

Farm dwellers and labour tenants

A review of the findings of the High Level Panel Report on the Assessment of Key Legislation and the Acceleration of Fundamental Change – December 2017

Parliament passed two main pieces of legislation intended to give effect to the state’s constitutional obligations for land tenure that is legally secure for farm dwellers and farmworkers.

- the Extension of Security of Tenure Act (No 62 of 1997) commonly referred to as ESTA addresses the tenure rights of farm dwellers residing on land owned by others. It sets out the rights and duties of landowners and farm occupiers, and the procedures that must be followed to lawfully evict a person from the farm.
- the Land Reform (Labour Tenants Act) (No 3 of 1996) sought to address the injustices of the past by giving labour tenants security of tenure or ownership of the portion of land that they use to live on, grow crops and keep livestock. Labour tenancy in South Africa is the result of racially discriminatory laws and practices, which have led to the systematic breach of human rights and denial of access to land.
- Both laws have redistributive components in that ESTA provides for on and off-farm settlements and the Labour Tenants Act makes provision for labour tenants to acquire land.

Key issues at a glance

| Core problems | Principal HLP recommendations |
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| <ul style="list-style-type: none"> ● Despite the constitutional provisions and legislative frameworks, instances of eviction and other human rights violations for people living and working on farms have continued unabated. ● The DRDLR have never produced comprehensive or costed plans to implement the LTA or ESTA. ● The redistributive component of ESTA and the LTA have been neglected and no dedicated budgets set aside despite the requirements of the Act. ● A “total systems failure” has resulted in preventing effective implementation of legislation passed to protect the rights farm dwellers. ● The implementation of the Labour Tenants Act has suffered from even | <ul style="list-style-type: none"> ● The significance of ‘total system failure’ for the Panel review is enormous. ● The HLP notes that such total system failure requires a total system re-design, with adequate resourcing. ● A training programme needs to be put in place for the South African Police Service (SAPS), Prosecutors and Magistrates on understanding, interpretation and implementation of ESTA and LTA. ● A National Register of farm dwellers still living on farms to record off-register rights, tied into a National Register of ALL off-register rights. ● Parliament carefully monitor the DRDLR’s progress on implementing the LTA. ● DRDLR to prepare a comprehensive, |



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| <p>greater neglect than ESTA, as the department effectively refused to implement the law since the early 2000s.</p> <ul style="list-style-type: none"> • The DRDLR has appealed a court ruling requiring it to appoint a Special Master to oversee resolution of Labour Tenant Claims. • Current policies on ‘strengthening the relative rights of people working the land’ and the ‘50/50’ policy are widely regarded as being unworkable and creating perverse incentives which could accelerate eviction. | <p>properly costed and resourced implementation plan for the LTA.</p> <ul style="list-style-type: none"> • Specific amendments are proposed to the ESTA Amendment Bill and the Labour Tenants Act. |
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Problem statement

The Panel heard extensive and worrying evidence that despite the constitutional requirements of Section 25(6), the implementation of tenure reform laws has been weak and ineffective. This is particularly the case with the Extension of Security of Tenure Act and the Labour Tenants Act. Court judgments confirm that the developmental provisions to provide for secure long-term rights under these laws have largely not been implemented. The DRDLR has acknowledged that it lacks capacity to implement these Acts.

ESTA

Section 4 of ESTA states that The Minister shall, from moneys appropriated by Parliament for that purpose and subject to the conditions the Minister may prescribe in general or determine in a particular case, grant subsidies

- (a) to facilitate the planning and implementation of on-site and off-site developments;
- (b) to enable occupiers, former occupiers and other persons who need long-term security of tenure to acquire land or rights in land; and
- (c) for the development of land occupied or to be occupied in terms of on-site or off-site developments.

In practice, the award of subsidies has been minimal, which impacts significantly on farmworkers’ rights to housing and tenure security. A further challenge with implementation of legislation has been that a broad range of Government officials do not fully understand the legislation protecting farm dwellers – this includes SAPS members, DRDLR and Municipality officials. This has a negative impact on eviction cases.



LTA

The implementation of the LTA has suffered from even greater neglect than ESTA, as the DRDLR has effectively refused to implement the law since the early 2000s. This refusal and the plight of labour tenants became the subject of proceedings initiated in 2013 in the Land Claims Court. This sought to address 10 914 labour tenant claims which remained unsettled.

In December 2016, the Land Claims Court granted an order appointing a 'Special Master of Labour Tenants' who is required to produce a plan in collaboration with the DRDLR to implement labour tenant claims. It was noted in the judgment that:

'From the history of the litigation, it is apparent... that the Department has not been able to comply with its own time frames or to provide accurate information on how far the collation of labour tenant's claims has progressed... Effective relief is undoubtedly required by the many thousands of vulnerable labour tenants' (LRC, 2016).

