-skilled farm work.
- The person is an employee.<sup>33</sup>

The ILO notes that according to the 2011 census 5.28% of South Africa's population (2.73 million people) live in farm areas of who 2.07 million lived on farms. The ILO drew on the

Quarterly Labour Force Survey for the third quarter of 2014 to extract the number of employed farmhands and labourers who together with motorised farm and forestry plant operators make up the total number of wage workers in the agricultural sector. The results are summarised in the table below.

**Table 2: Extracted from ILO (2015 pp. 15) based on QLFS third quarter data for 2014.**

<b>Occupation</b>	<b>Working for someone else for pay</b>
Motorised farm and forestry plant operators	44485
Farmhands and labourers	376151
<b>TOTAL</b>	<b>420636</b>

Moreover from an ESTA perspective the ILO report cautions that of course “not all farm dwellers are farm workers (or members (of) farm dwellers’ households), and not all farm workers are farm dwellers”<sup>34</sup>

It is beyond the scope of this review to undertake a detailed statistical analysis to chronicle the changes in the number of farmhands and labourers employed over time as a proportion of the on-farm population. However there is broad agreement that the rapid withdrawal of state support from the agricultural sector, coupled with increasing competition in the market and a growing suite of state and market linked measures to regulate labour, review minimum wage thresholds and discourage evictions have had a profound impact on the agricultural sector which have influenced employment and residence patterns in the farm areas.

The SAHRC has observed that:

*The policy changes that did occur in the agricultural sector include the inclusion of farm workers into the Labour Relations Act of 1995, and the promulgation of legislation such as the Sectoral Determination for Farm Workers, Extension of Security of Tenure Act of 1997 and the Labour Tenants Act of 1996. From a purely commercial point of view, the abolition of many tax breaks and the promulgation of the Marketing of Agricultural Products Act of 1996 meant that farmers were increasingly pressured by both internal and external global forces in order to remain competitive. To a large extent these policies were designed to create equity, a more commercially viable agricultural sector and to protect the interests of both farm workers and farmers. The contradiction however is that farmers were forced to make use of labour saving technology to become more competitive whilst at the same time being expected by the state to provide the social welfare tab for farm workers.*<sup>35</sup>

Global competition in agricultural markets and the vertical integration of producers into commodity procurement chains dominated by transnational supermarket chains have resulted in the consolidation and concentration of agricultural holdings. These create

economies of scale which favour increasing investment in mechanisation and the adoption of sophisticated digital management and production tracking systems. At the same time this process has undermined the potential for land reform and the emergence of a smallholder sector.

#### *Restructuring the agricultural labour market*

There is an increasing divide between an increasingly concentrated on-farm cohort of skilled farm workers and a growing mass of off-farm semi-skilled workers – many of who are employed via third party labour brokers on a part-time, seasonal or casual contract basis. This forms part of a global trend where labour is increasing outsourced:

*We appear to be witnessing a growing parallel workforce within global production. On many sites, some workers have access to jobs with relatively better employment security and conditions of employment. Working alongside them, on the same site, are often workers whose employment is highly insecure, with few rights or poor protection.<sup>36</sup>*

The deregulation of agriculture has created opportunities for some producers, but significant challenges for many others. Farmers producing for export markets in the horticultural, wine and fruit sectors have to manage a complex set of variables in order to contain costs. Their compliance obligations in respect of national labour and tenure legislation coupled with stringent export market standards have accelerated the restructuring of enterprises to reduce costs. Cost cutting strategies have included rising investment in mechanisation and have added impetus to the casualisation and externalisation of labour.

#### *Household income and access to housing opportunities*

As from 1<sup>st</sup> March 2016 – 28 February 2017 the minimum wage was set at R128.26/day with a minimum monthly payment of 2778.83. This means that farm worker households with a fulltime worker earning the minimum along with some additional part time income earned by other family members would raise household earnings above the R3500 ceiling of the basic housing subsidy. It also does not take into account instances where employers pay above the minimum wage. However exactly how many farm worker households are in this position remains unclear.

The rise in the minimum wage has implications for housing options on and off farm and excludes workers from core housing subsidy options. Where farm worker households are earning above the subsidy threshold they are therefore only eligible to apply for a Finance Linked Individual Subsidy (FLISP), which as the name suggests are subject to a loan from a financial housing institution. The National Housing Finance Corporation provides an explanation of FLISP which attempts to reduce the mortgage loan amount to render the monthly loan repayments more affordable

*FLISP was developed to enable first time home-ownership to households in the 'affordable or gap' market, that is, people earning between R3 501 and R15 000 per month. Individuals in these salary bands generally find it hard to*

*qualify for housing finance; their income is regarded as low for mortgage finance, but too high to qualify for the government 'free-house' subsidy scheme.*

*Depending on the applicant's gross monthly income, their once-off FLISP subsidy qualifying amount may vary between R10 000 and R87 000, as defined in the FLISP Subsidy Quantum. Any residential property acquired with a FLISP subsidy may not exceed the R300 000 price margin.<sup>37</sup>*

In practice however the general lack of housing options for those earning between R3501 – R15000 per month makes the prospect of homeownership remote. Housing policy is silent on the fact that many farm worker households have high levels of indebtedness and consequently may have poor credit records. This disqualifies them from obtaining a mortgage loan, (should such finance be available in the first instance) and even where the cost of repayments could be cushioned by FLISP.

In recent research<sup>38</sup> producers and workers reported that registration on the HDD would not serve any purpose and expressed scepticism that workers would be eligible for housing finance. This suggests that informal settlements expanding on the peripheries of small rural towns remain the only practical alternative for workers living off-farm.

## **6. ESTA: A review of aims, implementation and impacts**

Three years after the democratic transition the new government launched its bid to protect the tenure rights of farm dwellers with the passing of Extension of Security of Tenure Act (No 62 of 1997).

### *The aims of ESTA*

The Act seeks to:

- set out the rights and duties of the owners and occupiers;
- regulate the conditions and circumstances under which the rights of a person to reside on land may be terminated;
- regulates the conditions and circumstances under which people whose right of residence has been terminated may be evicted from land;
- provides special protection to two categories of occupiers:
  - those who are over sixty and have lived on the land for ten years or more,
  - those employees or former employees who because of ill-health, injury or disability can no longer work.<sup>39</sup>

The Act also sets out to:

- criminalise unlawful evictions;
- provide for State assistance to facilitate long-term security of land tenure;
- make provision for the provision of alternative accommodation.

ESTA seeks to extend protection to all people living on farms, regardless of whether they are employed there or not. The Act refers to these people as 'occupiers'. It affords these occupiers the legal rights to continue to live on and use the land they occupy. ESTA does make a distinction between occupiers who took residence after 1997 and those already living on farms prior to the Act's promulgation, giving stronger tenure rights to the latter. ESTA also gives tenure rights to workers and their families who are too old or ill to work, as well as giving the family of a deceased labourer a grace period of a year in which to find alternative accommodation.<sup>40</sup>

The Act also makes clear the legal requirements and process which farmers need to follow in order to legally evict a farm worker – provided that the eviction is 'just and equitable'. Evictions, which require a court order, can only be achieved under two circumstances. Firstly, if the occupier breaches his contract of residence by causing unlawful damage to property or persons on the land, by intimidating and threatening other occupiers, and by assisting the unlawful occupation of private land. Secondly, evictions are allowed if the relationship between employer and employee has collapsed and cannot be repaired. Regardless of circumstance, the land owner is mandated to supply the evictee and their family with 'suitable alternative accommodation'.

