
GENERAL NOTICE

NOTICE 1118 OF 2010

DEPARTMENT OF RURAL DEVELOPMENT AND LAND REFORM

INVITATION TO COMMENT ON THE DRAFT LAND TENURE SECURITY BILL, 2011

The Department of Rural Development and Land Reform hereby invites any interested person or body to provide comments on the draft Land Tenure Security Bill, 2011 (hereinafter referred to as the Bill), as published hereunder together with the Memorandum on the Objects of the Bill and the policy on which the Bill is based.

The main purpose of the Bill is to provide for the continued protection of rights of persons who live and work on farms, as well as to provide a support framework for the sustainable livelihoods of persons who live and work on farms. The Bill further provides for state assistance in the settlement of interested and affected persons on alternative land. To give effect to the provisions contained in the Bill, it is envisaged to establish a land rights management board. The Bill also makes provision for transitional provisions for the finalisation of applications under Chapter III of the Land Reform (Labour Tenants) Act, 1996.

Copies of the Bill, the Memorandum on the Objects of the Bill and the accompanying draft policy can be obtained from the following Departmental offices:

RURAL DEVELOPMENT AND LAND REFORM PROVINCIAL SHARED SERVICE CENTRES (PROVINCIAL OFFICES)	PHYSICAL ADDRESS	TELEPHONE NUMBER
EASTERN CAPE	BLOCK F 15 OCEAN TERRANCE QUIGNEY 5202	(043) 700 7000
FREE STATE	S A EAGLE BUILDING 5 TH FLOOR 136 MAITLAND STREET BLOEMFONTEIN 9301	(051) 400 4200
GAUTENG	BURNEITA BUILDING 1145 BURNETT STREET HATFIELD	(012) 362 3900
KWAZULU-NATAL	188 HOSSEN HAFFJEE STREET PIETERMARITZBURG 3201	(033) 355 4300

LIMPOPO	19 RESIDENCE SCHOEMAN ANDREA BUILDING 2 ND FLOOR C/O SCHOEMAN AND RISSIK STREET POLOKWANE 0700	(015) 297 3539
MPUMALANGA	BELL TOWERS BUILDING 7 TH FLOOR 18 BELL STREET NELSPRUIT 1200	(013) 755 3499
NORTHERN CAPE	NEW PUBLIC BUILDING KNIGHT AND STEAD STREET KIMBERLEY 6 TH FLOOR	(053) 831 4090
NORTH WEST	SHARMA INVESTMENT BUILDING 9 SHIPPARD STREET MAFIKENG 2745	(018) 397 9700
WESTERN CAPE	63 STRAND STREET NEDBANK CENTRE 3 RD FLOOR	(021) 426 2947

The documentation can also be downloaded from the Department's website at www.ruraldevelopment.gov.za

The closing date for comments is 60 calendar days from the date of publication of this notice in the Gazette. Written comments must be submitted to Adv V Z Mngwengwe and Mr S O Ogunronbi at the contact details below:

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REPUBLIC OF SOUTH AFRICA

DRAFT LAND TENURE SECURITY BILL

*(As introduced in the National Council of Provinces (proposed section 76); explanatory
summary of Bill published in Government Gazette No. of) (The English text is the
official text of the Bill)*

(MINISTER OF RURAL DEVELOPMENT AND LAND REFORM)

[B - 2011]

B I L L

To provide for the continued protection of rights of persons who live and work on farms; to provide support framework for sustainable livelihoods of persons who live and work on farms; to provide for State assistance in the settlement of interested and affected persons on alternative land; To provide measures aimed at security of tenure, sustainable livelihoods and production discipline; to establish a land rights management board; to provide for acquisition of rights in land for resettlement; to provide transitional provisions for the finalisation of applications under Chapter III of the Land Reform (Labour Tenants) Act, 1996; and to provide for matters connected therewith.

PREAMBLE

WHEREAS the Constitution establishes a society based on democratic values, social justice and fundamental human rights and seeks to improve the quality of life of all citizens and to free the potential of each person;

AND WHEREAS the State must respect, protect, promote and fulfil those rights;

AND WHEREAS it is desirable—

- that the law should give due recognition to the rights and legitimate interests of landowners, while extending the rights of persons residing on farms and clarifying the rights of persons working on farms;
- that the law should promote the achievement of long-term security of tenure for persons residing on farms including the provision of alternative land;
- that the law should prohibit the arbitrary eviction of persons residing on farms from land; and
- that the laws pertaining to the security of tenure rights for persons residing on farms and labour tenants be consolidated to provide for persons residing on farms and labour tenants to enjoy the same rights; and to ensure that persons residing on farms and labour tenants are not further prejudiced.

BE IT ENACTED by the Parliament of the Republic of South Africa, as follows:—

ARRANGEMENT OF SECTIONS

CHAPTER 1

DEFINITIONS AND OBJECTS

1. Definitions
2. Objects of the Act

CHAPTER 2

APPLICATION OF THE ACT

3. Application
4. Relationship with other laws
5. Pending matters in terms of other legislation

CHAPTER 3

CATEGORIES OF PERSONS COVERED BY ACT

6. Persons covered by this Act
7. Persons residing on farms
8. Persons working on farms
9. Persons associated with persons residing or working on farms
10. Farm-owners and authorised agents
11. Consent to reside on land

CHAPTER 4**RELATIVE RIGHTS AND DUTIES**

12. Relativity of Rights
13. Rights of farm owners
14. Duties of farm owners
15. Rights of persons residing on farms
16. Duties of persons residing on farms
17. Rights of persons working on farms
18. Duties of persons working on farms

CHAPTER 5**MANAGEMENT OF EVICTIONS**

19. Scope of Eviction
20. Conditions and Circumstances under which Evictions may be lawful
21. Prohibition of arbitrary eviction
22. Eviction Proceedings
23. General Limitations on Evictions
24. Order for eviction
25. Effect of order for eviction

CHAPTER 6**AGRI-VILLAGES AND LAND DEVELOPMENT MEASURES**

26. Agri-villages and Land Development Assistance
27. Resettlement Measures
28. Expropriation
29. Temporary right to use
30. Transfer Duties
31. Legal Aid
32. Integrated Government Services

CHAPTER 7

MANAGEMENT OF RESETTLEMENT UNITS AND AGRI-VILLAGES

33. Establishment
34. Community Management Rules
35. Duties and Responsibilities of a Resettled Community Committee

CHAPTER 8

LAND RIGHTS MANAGEMENT BOARD

36. Establishment
37. Roles and Responsibilities
38. General powers
39. Board composition and membership

40. Terms and Conditions of Office

41. Financial matters

CHAPTER 9

DISPUTE RESOLUTIONS AND COURTS

42. Choice of court

43. Powers of courts

44. Alternative Dispute Resolution

CHAPTER 10

MISCELLANEOUS PROVISIONS

45. Regulations

46. Offences

47. Amendment of Laws

48. Repeal of Laws

49. Short title

CHAPTER 1

DEFINITIONS AND OBJECTS

Definitions

1. (1) In this Act, unless the context indicates otherwise—

"Board" means the Land Rights Management Board established in terms of this Act;

"consent" means express or tacit consent of the owner or person in charge of the land in question in relation to the person residing on farm's rights in land;

"Constitution" means the Constitution of the Republic of South Africa, 1996;

"court" means a competent court having jurisdiction in terms of this Act;