Judge Thomas Ncube found that Minister Nkwinti and the Director-General acted in a manner, 'inconsistent with Sections 10, 25 (b), 33, 195 and 237 of the Constitution of the Republic of South Africa' and that a 'Special Master of Labour Tenants' shall be appointed by no later than 3 March 2017 to supervise the Director-General and the Department in respect of the pending labour tenant claims under Sections 16, 17 and 18 of the Act. The DRDLR is currently in the process of appealing this judgement.

HLP Recommendations

ESTA

The HLP has made wide-ranging recommendations to improve ESTA implementation including:

- Training for SAPS, Prosecutors and Magistrates on ESTA.
- A national register of farm dwellers.
- A review of legal assistance to farm dwellers with a view to improving the system.
- Provision of information about farmworkers' land rights.
- Pages 295 - 297 of the HLP report propose amendments to the ESTA Amendment Bill relating to:
 - the definition of a dependent
 - removal of income thresholds beyond which rights to occupation fall away
 - maintenance responsibilities for on farm housing
 - delinking rights of occupation to those of employment
 - enabling municipalities to deliver basic services on farms
 - a dedicated budget and human resources ringfenced for ESTA implementation
 - Strengthening the rights of long term occupiers to acquire secure rights in land on or off the farm.



LTA

The HLP report recommends that:

- Parliament carefully monitor the DRDLR's progress on implementing the LTA.
- A comprehensive, properly costed and resourced implementation plan for the LTA is a critical starting point. Until this has been developed by the DRDLR, progress is likely to remain haphazard, under resourced and poorly managed. The risks around poor implementation need to be fully assessed and managed, learning lessons from past failures.
- LTA Regulations should be amended to include protection for labour tenant when a restitution claim is lodged on land where labour tenants reside, i.e. the claims are overlapping.
- The DRDLR have attempted to create a new database of LTA claims; a process that remains incomplete and inaccurate. It is critical that this process is finalised and robust research is undertaken to update information and track missing claims. Progress should be reported to Parliament.
- There are amendments to the legislation needed, e.g. an amendment to Section 16(1)(d), which relates to the cut-off date for applications. There are labour tenants who did not lodge claims by 31 March 2001 and were thus excluded. Moreover, some claims that were lodged were lost by the DRDLR, and claimants should have the chance to reodge their applications.
- The reference in Chapter II Section 3(1) to labour tenants being able to acquire land that they were using on 2 June 1995 should be removed. They should be able to acquire land that they may have been able to use prior to this date, as their use rights might have been reduced by landowners.
- The highly regulated process that the LTA dictates should be revised to allow a more flexible and adaptable process that would best benefit labour tenants. However, many labour tenants are elderly and the processing of their claims has already been delayed by 16 years and will take many more years to process. There is a significant risk that starting the process of amendments will be used as an excuse to further delay the processing of the existing claims. It is critical this does not happen.
- The LTA states that an eviction notice must be sent to the DG. However, the DRDLR has failed to provide the mediation required by Section 11 of the LTA, and thus eviction orders are granted without adequate support to labour tenants. Amendment is needed to make the provisions for mediation compulsory before the matter is heard in Court.
- Section 9 (2) of LTA should be removed. An associate's right to reside should not depend on a labour tenant's right. Section 9 (2) states that 'On the death of a labour tenant who has retained the right to occupy the farm in terms of the provisions of Subsection (1), all his or her associates may be given 12 calendar months' notice to leave the farm'
- Sections 22 (4) (d), 24 (1) and 24 (2) of LTA should be amended. The word 'applicant' should be substituted with the words 'the Department of Rural Development and Land Reform'.
- Section 13 (1A) (b) should be removed from the LTA. Section (1A) states that 'With the exception of issues concerning the definition of 'occupier' in Section 1 (1) of the Extension of Security of Tenure Act, 1997 (Act 62 of 1997), if an issue arises in a case in a magistrate's court or a High Court that requires that court to interpret or apply this Act

- And: - (a) no oral evidence has been led, such court shall transfer the case to the Court and no further steps may be taken in the case in such court;
- (b) Any oral evidence has been led; such court shall decide the matter in accordance with the provisions of this Act.'
- Government needs to develop and implement a training programme for the South African Police Service (SAPS), Prosecutors and Magistrates on understanding, interpretation and implementation of ESTA and the LTA.

Conclusions

The Panel recommends that both ESTA and the LTA be amended slightly. However, their main recommendation is that the Act be properly enforced and resourced particularly with respect to their neglected redistributive components

References

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