#### *ESTA implementation in theory*

Shortly after the passing of ESTA, the Department of Land Affairs initiated a five day countrywide training programme for departmental officials<sup>41</sup> and sought to ensure that magistrates also received training and familiarisation with the new law.

The departmental training programme provided a roadmap for the handling of ESTA cases which included a negotiations route, a court route and how the department should respond to owners who took an illegal evictions route.

The negotiations route assumed that the owner and occupiers would seek a negotiated solution to secure the tenure of occupiers and protect the rights of the owner. It was envisaged that this negotiations process would draw on one of two options which could be made possible using Section 4 of the Act. These options included the negotiation of on-site settlement which could involve the registration of an independent tenure right against the farm title deed or the subdivision and purchase of a portion of the farm to accommodate farm worker families. The second option involved off site settlement where a separate piece of land would be identified which would be purchased, planned and settled making use of grants made available through Section 4 of the Act. In both instance it was envisaged that the DLA would appoint a mediator/facilitator to help parties reach a negotiated solution and a planner to oversee the on or off-site development in association with the land owner and the municipality

The court route set out the legal processes through which the owner could legally evict the occupiers. This involved the termination of the occupier's right of residence in accordance with Section 8 of the Act in relation to one of four termination scenarios – one general and three specific

These termination scenarios included:

- termination of residence rights on any lawful ground;
- termination of residence rights arising solely from a contract of employment;
- termination of residence rights of long term protected occupiers;
- termination of residence rights of the spouse or dependence of protected long-term occupiers after their death.

It was noted that if the occupiers did not leave the land voluntarily after their residence rights had been terminated, then the owner could apply for an eviction order in the magistrate's court. However before the court could hear argument on the eviction the owner was required to give two months written notice of their intention to apply for an eviction order. This notice must be served on the municipality, the Department of Land Affairs and the occupiers concerned.

This two-month period was designed to enable the DLA to investigate the case, verify the facts and develop a case strategy, in which either the DLA would engage with the owner and the occupiers to seek a negotiated solution or assist the occupiers to obtain legal aid through the legal aid officer at the nearest magistrates office, or seek the support of an NGO providing legal services.

The roadmap set out the procedures to be followed in court and the different options which would ensue following the magistrate making a ruling. This either would involve the magistrate granting an eviction order in which the court would set the date by which the occupiers should leave the land. The roadmap noted that the Land Claims Court was required to automatically review all eviction orders issued in a magistrate's court on or before 31 December 1999. The outcome of the review process could involve the Land Claims Court confirming the eviction order, amending aspects of the order or overturning it altogether.

In cases where the owner brought an eviction application which was denied by the magistrate the roadmap envisaged that the DLA could need to provide further negotiation and mediation support in an attempt to rebuild relationships which would have broken down.

In order to manage the above countrywide and monitor the implementation of the Act the roadmap highlighted the need for the DLA to develop a standard database to record evictions cases and which would allow the case to be tracked through the full cycle of procedures as set out in the act. This would require each district office to liaise closely with the local municipality in which the eviction cases were lodged and to log:

- the required forms A-H as required in the regulations set out in Gazette No. 18467, Notice No. 1598. Commencement date: 28 November 1997;
- the outcome of the case;
- the provision of alternative accommodation if appropriate;
- the referral of the case to the Land Claims Court;
- The outcome of the referral.



Likewise the Department would need to record all instances of on and off-site settlement agreements as envisaged in Section 4 of the Act and capture subsidies issued and hectares transferred.

#### *ESTA implementation in practice*

As can be seen from the evidence below the DLA and its successor the DRDLR have failed to adequately resource the implementation of ESTA. While there was an initial investment in the training of DLA officials, the training of prosecutors and magistrates and the deployment of dedicated officials responsible for ESTA implementation this was not sustained.

Allegations of abuse on certain farms were brought to the attention of the South African Human Rights Commission (SAHRC). In 2001 the SAHRC initiated a three phase process of research, public awareness and public hearings on alleged human rights violations on farms which culminated in a report in 2003.<sup>42</sup>

The SAHRC found that:

*Despite constitutional provisions and the promulgation of legislation such as ESTA and LTA to protect those whose tenure on the land is legally insecure, evictions and the rights of those who dwell on the farm owners' land dominated the Inquiry. There is a clear lack of support for the legislation from organised agriculture and a failure to ensure legal representation for those whose rights are violated.*<sup>43</sup>

The report also recorded that “the expectations of many people are unrealistic and that there is a limited understanding of the complexity of land reform processes”. It noted that “little has been done to promote access to housing in farming communities... and that there is general and widespread lack of compliance with labour legislation.”<sup>44</sup>

The SAHRC noted that they had commenced the inquiry assuming that reliable statistics were available on farm workers in the agricultural sector. However as they proceeded they recorded “it became increasingly apparent that these statistics, in many cases, do not exist”.

In its reflections on ESTA the report characterised the Act as a “complicated and technical piece of legislation”. This in the SAHRC’s view was reflected in the high number of eviction orders that had been overturned by the Land Claims Court when they were assessed on automatic review. However the report did not comment on what the overturning of the eviction order actually meant in practice. This is particularly pertinent given that the LCC case review often takes place several months after the conclusion of the magistrate’s court proceedings. This means that the eviction order provisionally issued in the magistrate’s court may be used to reinforce moves to get the farm workers off the farm. This review has not been able to identify any research which has examined the final outcome of eviction cases overturned by the LCC.

The SAHRC Inquiry investigated why Section 4 subsidies were not being effectively utilised. The DLA responded that the approvals process was slow because all projects required the

final approval of the Minister. DLA was requested to provide statistics on the number of Section 4 subsidies approved but “these were not forthcoming”.<sup>45</sup>

The SAHRC report found that there was:

- Widespread non-compliance with ESTA.
- A “disturbing lack of knowledge of ESTA by all role players”.<sup>46</sup>
- A “complete lack of compliance with the legislative provisions of ESTA in some court proceedings resulting in farm workers being evicted in terms of common law”.<sup>47</sup>
- High numbers of evictions associated with the change of farm ownership.
- A failure of the state to adequately train its officials to implement legislation resulting in a high rate of illegal evictions.
- Inadequate provision of emergency housing and required “relevant government departments (to) submit a reasonable plan to the SAHRC that addresses people in crisis situations after an eviction”.<sup>48</sup>
- Lack of access to adequate housing for many farm workers. The report noted that the Department of Housing “demonstrated little understanding of the rural context and that they were “clearly not grappling with the issues of farming communities”.<sup>49</sup>
- Too little evidence on the establishment of agri-villages to make a definitive findings on the appropriateness of this concept but there were some advantages as well as some risks of creating rural poverty traps.

Overall the report identified lack of political will and provision of service as the major constraint as opposed to the inadequacies in the laws passed to protect farm workers’ rights.