"Department" means the Department of Rural Development and Land Reform;

"Director-General" means the Director-General of the Department of Rural Development and Land Reform;

"evict" means to deprive a person against his or her will of residence on land or the use of land or access to services linked to a right of residence in terms of this Act, and

"eviction" has a corresponding meaning;

"executive authority" means the executive authority as defined in the Public Finance Management Act, 1999 (Act No. 1 of 1999);

"Labour Tenants Act" means the Land Reform (Labour Tenants) Act, 1996 (Act No. 3 of 1996);

"Minister" means the Minister responsible for Rural Development and Land Reform;

"municipality" means a municipality as defined in the Local Government: Municipal Structures Act, 1998 (Act No. 117 of 1998);

"owner" means the owner of the land at the time of the relevant act, omission or conduct;

"person in charge" means a person who at the time of the relevant act, omission or conduct has or had legal authority to manage or control the land in question;

"prescribed" means prescribed by regulation;

"Public Finance Management Act" means the Public Finance Management Act, 1999 (Act No. 1 of 1999);

"regulation" means a regulation made under this Act;

"relative rights" means the relational nature of the rights of persons working on farms and owners as contemplated in Chapter 4;

"relocate" means to move a person from one piece of land to another piece of land, and

"relocation" has a corresponding meaning;

"right in land" means any real or personal right in land, including a right to cropping and grazing land;

"suitable alternative land" means alternative land which is safe and not less favourable than the persons residing on farms' previous situation, having regard to the residential accommodation and land for agricultural use available to them, and suitable having regard to the reasonable needs and requirements of all of the person residing on farms in the household in question for residential accommodation, land for agricultural use, and services;

"traditional community" means a traditional community as defined in the Traditional Leadership and Governance Framework Act, 2003 (Act No. 41 of 2003).

(2) In respect of unalienated State land, unsurveyed State land, or land registered in the name of the State or an institution or functionary exercising powers on behalf of the State, "owner or person in charge" includes a person, who at the time of the relevant act, omission or conduct has been delegated by the executive authority to manage or control the land in question.

Objects of the Act

2. The objects of the Act are—
- (a) to promote and protect the relative rights of persons working on farms, persons residing on farms, and farm owners;
 - (b) to enhance the security of tenure of persons residing on farms;
 - (c) to create conditions conducive to peaceful and harmonious relationships on farms and in farming communities; and
 - (d) to sustain production discipline on land in the interest of food security.

CHAPTER 2

APPLICATION OF THE ACT

Application

3. This Act applies to all agricultural land, land used for agricultural purposes or farms other than land occupied by traditional communities.

Relationship with other laws

4. (1) Nothing in this Act shall affect the rights of an owner, person in charge or person residing on farm in terms of the Trespass Act, 1959 (Act No. 6 of 1959).

(2) A person whose right or interest is covered by this Act is excluded from the operation of the Prevention of Illegal Eviction from and Unlawful Occupation of Land Act, No. 19 of 1998.

(3) A person whose informal right to land, but for the provisions of this Act, would be protected by the provisions of the Interim Protection of Informal Land Rights Act, 1996 (Act No. 31 of 1996) is excluded from the operation of this Act.

Pending matters in terms of other legislation

5. (1) Notwithstanding the repeal of the Labour Tenants Act the provisions of Chapter III of the Labour Tenants Act, 1996 continue to apply to all labour tenants who have applied for the acquisition of ownership or other rights in land and whose applications are still to be finalised in terms of the provisions of that Act.

(2) Pending proceedings for restoration of rights in terms of the Extension of Security of Tenure Act, 1997 and the Labour Tenants Act shall be dealt with in terms of the provisions of this Act.

CHAPTER 3

CATEGORIES OF PERSONS COVERED BY ACT

Persons covered by this Act

6. This Act applies to persons falling within any of the categories in this Chapter.

Persons residing on farms

7. (1) A person, including his or her family members, who is residing on land which belongs to another person, and who has or had consent or another right in law to do so, but excluding a person using or intending to use the land in question mainly for industrial and mining purposes.

(2) A person—

- (a) who is residing or has the right to reside on a farm; and
- (b) who has or has had the right to use cropping or grazing land on the farm, referred to in paragraph (a), or another farm of the owner, and in consideration of such right provides or has provided labour to the owner or lessee; and
- (c) whose family members resided or resides on a farm and had the use of cropping or grazing land on such farm or another farm of the owner, and in consideration of such right provided or provides labour to the owner or lessee of such or such other farm; and

(3) A person who, on or before 31 March 2001, has lodged an application in terms of the provisions of Chapter III of the Labour Tenants Act, 1996.

Persons working on farms

8. A person—

- (a) who in any manner assist in carrying on or conducting the business of farming excluding the owner of the farm; or

- (b) employed in a home on a farm or engaged by the owner for other farming activities including as a domestic worker or security guard.

Persons associated with persons residing or working on farms

9. A person is associated with persons residing or working on farms being:

- (a) a spouse, including a partner in a customary union, whether or not the union is registered;
- (b) a child including nephew or niece under the age of eighteen years;
- (c) a child including nephew or niece over the age of eighteen years who attends a school;
- (d) parents;
- (e) brother or sister,

of a person residing or working on farm.

Farm-owners and authorised agents

10. A person

- (a) who owns a farm, agricultural undertaking or agricultural land as a natural person or is the beneficial owner of the interests in a juristic person or is in actual or effective control of a farming business or receive in any manner the pecuniary benefits accruing from such a farm, agricultural undertaking or agricultural land, or
- (b) acts as agent, manager or controlling mind of the person described in (a).

Consent to reside on land

11. (1) A person who resided on or used land with the consent of the farm owner, and such consent was lawfully withdrawn shall be deemed to be a person residing on farm, provided that he or she has resided continuously on that land for a period of at least one year after the consent was withdrawn.

(2) For the purposes of this Act, consent by a farm-owner or authorised agent to a person to reside on land is effective notwithstanding a defect in or failure to obtain a requisite authority required by law for such residence.

(3) For the purposes of this Act, a person who has continuously and openly resided on land for a period of six months shall be presumed to have consent unless the contrary is proved.

(4) Consent contemplated in this Act shall be binding on successors in title.

CHAPTER 4**RELATIVE RIGHTS AND DUTIES****Relativity of Rights**

12. All persons affected by this Act must respect the rights of every person and not violate any right of another person protected by the Constitution.

Rights of farm owners

13. (1) A farm owner may exercise any of the rights in terms of the Constitution and other laws including the following rights:—

- (a) right to property;
- (b) right of the employer in terms of the Labour Relations Act, No 66 of 1995, the Basic Conditions of Employment Act, No 75 of 1997, and other labour laws;
- (c) right to family life; and
- (d) right to dignity.

(2) The rights of the farm owner are subject to any reasonable condition imposed by this Act or any other law.

Duties of farm owners

- 14.** A farm owner must not—
- (a) intentionally or unlawfully harm any person occupying the land;
 - (b) intentionally or unlawfully cause material damage to the property of the person residing on farm or person working on farm;
 - (c) prevent the person residing on farm or person working on farm from accessing educational, health or any other public facility; or
 - (d) breach any provisions of relevant labour and employment legislation.