The SAHRC report recommended that “an initiative is needed at national level to address the provision of housing in farming communities” and required that “a policy and implementation plan must be submitted to the SAHRC”. It also recommended that “the provision of housing subsidies to farm dwellers who do not own the land on which they live must be addressed and a legal solution found”.<sup>50</sup> This review can find no evidence that these recommendations were acted upon by the relevant departments calling in question the powers of Chapter 9 institutions as set out in Section 13 of the South African Human Rights Commission Act (No. 40 of 2013)

It recommended that there needed to be an investigation into how to strengthen the rights of seasonal workers. It also recommended Farming Community Forum be formed at a national level where farm dwellers, farm owners and government could interact. The SAHRC recommended that this initiative should receive the highest possible support from the state and that it should be based in the office of the state president.

The SAHRC undertook a follow up a report (circa 2005) ahead of a second set of hearings in 2007. This report evaluates which recommendations had been addressed and which had not. For example the Farming Community Forum proposed in the final report was never established and because of this a number of recommendations which had been referred to this forum were never addressed.

*ESTA and rights of women*

Samaai<sup>51</sup> has noted that:

*Under the common law rules of eviction, if the owner instituted eviction proceedings against the male head of the household, the wife and the dependents were cited as 'all those who derive title under him'. This perpetuated the discrimination against women on farms and represented a situation which had to be addressed by ESTA, as well as the courts dealing with farm dweller evictions.*

He refers to the case of *Conradie v Hanekom* in which the Land Claims Court ruled that a woman whose husband has been dismissed could not be evicted from the farm based on this reason as she was an employee on the farm in her own right. Separate grounds for eviction had to be established if the farm owner wanted to evict her.

Samaai examines how this judgement was subsequently restricted by the Land Claims Court in the case of *Landbou Navorsingsraad v Klaasen* which restored the common law position. In the case of *Venter v Claasen*:

*The court decided that the legislature did not intend that a person could be an occupier by virtue of marriage and that her right to reside on the premises derived from husband's occupier status.<sup>52</sup>*

Samaai has argued that:

*By not taking into account the historical vulnerabilities and weak tenure relationships related to the position of women on farms, these cases perpetuated the common practice of landowners treating women as secondary occupiers.*

#### *ESTA and the rights of women on farms*

The Constitutional Court recently made an important ruling in the case of *Klaase and Another v van der Merwe N. and Others* (Case CCT 23/15). The judgement (which was not unanimous) sets important precedents for the rights of women who may face eviction should their husband's right to occupy be terminated. The judgement highlights the legal complexities in the interpretation of definitions provided in ESTA as the judges in the Constitutional Court are not all in agreement as to their interpretation.

The case is cited in the box below at some length as it provides an important window into the complex and long standing social relations which can apply on farms and the challenges in balancing the rights of owners and occupiers. The case involved a husband and wife – Mr and Mrs Klaase, who had lived together for over 30 years on the farm. Mr Klaase committed a clear breach of his duties as an occupier. He was dismissed and an eviction order obtained against him through the Magistrate's court.

He and his wife subsequently obtained legal support to contest the eviction order as she also worked on the farm and was unwilling to be evicted along with her husband. The case went on review to the Land Claims Court where it was upheld and then the Supreme Court of

Appeal where the Klaase's appeal against the judgement was also dismissed. The Klaases subsequently petitioned the Constitutional Court which confirmed the eviction order against Mr Klaase but in a majority judgement set aside the order against Mrs Klaase. A dissenting judgement held that Mrs Klaase was not an occupier as she had been given consent by the owner to reside on the farm, but that such consent was under or through her husband and not independently of his right to reside on the farm.

Mr Klaase started working on the farm in 1972. He worked as a general labourer and lived in the same house with his father. Mr Klaase and Mrs Klaase entered into a romantic relationship. Mrs Klaase fell pregnant with the couple's first child. After the child was born, Mrs Klaase moved onto the farm and resided with Mr Klaase, in his father's house. The farmer built a small cottage on the premises, to accommodate Mr Klaase, Mrs Klaase and their child. The couple later married, on 31 January 1988. They have lived on the farm for 30 years or more. Their three children and three grandchildren live with them.

In 2010 the owner initiated a disciplinary hearing against Mr Klaase after a charge of absconding and absence from work. The dispute between the parties was settled before the arbitration could be finalised. In terms of the settlement agreement, Mr Klaase agreed to a monetary settlement of R15 000 and undertook to vacate the premises by not later than 30 June 2010. He did not vacate the premises. On 22 October 2010 the respondents informed Mr Klaase in writing that his right to occupy the premises was terminated as it was dependent on his continued employment. The letter demanded that he vacate the farm within 30 days, failing which an application for eviction would be brought against him.

Mr Klaase was evicted on 14 January 2010. The Magistrates' Court granted the order evicting Mr Klaase and all those occupying through him, including Mrs Klaase, from the farm. The Court held that Mr Klaase's right of occupation arose from his employment on the farm. It found that there had been an irretrievable breakdown in the employment relationship between the parties as contemplated in section 10(1) (c) of ESTA. The Court further found that the formal requirements of section 9(2)(a) of ESTA had been complied with and that it was not necessary to provide Mr Klaase with alternative accommodation as no alternative accommodation was available.

Mrs Klaase launched an application in the Land Claims Court. She sought an order (a) to be joined as the second respondent in the eviction application; (b) for the suspension of the further proceedings, including the execution of the eviction order, pending the determination of her rights in terms of ESTA; and (c) for the consolidation of the application with the eviction application.

Mrs Klaase asserted that she continuously resided on the farm for many years in her own right as a general farm employee and with the consent of the owner. She contended that it was an essential term of her oral employment contract that she be entitled to housing on the farm. Mrs Klaase argued that she was protected by the provisions of ESTA, as an ESTA occupier, because she lived on the premises with the knowledge of the second respondent, for at least 30 years.

The Land Claims Court dismissed Mrs Klaase's joinder application and held, among other things, that there was no evidence to support Mrs Klaase's allegations. The Land Claims Court held that there are different classes of persons who can occupy the premises of another in terms of ESTA. First, "those who are granted consent to occupy the property and thus enjoy protections under ESTA as occupiers". Second, those persons who, in terms of section 6(2)(d) of ESTA, although not occupiers, are entitled to reside on the premises by virtue of being entitled to family life in accordance with the culture of that family. The court concluded that Mrs Klaase was a "resident" and not "an occupier in her own right".

Mr and Mrs Klaase petitioned the Supreme Court of Appeal. Mr Klaase sought to appeal the confirmation of the eviction order and Mrs Klaase sought leave to appeal the refusal of the joinder application. On 26 January 2015 the Supreme Court of Appeal dismissed the petition with costs and denied leave to appeal.

The case finally went to the Constitutional Court where Mr Klaase's appeal was dismissed.

Women on Farms was admitted as a friend of the court - *amicus curiae* and submitted that section 39(2) of the Constitution requires that the provisions of ESTA should be interpreted generously so as to afford protection to women who would otherwise not be regarded as occupiers for the purposes of ESTA. The *amicus curiae* argued that the effect of insecure tenure is to impose dependency on

women notwithstanding the fact that ESTA, properly interpreted, affords them protection as occupiers.

The majority judgment held that ESTA was enacted to give effect to section 26(3) of the Constitution and to provide security of tenure to people living on farm land whose tenure was insecure as a result of past racially discriminatory legislation or practices. The majority held that the eviction of an individual on the basis of the conduct of a spouse or partner alone has significant impact on security of tenure, not only for Mrs Klaase but also other similarly situated persons. It found that Mrs Klaase had a direct and substantial interest in the eviction order granted against Mr Klaase and should have been joined to the proceedings. The majority held that the respondents' failure to object to Mrs Klaase's residing on the farm for decades, or taking steps to evict her implied that they consented to her occupancy, and that she therefore fell into the first class of occupiers, being an "occupier" for purposes of ESTA. The majority judgment concluded that the Land Claims Court erred by not joining Mrs Klaase to the eviction proceedings and therefore set aside the confirmation of the eviction order relating to Mrs Klaase.

However it is important to note that even amongst the judges at the Constitutional Court there was disagreement over how to interpret the definition of an occupier. Zondo J held that Mrs Klaase was not an occupier as defined because, to the extent that she may have been given consent by the owner of the farm to reside on the farm, such consent was for her to reside on the farm under or through her husband and not independently of his right to reside on the farm.

### *ESTA and the right to family life*

Section 6(2)(d) of ESTA grants occupiers the right to "family life in accordance with the culture of that family". However, the Act does not provide a definition of family life or provide any guidance on how to interpret cultural constructs of the family. The drafters of the legislation clearly had in mind the differences between nuclear and extended family formations, but how to interpret these in law has remained a vexed question.

The case of *Hattingh and others vs Juta* extracted by Mathew in the box below illustrates the complexities and differences of interpretation by different courts of law of the right to family life and the ways in which the culture of the family can be understood.

*"In Hattingh and others v Juta, an elderly and frail Mrs. Hattingh lived with her three sons. Two of her sons were adults, one of whom also had his wife living with him, and they lived on Mr. Juta's small holding outside Stellenbosch. Mr. Juta, was happy to allow Mrs. Hattingh and her minor son to continue living on the property, but needed the space occupied by her adult children and daughter-in-law to accommodate his farm manager, who cycled long distances to work every day.*

*The landowner's attempt to evict the two adult sons and daughter-in-law from the property was met with resistance from Mrs. Hattingh, who argued that she had a right to family life, and that she was entitled to have the additional occupiers live with her. The Magistrate's Court ruled in favour of Mrs. Hattingh. On appeal, the Land Claims Court ruled in favour of the land owner, saying that the right to family life only extended to the spouse and dependents of the main occupier (neither of the adult sons or the daughter-in-law were dependent on Mrs. Hattingh).*

*After an appeal to the Supreme Court of Appeal, where judgment was again given in favour of the landowner, the occupiers then appealed to the Constitutional Court.*

*The Constitutional court held that it is not possible to define what "family" means, as families come in many different shapes and sizes. The Court remarked that it differed with the Land Claims Court's interpretation that the term should be limited to "nuclear" family, i.e. spouse or partner and dependent children, but declined to offer an alternative interpretation. Instead, the Court turned its attention to section 6(2) of ESTA, which states that the right to family life must be "balanced with the rights of the owner or the person in charge". A just and equitable balance between competing rights must therefore be struck. Indeed, the principles of "just and equitable" and "fairness" are mentioned throughout ESTA.*

*The Constitutional Court held that an occupier is entitled to a family life which is as normal as possible, having regard to the landowner's rights. The extent of what is allowed will depend on the specific set of facts and on striking a fair balance between enabling the occupier to enjoy family life and allowing the owner to also enjoy the rights of the land. If, in a particular case, the balancing produces a result that is unjust and inequitable to the owner of the land, the occupier's right to family life may be appropriately limited. If, for example, the occupier were to live with his or her spouse or partner and with one, two or more of his children or other members of the extended family and this would not result in any injustice or unfairness and inequity to the owner of the land, the occupier would be entitled to live with those members of his or her family. In balancing the rights, the court held that the balance was in favour of the landowner and found that it would be just and equitable to evict the adult children and daughter-in-law this".<sup>53</sup>*

#### *ESTA, farm worker housing and access to services*

The follow up report to the SAHRC hearings in 2003<sup>54</sup> did record a DLA submission prepared in 2004 on the number of Section 4 subsidies which had been made available to 273 people for 12 projects:

- 1 project in the Northern Cape
- 1 project in the Western Cape
- 10 projects in Gauteng
- No projects in the remaining provinces

The follow up report also recorded a submission from the Department of Housing that it had outsourced the task of developing a National Farm Worker Policy with implementation systems.

The Breaking New Ground (BNG) Housing Policy released in 2004 announced the intention to develop a "rural housing instrument" acknowledging that "the existing supply-side and commoditized housing programme reflects a significant and inherent urban bias". BNG undertook to:

*Develop a rural housing programme which is to deal with a comprehensive range of rural housing related issues, such as tenure, livelihood strategies and broader socio-cultural issues...*

*The policy will also make provision for eligibility criteria in respect of access to the housing subsidy, criteria for assessment of the suitability of land for housing purposes, institutional mechanisms, exit mechanisms for farm workers detailing rules for both off-farm and on-farm housing while considering the protection of the State's assets in such cases, suitable strategies for the management of on-farm settlements and agri-villages villages, and mechanisms for capacitation of all stakeholders in construction and building of farm worker and farm dweller housing.*

*The National Department will develop the policy and programme in conjunction with the Department of Land Affairs and the Department of Agriculture and it is envisaged that a draft policy will be ready for consultation*

*purposes by April 2005. After a policy development phase, it is anticipated that implementation would commence in April 2006.<sup>55</sup>*

Given that farm workers could only access housing subsidies in situations where they were able to obtain secure tenure; a review commissioned by the Department of Housing<sup>56</sup> found that the Institutional Subsidy was best suited to addressing the on-farm housing needs of farm workers. It proposed that municipalities could take on the role of the housing institution and establish municipal service entities in terms of the Municipal Systems Act to fulfil this function. The review also highlighted the potential of section 4 of ESTA which enabled the Minister to grant subsidies for the planning of on and off site developments, the acquisition, and the development of land.

In 2007 the SAHRC held follow up hearings to determine the progress made in relation to land tenure security, safety and labour relations on farms. The report highlighted how ESTA had impacted on secure access to housing for farm workers.

*ESTA has had unintended and undesirable consequences...Attempting to privilege tenure security in isolation from a larger development programme to address living and working conditions on farms, has practically extinguished many of the other rights of farm dwellers and their families – such as the rights to adequate housing, health and education... It provides a disincentive to land owners and employers to improve on farm housing and facilities.<sup>57</sup>*

The report found that farm owners who feared that on-farm dwellers would claim land rights under the Act sought to evict farm workers. The obligation under ESTA for farmers to provide 'suitable alternative accommodation' resulted in farmers deliberately not maintaining or upgrading the existing housing stock.