Rights of persons residing on farms

15. (1) A person who resides on a farm may exercise any of the following rights—
- (a) right to own livestock and not be unreasonably restricted;
 - (b) right to grazing land for the livestock;
 - (c) right to crop;
 - (d) right to have reasonable access to pathways;
 - (e) right to build houses and homesteads;
 - (f) right to visit and be visited;
 - (g) right to bury members of the family on the farm;
 - (h) right of access to burial grounds and ancestral land;
 - (i) right to reasonably practise culture;
 - (j) right of access to clean water;
 - (k) right of access to electricity;
 - (l) right of access to development;
 - (m) right not to be denied or deprived of access to educational or health services;
 - (n) right to do commercial farming and access to skills;
 - (o) right to work in compliance with the Labour Relations Act, No 66 of 1995, the Basic Conditions of Employment Act, No 75 of 1997, and other labour laws;
 - (p) right to education for self and family;
 - (q) right to family life; and
 - (r) right to dignity.

(2) The rights of the persons residing on farms are subject to any reasonable condition imposed by the owner of such land in order to safeguard life or property on the land.

Duties of persons residing on farms

16. (1) A person working on farm must provide labour to the owner in accordance with the conditions of employment as agreed upon between such person working on farm and owner.

(2) A person residing on farm must not—

- (a) intentionally or unlawfully harm any person occupying the land;
- (b) intentionally or unlawfully cause material damage to the property of the owner; or
- (c) assist persons who do not reside on the land to unlawfully establish new dwellings on such land.

Rights of persons working on farms

17. A person who works on a farm may exercise any of the following rights—

- (a) right to work in compliance with the Labour Relations Act, No 66 of 1995, the Basic Conditions of Employment Act, No 75 of 1997, and other labour laws;
- (b) right to education for self and family;
- (c) right to family life; and
- (d) right to dignity.

Duties of persons working on farms

18. (1) A person working on farm must provide labour to the owner in accordance with the conditions of employment as agreed upon between such person working on farm and owner.

(2) A person working on farm must not—

- (a) intentionally or unlawfully harm any person occupying the land;
- (b) intentionally or unlawfully cause material damage to the property of the owner; or
- (c) assist persons who do not reside on the land to unlawfully establish new dwellings on such land.

CHAPTER 5**MANAGEMENT OF EVICTIONS****Scope of Eviction**

19. (1) An eviction in terms of this Act is any act or omission resulting in the permanent or temporary removal of a person residing on farm against her or his will from her or his home or land being occupied.

(2) Eviction may occur through one or more of the followings—

- (a) prevention of access to place of residence;
- (b) closure of schools;
- (c) interference with performance of cultural practices;
- (d) denial or prevention of access to water and electricity;
- (e) refusal to allow burial on the farm;
- (f) unilateral reduction of rights protected in this Act;

- (g) not being allowed to own livestock in circumstances where you have previously owned livestock on the same farm or another farm of the same owner;
- (h) demolishing of a home;
- (i) forcing different families to live together;
- (j) forced relocation of a homestead.

Conditions and Circumstances under which Evictions may be lawful

20. (1) A person who resides on land as part of the conditions of employment, may be evicted upon lawful termination of the employment contract in accordance with the provisions of the Labour Relations Act, 1995 (Act No. 66 of 1995), provided that a formal process of eviction under the provisions of this Act has been followed.

(2) Subject to the provisions of this Act, the right of residence of a person residing on farm may be terminated on any lawful ground, provided that such termination is just and fair.

(3) The right of residence of a person residing on farm who is an employee and whose right of residence arises solely from an employment agreement, may be terminated if the person residing on farm resigns from employment or is dismissed in accordance with the provisions of the Labour Relations Act, 1995.

(4) Any dispute over whether a person residing on farm's employment was terminated as contemplated in subsection (3), shall be dealt with in accordance with the provisions of the Labour Relations Act, 1995, and the termination shall take effect when any dispute over the termination has been determined in accordance with that Act.

(5) A notice contemplated in section 23(1)(b) shall supersede any other notice purporting to terminate the right of residence of a person residing on farm as part of resolving a dispute contemplated in subsection (4).

(6) The right of residence of a person residing on farm who has resided on the land in question or any other land belonging to the owner for more than ten years and is older than sixty years or is an employee or former employee of the owner and as a result of ill health, injury or disability is unable to supply labour to the owner may not be terminated unless that person residing on farm has committed a breach contemplated in section 16 (2).

(7) On the death of a person residing on farm contemplated in subsection (6), the right of residence of his or her family members may be terminated only on 12 calendar months' written notice to leave the land, unless such a family member has committed a breach contemplated in section 16.

(8) Any termination of the right of residence of a person residing on farm to prevent such person residing on farm from acquiring rights in terms of this section, shall be void.

(9) If the right of residence of a person residing on farm has been terminated in terms of this section, or the person residing on farm is a person who has a right of residence in terms of subsection (7)—

(a) the person residing on farm and the owner may agree that the terms and conditions under which the person residing on farm resided on the land prior to such termination shall apply to any period between the date of termination and the date of the eviction of the person residing on farm; or

- (b) the owner may institute proceedings in a court for a determination of reasonable terms and conditions of further residence, having regard to the income of all the persons residing on farms in the household.

(10) An eviction shall be lawful only where adequate procedural and legal safeguards have been complied with including—

- (a) an opportunity for genuine consultation with those affected;
- (b) adequate and reasonable notice for all affected persons prior to the scheduled date of eviction;
- (c) information on the proposed evictions, and, where applicable, on the alternative purpose for which the land or accommodation is to be used, to be made available in reasonable time to all those affected;
- (d) where groups of people are involved, government officials or their representatives to be present during an eviction;
- (e) all persons carrying out the eviction to be properly identified;
- (f) evictions not to take place in particularly bad weather or at night unless the affected persons consent otherwise;
- (g) provision of legal remedies; and
- (h) provision, where possible, of legal aid to persons who are in need of it to seek redress from the courts.

(11) An eviction may not result in persons affected being rendered homeless or vulnerable to the violation of other human rights.

Prohibition of arbitrary eviction

21. Notwithstanding the provisions of any other law, a person residing on farm may be evicted only in terms of an Order of Court issued under this Act.

Eviction Proceedings

22. (1) An eviction proceedings may not be instituted, continued or maintained unless the owner has given 3 months notice of his or her intention to make an application to Court in terms of this Act to the affected person, the municipal manager of the municipality in whose area of jurisdiction the land in question is situated, and to the Board.

(2) Notwithstanding the provisions of subsection (1), the owner may make urgent application for the removal of any person residing on farm from land pending the outcome of proceedings for a final order, and the court may grant an order for the removal of that person residing on farm if it is satisfied that—

- (a) there is a real and imminent danger of substantial injury or damage to any person or property if the person residing on farm is not forthwith removed from the land;
- (b) there is no other effective remedy available;
- (c) the likely hardship to the owner or any other affected person if an order for removal is not granted, exceeds the likely hardship to the person residing on farm against whom the order is sought, if an order for removal is granted; and
- (d) the owner has made adequate arrangements for the reinstatement of any evicted person if the final order is not granted.

(3) The owner shall beforehand give reasonable notice of any application in terms of this section to the municipal manager of the municipality in whose area of jurisdiction the land in question is situated, and to the Board for information.