*For farmers, there is little incentive to promote ESTA principles. Farmers are facing heavy economic and financial pressures, as well as an uncertain political environment. There appear to be no international precedents for legislation like ESTA so farmers experience this legislation as yet another burden in an already fraught business environment.<sup>58</sup>*

In a survey conducted on Western Cape farmers in 2003, 10% of respondents explained that they were inclined to allow a substantial housing investment remain unused rather than transferring it to the custody of a permanent employee who could gain rights via ESTA. 11.6% of farm houses in the survey were standing empty and 7.4% of farms had houses that were being used for other purposes<sup>59</sup> (Du Toit & Ally, 2003:21). This highlights the disincentive for farmers to provide housing which is tied to the ESTA legislation.

The Department of Land Affairs made available the Settlement and Production Land Acquisition Grant (SPLAG) was available between 2007 and 2009 which was intended to provide land for both settlement and agricultural production for people living and/or working on rural land. It was supposed to benefit farm workers, occupiers, labour tenants, and people requiring long term tenure security. It specifically targeted the creation of agri-villages and rural farming settlements with individual farming plots. However, there appears

to have been very limited use made of this grant for the purposes identified above and it has since been phased out.

The National Housing Code of 2009 requires that municipalities include a housing chapter within their IDPs. This effectively passed the responsibility of subsidizing farm worker housing onto the local municipalities with scant resources to fulfil this task.<sup>60</sup> The Housing Code specifies basic minimum standards of requirements for all housing developments which have been subsidized. These include water, sanitation and storm water drainage, minimum size requirements, and a connection to electrical supply when available

Part three of the National Housing Code contains a chapter dedicated to 'rural interventions' which includes the various subsidies and programmes available to farm workers, farm dwellers and farm owners. It outlines and explains the Farm Residents Housing Assistance Programme which aims to provide subsidies to develop adequate housing for farm workers and occupiers. It provides subsidy options, allowing for on-farm and off-farm housing, depending on the appropriate solution for the specific agricultural context. Because of their rural locations and the inabilities of most municipalities to deliver the required services, the National Housing Code asks farm owners to act as key service delivery agents under the programme.<sup>61</sup>

The Code sets out options for on and off farm housing support for farm workers. A Farm Resident Subsidy can be awarded in a number of ways. The farm owner can apply for a grant to develop infrastructure and housing for their farm workers, but the workers are required to have long term security of tenure in order to enter into long term rental contracts. Farm owners are then expected to maintain the subsidized housing stock using their resources so that decent living conditions are maintained.

Where a farm owner is prepared to, (s)he and his farm workers may apply for a sub-division of the farm land in question so that individual title deeds can be transferred to farm workers. In this scenario, either the farm owner acts as the developer or, if they are unwilling to do so, the beneficiaries can approach the provincial department to act as a developer. The department may then seek out a private developer to complete the project. Institutional housing subsidies for longer term rental units are also available. Seasonal workers are not meant to be accommodated under the Farm Resident Subsidy programme – but their accommodation must still comply with the minimum requirements of basic service provision and municipal building and structural compliances.

The Institutional Housing Subsidy outlined in the National Housing Code is allocated to an approved housing institution to develop and manage on and off farm rental stock. Figures 3 and 4 below highlight the key thrusts of the farm resident subsidy policy:



# Farm resident subsidies: On farm

## **Sustainability concerns**

"Owing to the potential of the injudicious creation of unsustainable farm worker settlements the creation of new farm resident settlements, should be regarded as an option of last resort" (DHS 2009: 22).

## **Municipal service delivery capacity**

"If settlement is to take place outside of an existing town, an appropriate service delivery and maintenance agreement with the municipality must be in place before the project is implemented" (DHS 2009: 22).

## **On farm arrangements:**

"The farmer acts as developer and provides access to basic water, a storm water management system (if considered appropriate) and sanitation as well as the construction of new houses. It could also include the upgrading/renovation of existing structures" (DHS 2009: 24).

## **On farm arrangements:**

"Preference should be given to options that provide security of tenure (including rental). These include the sub-division and transfer of land ownership to workers, share block schemes, and long term (99 year) lease agreements" (DHS 2009: 22).

## **People's Housing Initiative**

"Where the beneficiaries of the subdivided farm land wish to undertake their housing development themselves, they must establish a legal entity to represent them and they may decide to undertake the development of their farms through a People's Housing Process Initiative (DHS 2009: 24).

## **On farm rental housing**

"Where the sub-division of land and the transfer of ownership to farm workers is not feasible or desirable, consideration should be given to rental housing arrangements through instruments such as the Institutional Subsidy Programme or a project based rental housing development" (DHS 2009: 22).

Figure 1: Policy relating to on-farm subsidies: Chapter 5 National Housing Code

# Farm resident subsidies: Off farm

"In the event where the MEC is of the opinion that farm residents should not be accommodated on farms or on farm portions in ownership, the following alternative housing programmes can be considered to settle them in the nearest towns" (DHS 2009: 25).

## **Individual Housing subsidies**

"Individual subsidies where a land owner has donated land or where a portion of a farm has been bought by a farm occupier/ worker using a land grant" (DHS 2009: 25).

## **Integrated residential development programme**

"Where normal residential development is to take place through a normal township establishment process" (DHS 2009: 25).

## **Institutional Housing Subsidies**

"A housing institution provides rental accommodation and/or deferred registered ownership tenure options (for four years) in a proclaimed township through the provisions of the normal Institutional Housing Subsidy Programme" (DHS 2009: 25).

Figure 2: Policy relating to off-farm subsidies: Chapter 5 National Housing Code

In 2009 the Department of Human Settlements introduced Farm Residents Housing Assistance Programme as part the National Housing Code. However it recently acknowledged that not a single subsidy application had been received over the last seven years in terms of this programme and that this unimplemented subsidy policy was still to be evaluated by DHS.

The policy silence on farm workers continues up to the present day. In 2015, more than 20 years after the first Housing White Paper was approved, a new White Paper process got

under way. Early drafts had very little to say about farm workers. At a consultation in November 2016 organised by the National Department of Human Settlements to communicate progress on the draft, farm worker housing was not on the agenda.

In fact where farm workers are concerned current housing policy and subsidy programmes are increasingly redundant as the combined income of many farm worker households has risen above the R3500 eligibility threshold. This leaves farmworker households earning above the threshold in the void as it is widely acknowledged that they will find very little through the Finance Linked Individual Subsidy Programme (FLISP) band which is supposed to cater for people with incomes between R3500 – 7000/month.

In addition to housing farm workers also face discrimination with regard to access to free basic services. Many farm workers who live on farm do not receive the free 50 kwh of electricity to which they are entitled.

The Department of Human Settlements highlights the broader national concerns about rural towns in decline as a result of the restructuring of the agricultural sector. They also observe that rural municipalities in these settings are already extremely hard pressed to deliver basic services. DHS also raises concerns about the “affordability to farm workers and occupiers to pay the cost of housing and associated municipal rates and service charges that will arise in most off-farm settlement options” National housing policy goes on to explicitly discourage agri-village establishment which it characterises as unsustainable :

*The focus of this Housing Programme should be on strengthening existing service centres, towns and villages rather than compounding the problem by the injudicious creation of new agriculturally based (unsustainable) settlements.*

Del Grande has examined why DoH/DHS policy has been ineffective in addressing rural housing needs, specifically those of farm workers. She highlights the strong urban bias in early housing policy. The criteria specifically related to housing subsidies requiring applicants to have ‘functional’ security of tenure led to the effective exclusion of farm dwellers. She argues that the focus of housing policy on houses *per se* has frequently overlooked the needs of families with homes on farms and social networks embedded in rural space and place. Her research provides important insights into the social and historical dimensions of people’s sense of belonging on farms.

*While the overall picture, built through the family interviews, is of families living incredibly vulnerable existences there remains a strong sense of place in their presence on the farms and in the changing South African landscape. The respondents consistently referred to the homes on the farms as their primary and only homes as opposed to worker accommodation. These are not families living in transit, who would be primarily driven by household labour opportunities, as employment patterns decline across farms. Nor are they simply workers who need accommodation or housing.<sup>62</sup>*

Del Grande critiques the Department of Housing for failing to acknowledge farm workers as anything other than labour. She reviews how the urban bias of housing development was strengthened at a municipal scale by the Local Government: Municipal Systems Act 32 of 2000. This resulted in rural areas being amalgamated into municipal administration areas, subsequently placing the task of rural housing provision and farm worker housing provision with poorly resourced local governments.

There remains considerable confusion about the legal obligation of municipalities to provide services to farm dwellers on private land. This has been problematic in a variety of settings – not least in the case of land reform where land in the earlier phases of the land reform programme was transferred in private ownership. However, this problem may be overcome by legislation as the example of the provision of water services on private land illustrates so clearly. The Sustainable Development Consortium records how in 2005 the then Department of Water Affairs and Forestry issued a guide to municipalities in respect of providing water services to residents on privately owned land which makes it clear that “all residents, wherever they may live, are entitled to receive at least a basic level of water and sanitation services”.<sup>63</sup>

The guideline went on to note that despite the *superficies solo cedit* principle in Roman Dutch law that specifies that buildings and improvements become part of the land and the property of the landowner:

*There is no legal impediment to the use of government grants to fund infrastructures for a poor household on private land not owned by that household, provide that the intermediary (private land owner) makes a financial contribution.*<sup>64</sup>

This position was confirmed by a legal opinion. May<sup>65</sup> cited case law – as mentioned previously - to show that the municipality had a constitutional duty to uphold its service delivery mandate which binds municipalities to deliver services to every member in their municipal community. This includes access to water and sanitation, housing, health care services, education, an environment that is not harmful to one’s health, and to sufficient food as set out in the Municipal Systems Act 32 of 2000. This suggests that the Municipal Infrastructure Grant (MIG) can also be used to install infrastructure necessary for the provision of basic services to poor households living on private land. The key issue remains the extent of the contribution of the land owner to the capital cost and their responsibility for subsequent maintenance of the facilities.

Despite the evidence that services can be delivered on private land subject to certain conditions these issues appear to remain practically unresolved at a policy level, or if they have been resolved then poorly communicated and implemented.

As noted in Section 5 it has been argued that the rise in minimum wages has now meant that many farm worker households earn above the subsidy ceiling of R3500/month which confines them to the FLISP gap housing market.

The Department of Human Settlements has recently acknowledged that:

*A total of about 3.5 million households with income between R3501 and R15000 per month do not qualify for full government subsidy. While households with a monthly income of between R3500 and R7500 may qualify for a mortgage loan of between R140000 and R300000, the supply of stock is limited and mortgage finance for households with a monthly income below R7500 is almost non-existent. This means, there is an increasing number of households that do not qualify for a government subsidy or mortgage finance due to a number of reasons that include non-availability of stock and inability to access mortgage finance.<sup>66</sup>*

#### *ESTA, casualisation and rural informality*

The recent ILO report<sup>67</sup> assessing farm worker living conditions in South Africa highlights the drivers of casualisation and externalisation of farm labour.

*Firstly, employing workers on seasonal contracts was more cost-effective. This was especially the case in the Western Cape where permanent employment was still strongly correlated with the provision of on-farm housing and a range of benefits that increased overall cost to company. Secondly, the vast majority of seasonal and externalised workers lived off-farm. Recruiting such workers means that employers avoid having to grant security of tenure to workers living on farms, as required by the Extension of Security and (sic) Tenure Act. Therefore, it seems that one of the unforeseen consequences of ESTA has been to contribute to the process of casualisation.<sup>68</sup>*

The ILO report observes that legislation and policy relating to farmworker housing and security of tenure, “appears to be hugely out of step with the growing, off farm worker population”. The report goes further to characterised the Farmworker Housing Assistance Programme as “myopic” in that it does not recognise or address the needs on seasonal workers or provide subsidies for seasonal on-farm housing/hostel accommodation. The report argues that government should be providing subsidies for on-farm housing and to support workers off farm. The report cites Barrientos and Visser to note that:

*The only law that prescribes some basic conditions for on-farm worker housing is sectoral determination 13 and its stipulations regarding housing only apply when deductions are made from workers’ wages and accommodation. If no such deductions are made, then no minimum standards apply.<sup>69</sup>*

The rapid casualisation and externalisation of the workforce has overwhelmed municipal capacity to provide housing. This means that small rural towns are experiencing steep growth in informal settlements on the periphery. These settlements are often unserved. As the ILO report has observed this is creating a health and environmental hazard which threatens the production on which local economies depend:

*Raw sewage is ending up in river courses. This poses a threat to the exportability of irrigated crops that are subjected to stringent food safety*

*standards. The problem of inadequate housing for farmworkers therefore, has larger repercussions that threaten all stakeholders.<sup>70</sup>*

#### *ESTA data on evictions and displacement*

The ILO report highlights the failure of the DRDLR to keep reliable data on evictions despite being obligated to do so. This is particularly serious when it has a constitutional mandate to ensure tenure security and is directly responsible for the implementation of ESTA.

In local studies conducted in the Cape Winelands in 2010 – a district nationally regarded as a ‘hotbed’ of evictions – researchers from Phuhlisani concluded that:

*There is no reliable and comprehensive information on the extent of legal and illegal evictions from farms in the CWDM, or anywhere else in the country. Although section 9 of ESTA requires that owners give notice of intention to obtain an eviction order to the occupier, the municipality and the head of the local DLA, and despite repeated promises over the years by government agencies to remedy the situation, reliable information on evictions from farms remains elusive... A comprehensive search of a wide range of sources has turned up a meagre and at times contradictory harvest of statistics and related information on evictions in the CWDM since 2005.<sup>71</sup>*

The Phuhlisani study reviewed 347 eviction cases which had been recorded in the DLA/DRDLR database since 2005 in the Cape Winelands. From this data results were only known for 27 cases (7.7% of cases).

Where workers and their families were evicted or displaced case studies highlight the devastating impacts on their lives. Persons evicted experience acute social dislocation and vulnerability and struggle to find shelter and employment. Evicted and displaced farm workers remain largely invisible in local planning and development processes.