General Limitations on Evictions

23. (1) A court may make an order for the eviction of a person residing on farm if—

(a) the person residing on farm has not vacated the land within the period of thirty days notified by the owner; and

(b) the owner has, after the expiry of the thirty days written notice of termination of the right of residence, given—

(i) the person residing on farm;

(ii) the municipality in whose area of jurisdiction the land in question is situated;

(iii) the Board; and

(iii) the Director General,

not less than 3 calendar months' written notice of the intention to obtain an order for eviction, which notice shall contain the prescribed particulars and set out the grounds on which the eviction is based.

(2) For the purposes of subsection (1)(b), the Court must request a probation officer contemplated in section 1 of the Probation Services Act, 1991 (Act No. 116 of 1991), or an officer of the department or any other officer in the employment of the State, as may be determined by the Minister, to submit a report within a reasonable period—

- (a) on the availability of suitable alternative accommodation to the person residing on farm;
- (b) indicating how an eviction will affect the constitutional rights of any affected person, including the rights of the children, if any, to education;
- (c) pointing out any undue hardships which an eviction would cause the person residing on farm; and
- (d) on any other matter as may be prescribed.

Order for eviction

24. (1) If it was an express term of the consent granted to a person residing on farm to reside on the land in question, that the consent would terminate upon a fixed or determinable date, a court may on termination of such consent by effluxion grant an order for eviction of any person who was a person residing on farm on the land in question, if it is just and equitable to do so.

(2) In circumstances other than those contemplated in subsection (1), a court may grant an order for eviction in respect of any person who was a person residing on farm, if it is of the opinion that it is just and equitable to do so.

(3) In deciding whether it is just and equitable to grant an order for eviction in terms of this section, the court shall have regard to—

- (a) the reason for the proposed eviction; and
- (b) the fairness of the terms of any agreement between the parties.

Effect of order for eviction

25. (1) Where the court grants an eviction of a person residing on farm, such order may not be executed within a period of less than 2 months.

(2) The court shall, upon issuing an order contemplated in subsection (1), direct the municipal manager of the local municipality within whose jurisdiction the subject land is located, the Board and the owner, to jointly submit to court a plan indicating relevant details for the provision of suitable alternative land for the affected person residing on farm.

(3) The plan contemplated in subsection (2) shall be submitted within a period of 2 months of the issuing of the order.

CHAPTER 6**AGRI-VILLAGES AND LAND DEVELOPMENT MEASURES****Agri-villages and Land Development Assistance**

26. (1) The Minister may institute land development measures including the establishment of agri-villages, industrial parks and such other initiatives aimed at creating economic and social support for persons covered within the objects of this Act .

(2) The powers, duties and responsibilities conferred by the Land Reform: Provision of Land and Assistance Act, No 126 of 1993 on the Minister may be exercised by him or her as may be suitable for the achievement of the objects of this Act, in general, in cases of a particular nature or in specific cases.

(3) The Board may, consistent with the plans and programmes administered or instituted by or under the authority of the Minister or the Minister responsible for human settlements and other responsible State organs, establish

sustainable human settlements for persons residing on farms and persons working on farms.

(4) Prior to the establishment of agri-villages, industrial parks, sustainable human settlements or other land development initiatives the owner may enter into an agreement with persons residing on farms in terms of which such persons are relocated to suitable alternative land.

(5) The agreement contemplated in subsection (4), or any other similar agreement, shall be subject to the approval of the Minister.

Resettlement Measures

27. (1) The Board shall, where those affected or likely to be affected by eviction are unable to provide for themselves, take all appropriate measures, to the maximum of its available resources, to ensure that adequate alternative accommodation, resettlement or access to productive land, as the case may be, is available.

(2) The Board shall ensure, in cases where evictions have been deemed lawful and in compliance with this Act, the right of all persons, groups and communities to suitable resettlement which includes the right to alternative land or accommodation which is safe, secure, accessible, affordable and habitable.

(3) The Board shall ensure that resettlement is only carried out in the public interest, or where the safety, health or enjoyment of human rights demands, that particular persons, groups and communities are subjected to resettlement.

(4) Resettlement must occur in a just and equitable manner.

(5) The Board shall ensure that in the context of any case of resettlement the following criteria are adhered to:

- (a) The rights of women, children and other vulnerable groups are recognised in any resettlement measure;
- (b) No affected persons, groups or communities, shall suffer detriment as far as their human rights are concerned;
- (c) Affected persons, groups and communities provide their full and informed consent as regards the relocation site;
- (d) The resettlement process should be carried out in full consultation and participation with the affected persons, groups and communities; and
- (e) Resettlement should take into account in particular all alternate plans proposed by the affected persons, groups and communities.

Expropriation

28. (1) The Expropriation Act, No. 63 of 1975 shall apply to an expropriation under this Act and any reference to the Minister of Public Works in that Act must be construed as a reference to the Minister for the purpose of such expropriation.

(2) Where the Minister acquires or expropriates land, a portion of land or a right in land under this Act, the amount of compensation and the time and manner of payment shall be determined either by agreement or as regulated by the Expropriation Act 1975 (Act No. 63 of 1975) and in accordance with section 25(3) of the Constitution.

Temporary right to use

29. (1) The Board may acquire either in agreement with the land owner or through the Expropriation Act a temporary right to use a piece of land for resettlement purposes where a permanent expropriation is not desirable in the interest of affected persons.

(2) The provisions of the Expropriation Act, 1975 (No. 63 of 1975) applies in the case of acquisition of land for temporal use for the purposes of this Act.

Transfer Duties

30. Transfer duty shall not be payable in respect of the transfer of land or the cession of any right in land in terms of this Chapter.

Legal Aid

31. The Minister may from money appropriated by Parliament for that purpose, make funding available for the legal representation of persons residing on farms, labour tenants and persons working on farms whose real or personal rights in land are in any way threatened or affected.

Integrated Government Services

32. The Minister may in general and specific cases enter into agreement with other organs of state to ensure integrated delivery of government services to persons covered by this Act.

CHAPTER 7

MANAGEMENT OF RESETTLEMENT UNITS AND AGRIVILLAGES

Establishment

- 33** (1) A committee of each resettled community or agri-village consisting of representatives from such community or agri-village must be established to manage the affairs of the community or agri-village.
- (2) A committee established for a resettled community or agri-village must be registered with the Board and reports to the Board.
- (3) The number of persons forming a committee is as prescribed by the Board and may be increased with the approval of the Board.

Community Management Rules

- 34** (1) A committee of a resettled community or agri-village must operate in accordance with rules made by the Board.

- (2) The rules shall provide for the control, management, administration, use and enjoyment of the individual units and the common property.
- (3) Rules applicable to a community must be reasonable and fair.
- (4) The Rules applicable to a community may be amended by the community with the approval of the Board

Duties and Responsibilities of a Resettled Community Committee

- 35** (1) To act as a central body representative of all affected groups within a resettled community.
- (2) To aid and assist the Board in managing the development initiatives affecting the community.
 - (3) To offer a platform to inform and advise community members of the State's and other development activities and ensure by means of concerted action, the achievement of such development goals.
 - (4) To co-ordinate the view points of all affected groups in order to ensure involvement and participation of members of the community.
 - (5) To create and maintain communication channels between the community and other development bodies.
 - (6) To liaise with other community organisations.
 - (7) To assist in the enforcement of rules and other development initiatives within the community.

CHAPTER 8

LAND RIGHTS MANAGEMENT BOARD

Establishment

- 36.** (1) The Land Rights Management Board is hereby established.
- (2) The Public Finance Management Act applies to the Board.

Roles and Responsibilities

- 37.** The Board must—
- (a) ensure the effective and efficient implementation of measures designed to achieve the objects of this Act including development measures to uphold and promote the rights of affected persons;
 - (b) manage land rights including the provision of legal aid and legal representation to affected persons in terms of this Act;
 - (c) facilitate dispute resolution amongst persons affected by the provisions of this Act;
 - (d) implement information dissemination measures to develop awareness of the provisions of this Act;
 - (e) acquire and regulate the management of land for resettlement including the implementation of related development measures;
 - (f) ensure the effective management of committees in resettled communities or agri-village, make rules and guidelines applicable to committees in resettled communities; and
 - (g) generally deal with any other matter referred to it by the Minister in connection with the achievement of the objects of this Act.

General powers

38. The Board has the power and authority under the general and specific direction of the Minister and in accordance with the Public Finance Management Act to do all things necessary and incidental to the achievement of the functions of the Board in terms of this Act.

Board composition and membership

39. (1) The Board consists of—

- (a) not fewer than seven and not more than nine members; and
- (b) the Director-General or an official of the Department designated by the Director-General.

(2) The Minister—

- (a) must determine the number of members to be appointed in terms of subsection (1);
- (b) may alter the number determined in terms of paragraph (a), but a reduction in the number may be effected only when a vacancy in the Board occurs.

(3) A member of the Board must—

- (a) be a fit and proper person to hold office as a member; and
- (b) have appropriate qualifications and relevant experience.

(4) Whenever it is necessary to appoint members of the Board, the Minister must—

- (a) through advertisements in the media invite nominations for appointment as such a member; and

(b) compile a list of the names of persons nominated, setting out the prescribed particulars of each individual nominee.

(5) Any nomination made pursuant to an advertisement in terms of subsection (4)(a) must be supported by—

- (a) the personal details of the nominee;
- (b) nominee's qualifications or experience; and
- (c) any other information that may be prescribed.

(6) The Board must be representative of the communities and interest affected by this Act.

Terms and Conditions of Office

40. The term of office, conditions of appointment, termination of membership, operating procedures, and related matters must be prescribed by the Minister.

Financial matters

41. The Minister may, on receipt of a budgeted request, grant to the Board out of money appropriated by Parliament, such amounts as he or she considers necessary in order to enable the Board to carry out its functions and may determine the conditions of the grant.

CHAPTER 9

DISPUTE RESOLUTIONS AND COURTS

Choice of court

42. (1) The Land Claims Court shall have jurisdiction in terms of this Act throughout the Republic and shall have all the ancillary powers necessary or reasonably incidental to the performance of its functions in terms of this Act, including the power—

- (a) to decide any constitutional matter in relation to this Act;
- (b) to grant interlocutory orders, declaratory orders and interdicts; and
- (c) to review an act, omission or decision of any functionary acting or purporting to act in terms of this Act.

(2) Notwithstanding the provisions of subsection (1), a party may institute proceedings in the magistrate's court within whose area of jurisdiction the land in question is situated.

(3) The Rules Board for Courts of Law established by section 2 of the Rules Board for Courts of Law Act, 1985 (Act No. 107 of 1985), may make rules to govern the procedure in the Magistrates' Court in terms of this Act.

(4) Until such time as rules of court for the magistrates' courts are made in terms of subsection (3), the rules of the Land Claims Court shall apply, with the necessary amendments, in respect of any proceedings in a magistrate's court in terms of this Act.

Powers of courts

43. (1) A court may, in addition to other powers set out in this Act—

(a) direct how the order of the court shall be executed, including the setting of time limits for the implementation of such orders; and

(b) make such orders for costs as it deems just.

(2) A magistrate's court—

(a) shall have jurisdiction in respect of—

(i) proceedings for relocation or restoration of rights; and

(ii) criminal proceedings in terms of this Act; and

(b) shall be competent—

(i) to grant interdicts in terms of this Act; and

(ii) to issue declaratory orders as to the rights of a party in terms of this Act.

(3) Civil appeals from magistrates' courts in terms of this Act shall be heard by the Land Claims Court.

(4) Any order by a magistrate's court in terms of this Act, shall be subject to automatic review by the Land Claims Court, which may—

(a) confirm such order in whole or in part;

(b) set aside such order in whole or in part;

(c) substitute such order in whole or in part; or

(d) remit the case to the magistrate's court with directions to deal with any matter in such manner as the Land Claims Court may deem fit.

(5) The provisions of subsection (4) shall not apply to a case in which an appeal has been noted against the decision of a Magistrate.

(6) Any order contemplated in subsection (4) shall be suspended pending the review thereof by the Land Claims Court.

(7) If in any proceedings in a High Court at the date of the commencement of this Act, where that Court is required to preside over any matter which

is dealt with in this Act that Court shall stop the proceedings and refer the matter to the Land Claims Court.

(8) The President of the Land Claims Court may make rules—

- (a) to govern the procedure in the Land Claims Court in terms of this Act; and
- (b) to govern the procedure for the automatic review of all orders in terms of section 43(4).

(9) Appeals from the Land Claims Court shall be heard in the Supreme Court of Appeal.

Alternative Dispute Resolution

44. (1) A party may request the Board to appoint one or more persons with expertise in dispute resolution to facilitate meetings of interested parties and to attempt to mediate and settle any dispute in terms of this Act.

(2) The Board may, on the conditions determined by the Board, appoint a person to facilitate meetings or mediate a dispute.

CHAPTER 10

MISCELLANEOUS PROVISIONS

Regulations

45. The Minister may make regulations regarding all matters which are reasonably necessary or expedient to be prescribed in order to achieve the objects of this Act.

Offences

46. (1) A person who obstructs or interferes with an official in the employ of the State or a mediator or legal representative in the performance of his or her duties under this Act is guilty of an offence.

(2) Any person who contravenes a provision of this Act is on conviction liable to imprisonment for a period not exceeding five years.

Amendment of Laws

47. The laws mentioned in the Schedule are hereby amended to the extent indicated in the third column thereof.

Repeal of Laws

48. (1) The Extension of Security of Tenure Act, 1997 (Act No. 62 of 1997) is hereby repealed.

(2) The Land Reform (Labour Tenants) Act, 1996 (Act No. 3 of 1996) is hereby repealed.