#### *The forced eviction-voluntary relocation continuum*

Research conducted by Phuhlisani<sup>72</sup> has identified a continuum of eviction-displacement-voluntary relocation scenarios common on farms. These include scenarios which involve:

- forced and constructive eviction,
- mediated deal making involving financial transactions between the owner and the worker as an inducement to vacate the property,
- eviction processes which go through the courts where the farm worker may or may not have access to legal representation
- voluntary relocation where workers relocate to another farm or to town of their own free will

## Forced eviction – voluntary relocation

### A continuum

Forced eviction	Constructive eviction	Severance payouts	Legal eviction without representation	Legal eviction with representation	Voluntary relocation
Persons threatened and forced off property	Service cut offs, housing not repaired. Restrictions etc	Owner pays workers cash sum to leave property and waive their rights	Owner terminates right of residence and secures eviction order	Owner terminates right of residence and secures eviction order	Persons relocate to urban area or other settlement
Owner uses illegal pressure to override farm worker and farm dweller rights	Owner puts illegal pressure on unwanted occupiers to leave property 'voluntarily'	Farm changes ownership, faces economic problems, changes in land use Occupiers uninformed of their rights	Persons do not appear in court or have no lawyer Judgement in absentia	Labour dispute Person retrenched or found by court to have committed an offence Represented by a lawyer	Other employment and/or tenure security opportunities

The scenarios highlight how promulgation of ESTA has prompted a range of responses from employers, workers and farm dwellers. Increasingly common is the practice of the reaching of agreements between owners and workers/occupiers where the owner makes a severance payment and may provide a Wendy house off farm in exchange for the worker/occupier relinquishing their ESTA rights and vacating the property. This effectively transfers responsibility for housing and service provision to the municipality.

#### *ESTA and provision of emergency housing*

Very few farm workers are registered on local housing lists and municipalities are reluctant to make emergency housing available and they fear this will spark local conflict and allegations of queue jumping.

According to a legal opinion provided by the Community Law Centre Chapter 12 of the National Housing Code dealing with the Emergency Housing Programme extends beyond rehousing people following floods and fires to include those who are evicted or threatened with imminent eviction.

*Of significance to this opinion is the fact that no distinction is made between evictions which take place in urban areas or those which take place in rural areas. Furthermore, the programme is flexible enough to make provision for 'imminent eviction from land... or situations where pro-active steps ought to be taken to forestall such consequences.' This enables a municipality to assess its*

*current and foreseeable housing needs, particularly in respect of vulnerable farm dwellers.*

#### *ESTA and DRDLR implementation capacity*

It is clear from the above that DLA/DRDLR capacity to implement ESTA has been declining rather than increasing. Legislation which seeks to secure tenure requires the development of extensive institutional capacity. Currently much of this capacity is outsourced via the Land Rights Management Facility which officials can draw on to obtain legal services and mediation support.

#### *ESTA: A casualty of ‘total system failure’?*

In the 2011 Green Paper on Land Reform the Department of Rural Development and Land Reform acknowledged that the implementation of ESTA has been overwhelmed by “total system failure”.

10.3 *A systems approach seems necessary and appropriate in addressing complex and emotive challenges such land reform. The failure to protect the rights and security of tenure of farm workers and dwellers is a good illustration of this point. There is a strong view that the real problem in land reform in general; and, in the protection of the rights and security of tenure of farm-dwellers, in particular, may be that of a total-system failure (TSF) rather than that of a single piece of legislation, e.g., Extension of Security of Tenure Act (ESTA).*

10.4 *In the case of farm-workers and dwellers, this failure would reflect in a number of aspects: inadequate articulation of policy and legislative regime to protect farm workers and dwellers; poor implementation of existing policies and legislation by organs of the state; weak enforcement of legislation by law-enforcement agencies; the judicial system not being worker-friendly in handling eviction cases; labour unions not organizing effectively on farms; non-complementary (almost adversarial) relationship between non-governmental organizations and state organs in addressing problems of farm-dwellers; and, poor or non-existent monitoring, co-ordination and communication amongst state organs, within and across the three spheres of government, and other interested parties, on matters negatively affecting the rights of farm workers and dwellers.<sup>73</sup>*

The significance of this “total system failure” for the High Level Panel review is enormous. As delegates at the National Land Tenure Summit in 2014 argued “total system failure requires a total system re-design, with adequate resourcing”.<sup>74</sup> Considerable scepticism has been expressed that the ESTA Amendment Bill discussed below will result in any such change.

#### *The ESTA Amendment Bill*

The ESTA Amendment Bill is being debated in Parliament. In a recent submission PLAAS has enumerated a wide range of factors which have limited the effectiveness of ESTA to date including:

- the absence of an effective national campaign to make farmworkers aware of their rights in terms of ESTA;
- the erosion of capacity in rural advice offices which for many farmworkers represented an important source of local advice;
- the discontinuation of the training of prosecutors and magistrates to enable them to interpret and implement the act;
- the absence of ESTA violations appearing on the database of the South African police service;
- The failure to provide farm workers with access to legal representation (despite the establishment of the land rights management facility)
- The failure to develop a programmatic approach to implementing Section 4 of the Act
- The lack of dedicated officials in District offices responsible for ESTA implementation
- The absence of a dedicated budget for ESTA implementation.<sup>75</sup>

The Legal Resources Centre in their submission has critiqued the Bill for failing to provide sufficient measures to ensure security of tenure for all occupiers. It has argued that sections 8(2) and 8(3) which provide the principal grounds relied on by the owners of farms for ESTA eviction orders remain unchanged and as such render occupiers vulnerable.

*Our experience is that in most successful eviction cases, all that the owner has to do is to show that the labourer/worker has been dismissed and that there is no pending proceedings before the CCMA. In our experience, most farm labourers/workers are not aware of their rights at the CCMA and they often sign settlement agreements arising from their employment disputes without fully understanding that an eviction application will follow.<sup>76</sup>*

The LRC has proposed that section 9(3) of ESTA should be amended so that it is expressly stated that a court cannot grant an ESTA eviction order in the absence of a probation report and a report from the local municipality on the availability of emergency housing. It has observed that cases are often heard without a probation officers report being prepared.

The LRC has observed that:

*The lack of preparation of the probation officer's report reveals the lack of commitment and seriousness of the Department and its officials towards the lives of farm occupiers. We propose that the provision of a probation officer report should be mandatory before a court grants an order for the eviction of a farm occupier.<sup>77</sup>*

The LRC notes that Bill introduces "land tenure grants" to replace the Section 4 "subsidies". The LRC questions whether the reason for the name change is that the tenure grants will be made available to the farm owners as opposed the occupiers. The LRC expresses concern



that that “this amendment reverts to the situation when the state used to subsidize farmers for their farm labour in terms of basic services and housing without leveraging for better rights for the workers”.

***Other policy proposals: Strengthening the relative rights of farm workers - the 50/50 scheme***

The 50/5050 policy, proposes that the state will buy shares in farming enterprises for farm workers with 10 years or more of so-called “disciplined service”. Hall has noted that while this has been presented as a “radical” policy to realise the Freedom Charter’s vision that “the people shall share in the country’s wealth”, the policy rests on a model of equity sharing that was shown to be ineffective in the past.

*With the cost of the scheme estimated to be at least R141-billion, the proposal would see a massive windfall of public money into privately-owned farms without securing jobs or homes and with no guarantee of increased incomes for farm workers.<sup>78</sup>*

Hall reports that delegates at the Land Tenure Conference argued that “total system failure” required a total system re-design, with adequate resourcing.