Short title

49. This Act shall be called the Land Tenure Security Act, 2011.

SCHEDULE

LAWS AMENDED BY SECTION 47

No and year of law	Short Title	Extension of amendment
Act No. 6 of 1959	Trespass Act, 1959	<p>1. Amendment of section 1 by the substitution for subsection (1A) of section 1 of the following subsection:</p> <p style="padding-left: 40px;">"(1A) A person who is entitled to be on land in terms of the [Extension of Security of Tenure Act, 1997] <u>Land Tenure Security Act, 2010</u>, shall be deemed to have lawful reason to enter and be upon such land."</p> <p>2. Amendment of section 2 by the substitution for subsection 2 of the following subsection:</p> <p style="padding-left: 40px;">"(2) A court which convicts any person under subsection (1) may make an order for the summary</p>

No and year of law	Short Title	Extension of amendment
		<p>ejection of such person from the land concerned:</p> <p>Provided that a person residing on farm who has a right of residence or right to use land in terms of the [Extension of Security of Tenure Act, 1997] <u>Land Tenure Security Act, 2010</u>, shall not be ejected in terms of this sub-section from land in respect of which he or she has such a right."</p>

MEMORANDUM ON THE OBJECTS OF THE LAND TENURE SECURITY BILL, 2011

1. BACKGROUND

- 1.1 Section 25(6) of the Constitution of the Republic of South Africa, 1996 entitles persons whose land tenure is legally insecure as a result of past racially discriminatory laws and practices, either to legally secure tenure or comparable redress.
- 1.2 The promulgation of the Land Reform (Labour Tenants) Act, 1996 (Act No. 3 of 1996) and the Extension of Security of Tenure Act, 1997 (Act No. 62 of 1997) sought to achieve this Constitutional imperative in relation to persons residing on farms.
- 1.3 Subsequent internal reviews of both pieces of legislation have shown some weakness at interpretation, enforcement and general implementation levels.
- 1.4 The National Land Tenure Conference in 2001 and the National Land Summit in 2005 also reached some consensus on the perceived constraints and unintended consequences of the two post-apartheid tenure legislation.
- 1.5 Whilst stakeholders have generally criticized existing tenure laws from their sectoral points of view, there appears to be general consensus on the points listed below, which this Bill seeks to respond to:
 - 1.5.1 Evictions and other forms of unilateral deprivation of rights on farms continue despite the existence of tenure legislation since there are loopholes that are exploited by land owners;
 - 1.5.2 Persons residing on farms' access to justice in appropriate circumstances is constrained by their lack of financial resources whilst the state has no deliberate mechanism for assistance;
 - 1.5.3 Current legislation inadvertently encourage settlements on farms which complicates access to social and economic infrastructure due to the sparseness of existing settlements.
 - 1.5.4 Uncontrolled growth of settlements on farms carries a long term threat to agricultural production and safety.
 - 1.5.5 The provision of accommodation that is linked to employment is discouraged by uncertainty regarding potential assertion of tenure rights.
- 1.6 In view of the challenges outlined above, new legislation is required in order to:

- 1.6.1 Tighten up legislation by, amongst other things, creating substantive rights in land for occupiers;
- 1.6.2 Implement a well-resourced programme of information dissemination, support to farm dwellers and enforcement of the tenure laws;
- 1.6.3 Proactively create new, sustainable settlements in farming areas; and
- 1.6.4 more effective system for the monitoring of arbitrary evictions, in particular a rapid response system for evictions, eviction threats or retrogressive measures with significant consequences.

2. OBJECTS OF THE BILL

The Bill seeks to give effect to sections 25(5) and (6), and 26 of the Constitution by making provisions for the following:

- 2.1 to promote and protect the relative rights of persons working on farm, person residing on farms, and farm owners;
- 2.2 to enhance the security of tenure of person residing on farms;
- 2.3 to create conditions conducive to peaceful and harmonious relationships on farms and in farming communities; and
- 2.4 to sustain production discipline on land in the interest of food security.

3. STRUCTURE OF THE BILL

- 3.1 Chapter 1 contains the definition of keys terms used in the Bill and the objects behind the legislative proposals.
- 3.2 Chapter 2 describes the application of the Bill as being only to agricultural land, excludes those covered by the Act from the operation of the Prevention of Illegal Eviction from and Unlawful Occupation of Land Act, No. 19 of 1998 and also that persons covered by the Interim Protection of Informal Land Rights Act, 1996 (Act No. 31 of 1996) are excluded from the its application. It enables pending applications for land rights in terms of the Labour Tenants Act from being continued despite its proposed repeal.
- 3.3 Chapter 3 of the Bill describes the persons covered as those residing on farms, those working on farms, those associated with persons residing or working on farms, farm-owners and their authorised agents.
- 3.4 Chapter 4 deals with the relative rights duties and obligations of those residing on farms, those working on farms, those associated with

persons residing or working on farms, farm-owners and their authorised agents.

- 3.5 Chapter 5 describes the environment for the management of evictions including the scope of evictions, conditions and circumstances under which evictions may be lawful, prohibition of arbitrary eviction, eviction proceedings and general limitations on evictions.
- 3.6 Chapter 6 offers the environment for the provision of land and development support to persons covered by the Bill, including the creation of agri-villages. It also provides the space for resettlement for human settlements and agricultural purposes, authorises acquisition of land on temporary or permanent basis for the purpose of resettlement and makes provision for financial aid to vulnerable persons on farms whose rights to land are threatened.
- 3.7 Chapter 7 provides for the establishment of committees for resettled communities or agri-villages, duties and responsibilities of such committees as well as community rules that would guide the operation of the said committees.
- 3.8 Chapter 8 establishes the Land Rights Management Board, describes the functions, powers, appointment of the board, its composition and membership and related matters.
- 3.9 Chapter 9 deals with dispute resolution and the powers of the courts in relation to the issues covered in the Bill. It authorises the Minister to offer support in terms of legal representation to those threatened or affected by evictions.
- 3.10 Chapter 10 creates offences in the event of breach of the provisions of the Bill, authorises the Minister to make regulations required for the better implementation of the provisions of the Bill, and miscellaneous matters such as amendment and repeal of laws and short title.

4. DEPARTMENTS OR BODIES CONSULTED

- 4.1 The following cluster departments were consulted: Science and Technology; Trade and Industry; Higher Education and Training; Arts and Culture; Economic Development; Communication; Tourism; Agriculture Forestry and Fisheries; National Treasury; and Cooperative Governance.
- 4.2 Substantive written comments were received from National Treasury and have generally been accommodated.
- 4.3 Verbal comments were received in meetings with officials from the Departments of Labour, of Public Works and of Human Settlements.

4.4 The Bill was also processed through the Economic Sectors and Employment Ministerial Cluster and was supported.

5. FINANCIAL IMPLICATIONS FOR THE STATE

5.1 There will be additional financial implications as a consequence of the creation of the proposed Land Rights Management Board. The real estimates in financial terms will emerge from the Regulatory Impact Assessment study that is being conducted on the Bill.

5.2 The other financial implications in relation to land acquisition will be accommodated within the current Medium Term Expenditure Framework as reviewed at relevant times.

6. PARLIAMENTARY PROCEDURE

The Department of Rural development and Land Reform proposes that this Bill must be dealt with in accordance with the procedures established by section 76 of the constitution, since it contains provisions which affect the provinces.

DRAFT TENURE SECURITY POLICY

Background

Despite the Constitutional guarantees afforded to those who reside and work on farms, challenges remain in the environment within which both the land owners and those who till the land operate. The historical legacies of the skewed patterns of landholding, untenable power relations in the farming communities, lack of conducive environment for the realisation of the potentials of others, continued denial of rights, negative effects of instability on agricultural production, insecurity, and many others form the basis of this policy review. Reform efforts in this area then involves the change and restructuring of the economic, legal and political arrangements governing the ownership, management and relations on agricultural land in line with overall national economic development. It involves a restructuring of existing systems so as to results in direct changes in the social class and political and economic power structure of those affected.

The challenges around the two pieces of legislation (Extension of Security of Tenure Act, No. 62 of 1997 and the Land Reform (Labour Tenants) Act No. 3 of 1996) include the followings:

- ESTA “unfairly strengthen the hand of labour and prejudice employers during protracted labour disputes”, and that Section 8 of the ESTA has made farmers apprehensive about employing permanent workers and about providing accommodation for workers on their farms;
- ESTA has not been effective in stemming the tide of evictions;
- Lack of effective implementation framework (including limited state enforcement capacity;
- the ability of farmers to circumvent the legislation or exploit loopholes; and
- the failure to publicise the legislation.

In addition to these challenges are the imperatives of economic participation, inclusiveness and ensuring food security. The farming community are critical

stakeholders in achieving these. Thus, the political, economic, socio-cultural and legal dimensions of the underlying causes, consequences and effects of the relations on farms require re-examination. The **political** angle must address the relational nature of the parties involved (owners, tenants, farmworkers and farmdwellers) inclusive of correlative rights and obligations, how current reform efforts link to land reform in the wider sense, the State capacity to accommodate or favour tenure reform initiatives and how effective is the administration of land tenure. At the **economic** level, we must attend to the effect of tenure systems on agrarian and other sources of production and income, what economic use is made of common property resources, how the land tenure system intersect with markets for land, capital, labour, inputs and outputs, and the impact of land rights clarity or lack of it on investment. In this policy development, due cognisance is taken of the conditions for successful agricultural enterprise, i.e. land, labour, capital, market access, and management. The **socio-cultural** aspects include how rights to land connect within wider social and cultural relationships, the impact of the structure of land rights on gender inequality and other primordial power relations, association of tenure systems with class, racial ethnic and/or other forms of inequality, how indigenous tenure forms been affected by colonial and post-colonial laws, and how do reform policies interact with informal evolutionary processes. Ultimately we must seek answers to the questions of how **constitutional and legal** frameworks affect tenure, are there appropriate and legally secure options for rural and urban situations, and the appropriate balance between the rights of the landowners and the occupants.

The policy proposal is to seek **efficiency** and **effectiveness** in the protection mechanism for the vulnerable groups of occupants (tenants, farmworkers and farmdwellers) on agricultural undertakings. This requires review of existing laws which govern the circumstances under which land owners can evict occupants, and which regulate and protect the rights of tenants and other occupants. Policy intends to specify procedures to provide alternative land to enable vulnerable occupants so as to become the holders of independent land rights within the Comprehensive Rural Development Programmes, and thereby addressing the underlying problem of conflict between current land owners and occupants. Increased correlative rights, duties and obligations among those on farms (owners, tenants, farmworkers and farmdwellers) will be instituted to place the

onus on all as stakeholders in devising and implementing practical solutions to tenure disputes, and which provides incentives to combine on-site solutions (eg. regulated occupancy rights for some) with off-site solutions (eg. State-subsidised or state-financed acquisition of alternative land, Agri-villages, etc) for others.

Constitutional Environment

The thrust of this policy review, including of the law on land rights and tenure forms, may not however be unduly hamstrung by reluctance to depart from the traditional system of the common law. The proposed reforms are not simply aimed at making possible the reallocation of rights in land without seeking to achieve the revision of substantive principles of property law. Our reform agenda may have significant implications for traditional principles of property. Even the 1997 White Paper speaks to this in commenting on the complexity of the process of tenure reform that finding solutions *'may entail new systems of land holding, land rights and forms of ownership, and therefore have far-reaching implications.'* This current point of departure is buttressed by the constitutional injunction that 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.'* The Constitution further mandates the enactment of tenure reform legislation to deal with the insecure tenure of individuals or communities *'as a result of past racially discriminatory laws or practices'* and for restitution or equitable redress, *'to the extent provided by an Act of Parliament'* in respect of dispossessions after 19 June 1913 which also occurred on the basis of racially discriminatory laws or practices. The Constitution's reform agenda is emphasized in its declaration that no provision of the property section of the Bill of Rights *'may impede the state from taking legislative and other measures to achieve land, water and related reform in order to redress the results of past racial discrimination'*. The subsection in question goes on to define the extent of entrenchment in stating that any departure from this statement of priorities must be in accordance with the general approach of section 36 concerning the limitation of a right provided for in the Bill of Rights.

Policy Objectives

The current policy review seeks to achieve the following strategic objectives:

- (a) to protect the relative rights of farm-workers, farm-dwellers, and farm owners;
- (b) to enhance the security of tenure of farm-dwellers;
- (c) to create conditions conducive to peaceful and harmonious relationships on farms and in farming communities; and
- (d) to sustain production discipline on land in the interest of food security.

Sustainable livelihoods will be underpinned by the followings:

- (a) Secure tenure
- (b) The right to live in the way that the family wants to, with dignity
- (c) The right to meet their own basic survival needs
- (d) Development

Four critical areas are to be further pursued in the ensuing policy and legislative proposals:

- (a) Tighten up legislation by, amongst other things, creating substantive rights in land for occupiers;
- (b) Implement a well-resourced programme of information dissemination, support to farm dwellers and enforcement of the tenure laws;
- (c) Proactively create new, sustainable settlements in farming areas; and
- (d) more effective system for the monitoring of arbitrary evictions, in particular a rapid response system for mass eviction threats or retrogressive measures with significant consequences

Fostering Efficiency in Farm Relations

In order to foster efficiency in farm relations, the following measures are to be pursued:

- (a) adequate *information* on land rights:- this implies effective *communication* of legal reforms to farm owners and to potential beneficiaries;
- (b) *institutional capacity* (inside and outside government) to advise and support rights-holders and facilitate their active use of the law;
- (c) accessible and efficient *systems to record and register rights*;
- (d) *in case of disputes, access to the courts*, or alternative conflict resolution mechanisms; and
- (e) an integrated state support on development measures to farming communities and the vulnerable groups.

Power Relations

Laws are necessary but not sufficient for the transformation of the current state of relations on our farms. Policy recognised that formally defined rights intersect and interact with other institutional frameworks, both formal and informal, in the real world contexts of the prospective rights-holders. We acknowledge that the position of those who work on farms, their dependants and others interact with the other forces that are both historical and current. These issues centrally involve issues of power, authority and contestation, and require us to consider law as only one source of rule-making in society. Continuous engagement with the stakeholders in the farming community, labour and civil society will be intensified to ensure that we reduce and ultimately eliminate distortions in the nature of relations on our farms.

Resettlement - Agri-Villages – Onsite and Offsite

Currently, occupiers of farms have weak and precarious *use rights*. It is expected in the long run that a mix of both onsite and offsite resettlement will be utilised to deal with the issue of livelihoods and tenure security of the vulnerable groups on farms. Intended beneficiaries will include those covered and not covered by the Extension of Security of Tenure Act and the Land Reform (Labour Tenants) Act. We propose that those evicted,

or prone to evicted, and others be afforded the opportunity to opt for resettlement in agri-villages. Current land owners are critical stakeholders in the proposed approach. This may be achieved through situations such as one large farm or several farms providing land either through sale or donation to a Farm Worker's grouping, who could initially be the title deed holder for / of the land. The State will also have the option to acquire farms primarily through voluntary purchase, or where State Land exists to use such, and as a last resort to acquire within the legal framework of expropriation with due compensation being paid.

Social organisation of the Agri-villages will be regulated and local rules to govern the establishment and operation of such a village are to be worked out and agreed upon jointly by the participants namely the 'village community', the financier and the respective municipalities. Issues such as: community levies, repayment conditions, transfer of ownership, if one wants to leave the area, change of place of work, standard of housing and financing conditions for the individuals, maintenance of communal facilities, where they exist or are planned, and other aspects relevant to the local conditions, are to be addressed and regulated.