*Participants identified several measures to secure tenure on farms:*

- *A ring-fenced budget for securing farm dwellers’ rights and farm dwellers should be prioritised in land redistribution;*
- *Staff posts in the department exclusively responsible for securing tenure on farms;*
- *Training of the SA Police Service, prosecution authorities and magistrates to make the justice system more responsive;*
- *Task teams of all relevant departments to respond to threatened or actual evictions;*
- *A national tripartite forum of government, farmers and farm workers and similar forums at provincial level; and*
- *A moratorium on evictions while institutions are being strengthened to implement ESTA.<sup>79</sup>*

As can be seen from the foregoing sections these proposals have been made repeatedly over a period of several years but to date the Department and Cabinet have tended to pay lip service to such recommendations with the result that very little changes.

***Tenure security, the right to housing and dignity***

On the 11th May 2017 the Constitutional Court handed down an important judgment in the case of Daniels v Scribante and Another (Case CCT 50/16) which goes to the heart of the

complex relationship between owners and occupiers in a constitutional democracy where the Constitution has enshrined the right to security of tenure and with it the right to housing and dignity.

Justice Madlanga's judgement writing for the majority provides a historical background to land dispossession and the origins of law to secure tenure and advance the right to human dignity. He notes that "an indispensable pivot to that right is the right to human dignity. There can be no true security of tenure under conditions devoid of human dignity".

The supporting judgment of Justice Froneman emphasises the need to rethink our understanding of property. He draws on a range of sources including the late professor van der Walt to challenge a narrow "absolutist conception" of property and a supposed hierarchy of rights with ownership at the top and lesser real and personal rights below.

He concludes:

*The injustice of our history cannot be avoided. At the immediate level of this case it requires that we afford the same dignity, and rectification of indignity, to those living on farms, as that which motivated the solution to the "poor white problem" in the first half of the previous century. It means that we must recognise that the common law protection of property and its attendant economic privileges did not, in our historical context, support personal autonomy and economic freedom, but effectively worked against it.*

## **7. Conclusion**

This review suggests that there is a complex policy and practice gridlock in the farming sector with regard to the tenure, housing and access to services of farm workers. The provision of improved tenure security, adequate housing and access to services on and off farms can be characterised as a "wicked problem... composed of inter-related dilemmas, issues, and other problems at multiple levels of society, economy, and governance. These interconnections—systems of systems—make wicked problems so resilient to analysis and to resolution".<sup>80</sup>

Since 1994, solutions for the complex challenges posed by farm worker tenure security, secure access to housing and services have remained elusive. The DRDLR has acknowledged that the implementation of ESTA has collapsed under the weight of "total system failure". At the same time there are limited options supporting the development of housing for farm workers on and off-farms. It is common cause that existing measures in the National Housing Code which allow the state to direct public money to subsidise the provision of farmer owned rental accommodation, face many challenges and remain unimplemented.

The rise in the minimum wage has also been associated with unintended consequences placing many farm worker households in full time employment into a notional gap market for housing options and finance remain unavailable. For those workers who have moved, been displaced or evicted off farm there are very few options.

Most farm workers are not included on housing waiting lists. In case where they have been registered, the efficacy of housing waiting lists and the fairness of allocation procedures have been called into question at all levels. Researchers from the Community Law Centre and the Socio-Economic Rights Institute have cast serious doubts on the waiting lists, citing “a critical lack of transparency in the housing allocation process ... and (asking) where along the extremely complex housing allocation process more transparency can be injected”<sup>81</sup>. These concerns have been confirmed by the National Minister of Human Settlements, who has argued that nationally “there is no credible database against which municipalities can verify the waiting list”.<sup>82</sup>

All of these factors recall the unresolved issues and sharply differing perspectives of actors in this sector documented in micro detail by the SAHRC report in 2007.

The SAHRC report recorded that the then Minister of Land Affairs was of the view that ESTA was not implementable:

*The previous Agriculture and Land Affairs Minister – Thoko Didiza publicly expressed concerns ... that both ESTA and the Labour tenants act... was not implementable...[stating] that if we accept that farming is a business, the relation between owner and worker should not be tied to tenure.*<sup>83</sup>

A different but related perspective was advanced up Atkinson who in a written submission to the Commission argued that “ESTA should be abolished as it is not only wrong in its consequences (leading to evictions and/or unemployment; it is also wrong in principle (no one should have the right to live in a specific place)”.<sup>84</sup>

The SAHRC report records her argument that:

*To the extent that the situation facing farm workers is a rights question it is a question of second generation rights i.e. social and economic rights claimable against the State – not against the employer. In this regard the key focus of government policy should not be to enforce farm workers’ rights vis a vis farmers, but to enforce farm workers’ rights vis a vis municipalities”.*<sup>85</sup>

This approach seeks to frame the farm worker question as a developmental challenge to ensure that “farm workers are recognised as citizens entitled to housing, services, education and health care with a working environment where working conditions are regulated by the State”.<sup>86</sup>

Ranged against these arguments are those of the human rights and land sector activists which locate the contemporary position of farm workers within histories of land dispossession and systemic abuse and highlight their acute vulnerability in the face of the deregulation of agriculture and the economic logic driving vertically integrated value chains. These actors remind us of our constitutional obligations to secure tenure and progressively enable access to land and housing. They mount strong arguments that the state is failing in its constitutional duties to protect the rights of farm workers and implement the laws to give effect to Section 25(5) and 25(6) of the Constitution.

As PLAAS has recently observed, the White Paper on South African Land Policy of 1997 noted that:

*A major cause of instability in rural areas are the millions of people who live in insecure arrangements on land belonging to other people. They had and have simply no alternative place to live and no alternative means of survival. The evicted have nowhere else to go and suffer terrible hardships. The victims swell the ranks of the absolute landless and the destitute. They find themselves at the mercy of other landowners for refuge. If no mercy is shown, land invasion is an unavoidable outcome. Because the root cause of the problem of insecurity of tenure under these circumstances is a structural one it requires a structural solution' (DLA 1997:33).<sup>87</sup>*

PLAAS notes that:

*Farm workers and farm dwellers have repeatedly expressed their misgivings about the failings of ESTA – both limitations in the law and in its implementation and enforcement. Similarly, trade unions, rural advice offices, non-governmental organisations, human rights lawyers and academic researchers have repeatedly contributed in dialogues with government and with representatives of the farming industry.<sup>88</sup>*

PLAAS has argued that they can “see no evidence that the main concerns which have been raised repeatedly at these many engagements”<sup>89</sup> have been taken up or reflected in the ESTA Amendment Bill.

Whichever of these arguments members of the High Level Panel may find persuasive it is clear to all almost two decade after the promulgation of ESTA not much has changed on farms. Despite the debates, inquiries, indabas and commissions it is clear that little has improved for farm workers. The fault lines which delineate the positions of the different actors remain deeply incised and they remain far apart.

The question for the High Level Panel and South African citizens more broadly is what can be done to address what the DRDLR has described as a “total system failure” in relation to ESTA, to provide resources to implement or review the law through a process that involves thorough public participation. This must enable the identification of sustainable solutions which arrest and reverse the marginalisation and impoverishment of those working in the agricultural sector and living on and off farms, protect them from arbitrary eviction and secure their rights to land, dignity, family life, housing, tenure security and access to services.

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