Positive aspects of agri-village development include individuals have security of tenure, allows the individual to build-up equity [build a home - compared to just having a roof over one's head], depending on the size of such a village, government services such as schooling, kindergartens, health care, etc. can be provided not only to the village community but also to other families living in the vicinity, and allows the provision of better basic infrastructure: water, electricity, sanitation, roads, etc.

Suitable land will be acquired to resettle persons on a long term basis Land in resettlement areas may be held under a temporary permit system, which confers land rights to the permit holder. Each settler is given permits such as to pasture livestock on a communal basis, to reside on a given plot and to cultivate arable plots. The period over which the permits are valid will be specified and beneficiaries will have the right of use of land for as long as he does not violate the provisions of the permits. Rules will be instituted to afford the transfer in freehold title to those who make better use of allotted

land. In the absence of secure tenure, the inheritance procedures in the event of a death of beneficiary will be instituted. Land may be taken away from non-performers.

We will ensure the strengthening of public institutions and improvement in the provision of public goods and services (e.g. extension, credit, market information and quality public services) which are considered essential for successful agricultural production.

Since a significant number of labour tenant claims have been resolved by resettlement, the key proposal is that in cases where groups are allotted land purchased by the State, increased level of support and organisation will be offered to ensure that land allocated are subdivided in the manner proposed for resettlement initiatives.

Challenge in Land Acquisition

A challenge lies in the related area of land acquisition. In redistribution, the combination of 'demand-led' and 'willing buyer, willing seller' policies has meant that would-be beneficiaries of land reform are themselves responsible for identifying land, and depend on the willingness of current owners to transact with them. In commercial agricultural, for both social and economic reasons, farm dwellers do face severe difficulties in acquiring suitable land: farm dwellers are unlikely to be able to afford to buy land without subdivision of large commercial units (to which current policy, and landowners themselves, are strongly antagonistic), and many owners will undoubtedly be reluctant to sell land for the settlement of workers and former workers adjacent to their property. This makes a strong argument for more forcible intervention by the state, using its power of expropriation, in order to acquire land on behalf of farm dwellers. Thus, the securing of tenure for farm dwellers needs to be seen in the wider context of resettlement, in terms of which intervention by the state, working closely with intended beneficiaries, is required over an extended period to acquire appropriate land and provide support to beneficiaries in order to achieve sustainable development and to alleviate poverty.

Dealing with Arbitrary Evictions

The tenure rights of farm dwellers are protected by law, yet this protection must be seen within the context of the competing rights of landowners and employers. The problems

identified with ESTA, and the reasons why its provisions are thought to have had minimal impact, are twofold. Firstly, where landowners apply for an eviction order, it is almost invariably approved by the court, regardless of the circumstances. It is widely perceived that the magistrates' courts either do not apply ESTA in all cases where they are legally obliged to do so, or ignore important aspects that are designed to protect the rights of occupiers. An inquiry by the South African Human Rights Commission in 2003 found 'widespread non-compliance' with ESTA at all levels of the justice system. The report stated:

There is a lack of compliance with ESTA provisions that regulate eviction proceedings. There is complete lack of compliance with the legislative provisions of ESTA in some court proceedings, resulting in farm dwellers being denied their ESTA rights and being evicted in terms of common law.

A more robust institutional environment is proposed. A land rights management board will amongst others ensure that the stakeholders are involved in pro-actively dealing with evictions and its underlying causes.

Legislation will define:

- Conditions and Circumstances under which Evictions may be lawful, and
- General Limitations on Evictions for special categories including - those over the age of 60 [or a prescribed class] who have worked/lived on a farmed for a prescribed period.

While the constitutionally-guaranteed rights are to continue to enjoy protection, and as such arbitrary evictions will remain prohibited, it is recognised that a more desirable option is to offer the affected persons opportunities within and outside the farms they leave to create better life for themselves. Suitable and alternative accommodation, farming opportunities and tenure forms will be offered as relief from the undesirable consequences of evictions.

Legal Aid

In the landmark judgement of *Nkuzi Development Association v Government of the Republic of South Africa and the Legal Aid Board* (LCC 10/01), the Land Claims Court made a declaratory order that people who have a right to security of tenure under ESTA or the LTA, and whose security of tenure is threatened or has been breached, have a right to legal representation or legal aid at state expense if substantial injustice would otherwise result and if they cannot reasonably afford the cost of legal representation from their own resources. The state is under a duty to provide this legal representation or legal aid through mechanisms selected by it.

Development Rights

In addition to regulating evictions, ESTA makes provision for farm dwellers to apply for grants for 'on-farm' or 'off-farm' land or development (e.g. housing), and it specifically allows for expropriation for 'purposes of any development in terms of this Act', but the first of these measures has been applied in few cases and the latter not at all. It has been argued that while the legal provision exists to implement a programme that gives farm dwellers long-term security of tenure, this remains dependent on the willingness of the Minister to use his powers to design and implement such a programme, and there is effectively no right under the legislation for a farm dweller to claim security of tenure if the state should fail to provide it. The new policy proposals recognise this situation and within the framework of the Comprehensive Rural Development Programme, appropriate state measures including off-site and on-site resettlement will be afforded to the vulnerable group.

Compliance and Enforcement

The current environment is bedevilled by:

- Inadequate responses to complaints;
- Institutional weakness in law enforcement;
- Ineffective monitoring system;
- Adversarial legal system, less power for court to be pro-poor;
- Scaled-down activities of Social movement ; and

- Lack or inadequate legal representation/legal aid to the poor

It is proposed that the Land Rights Management Board will offer the institutional climate for redressing these inadequacies. In order to deal with issues of compliance and enforcement, and also improve on relations on farms, the followings are proposed:

- Alternative Dispute Resolution Mechanisms;
- Provision of legal representation; and
- Register of interests on farms.

Integration in provision of Government Services

We propose within the Comprehensive Rural Development Programme (CRDP) the followings:

- Coordinated delivery mechanism for farming settlements;
- Improved policy clarity on provision infrastructure in rural areas/farms to enable municipal service provision on farms, which are essentially private land; and
- Special norms for the provision of services recognising isolated and dispersed nature of certain settlements.

The provision of Government services will nonetheless be within shared responsibilities with land owners who are also employers. We will therefore seek to further define the roles of the farmowner in ensuring basic services on farms alongside the roles of the State in the provision of services on farms.

Conclusion

We cannot claim to have dealt with the issue of evictions, paternalism and violence on farms until the power relationships in rural areas and on farms are changed significantly. This requires a reduction in farm workers' and labour tenants' dependency on large-scale commercial farmers. This will only be achieved if land and housing access (and related social services) is de-linked from employment contracts. Farm workers need independent access to land, while the conditions of labour tenancy contracts need to be regulated.

While we continue to protect farm workers and labour tenants against unfair evictions, new settlement models within the Comprehensive Rural Development Programme is the suggested route. We recognise the reality that there is a move away from permanent labour towards temporary or part-time labour, because of temporary, casual or/and seasonal workers who are not covered by the LTA or ESTA. We must therefore continue to interact with the Department of Labour to strengthen labour laws on the rights of this class of workers not covered by current policy and legislative proposal.

Increased institutional support to implementation of new legislation will ensure a more effective implementation, monitoring, compliance and enforcement.
