



DEPARTMENT OF RURAL DEVELOPMENT AND LAND REFORM'S RESPONSE TO ESTA COMMENTS: PORTFOLIO COMMITTEE ON RURAL DEVELOPMENT AND LAND REFORM: 23 NOVEMBER 2016

No	Organization	Comments	Response
1	LRC legal resources Centre, NGO	<ul style="list-style-type: none"> <li>- Definition of "reside" is narrow and does not protect occupiers sufficiently as it suggests permanent uninterrupted presence by an occupier.</li> <li>- Definition of "occupier" limited to a person earning less than 5 000.00 as prescribed. The regulations need to be amended.</li> <li>- Definition of "dependant" must be removed as it does not serve to protect occupiers.</li>   <li>- Definition of "family" is limited as it does not cover partners living together but not married.</li> <li>- Section 8(2) provides for the right of the owner to evict an occupier who has been dismissed from employment. Any dispute relating to the dismissal is dealt in terms of the LRA (CCMA). It is proposed that the determination for eviction even in dismissal cases be dealt with (be made) by a court as an ordinary eviction application.</li> <li>- Section 9(3) must be amended to ensure that a court must only consider an eviction application after it has received a probation report</li> <li>- Sections 8(4) and 8(5) provides that a spouse or dependant of</li> </ul>	<ul style="list-style-type: none"> <li>- Definition can be revised to take into account the fact that physical presence may be interrupted by economic factors such as employment.</li> <li>- It is not indicated whether the amount must be increased or decreased. This is a matter for regulations and not the Bill.</li> <li>- The word is used in the Act and it is important that it be defined. However, it may be reviewed to provide for other descriptors such as social support or preservation of family relations instead of only limiting it to legal duty to support. <i>must also be financially dependent on occupier</i></li> <li>- Definition may be expanded to include unmarried partners living together.</li> <li>- Sections 8(2) and 8(3) can be amended to address the legitimate concern raised. The amendment will ensure that the tenure right of an occupier is not simply terminated by dismissal from employment. Owners can simply use their discretion to withhold employment as the basis for terminating an occupier's right to tenure.</li> <li>- Section 9 can be amended accordingly as the mandatory consideration of the report will serve to protect occupiers even after an eviction has been ordered.</li> <li>- Section 8 may be amended to ensure that if the spouse</li> </ul>

20161130perural

		<p>an occupier who dies or is unable to provide labour due to illness, injury or disability shall have only 12 months to reside and thereafter may be evicted.</p> <ul style="list-style-type: none"> <li>- Section 6(2) amendment (clause 3(a)) imposes an obligation on the occupier to maintain dwelling place. This is onerous and burdensome on the occupier.</li> <li>- Clause 8 (Land Management Board) is problematic for the following reasons: <ul style="list-style-type: none"> <li>(a) practical measures to ensure the Board performing its functions <del>not</del> outlined</li> <li>(b) some functions duplicate those of department eg <i>create mechanisms for legal assistance or provide mediation or arbitration services</i>. How does this relate to panel of attorneys facility in the Department and section 21 of the Act.</li> <li>(c) "appropriate qualifications" too broad.</li> <li>(d) Committees seem to operate parallel with land reform district committees</li> </ul> </li> <li>- Land tenure <del>grants</del>, not clear how these will benefit occupiers as opposed to owners.</li> <li>- Tenure grants must be used to leverage better tenure rights for occupiers.</li> <li>- Amend section 23 that refers to the <i>Attorney General</i>.</li> </ul>	<p>and dependants desire to continue residing on the farm, their right be protected.</p> <ul style="list-style-type: none"> <li>- The amendment reinforces a right for the occupier and does not impose an obligation. May be the wording may change from "take reasonable measures" to "have the right to".</li> <li>- Clause to be amended to make it clear that the role of Board / Committee is advisory and not executive. <ul style="list-style-type: none"> <li>(a) practical measures to be outlined or the Board / Committees are only given advisory functions</li> <li>(b) duplication of functions to be addressed, also, Board / Committees to be given advisory functions thereby advising the Department on the functions discharged by the Department.</li> <li>(c) qualifications to be specified.</li> <li>(d) Committees' role advisory and not executive</li> </ul> </li> <li>- Both occupiers and owners benefit ito the Act</li> <li>- Where grant is made for on site development, the development must be insulated in favour of occupiers and against owner's total control. Evictions may not be allowed without the Department's consent or the owner may not charge rent.</li> <li>- Section 23 to be amended accordingly.</li> </ul>
2	PLAAS UWC, Research Unit	<ul style="list-style-type: none"> <li>- The Bill does <u>not</u> create an obligation to provide alternative accommodation for those evicted.</li> <li>- Definition of "dependant" which is premised on <i>legal duty to support</i> excludes children above 18 and other relatives living with occupier. Alternatively, it should not be defined as it is restrictive.</li> </ul>	<ul style="list-style-type: none"> <li>- Provision for alternative accommodation is provided for but not as an obligation.</li> <li>- Definition to be amended to take into account other factors (see response to LRC above). Removing the definition will only defer its interpretation to the courts.</li> </ul>

	<ul style="list-style-type: none"> <li>- The definition of "occupier" to be revised to <del>delete</del> "or has" and the prescribed amount of 5 000.00 to be adjusted in the regulations.</li> <li>- Grants must not be extended to owners but occupiers and any reference to owners receiving grants be deleted.</li> <li>- Maintenance of dwellings must be a right and not an obligation for occupiers.</li> <li>- Land Rights Management Board. The functions overlap with those of the Department (eg monitoring, tenure disputes, legal assistance, data base of occupiers).</li> <li>- Land Rights Management Committees. Functions overlap with those of the Department. Further, the committee cannot take executive functions and it is inappropriate to provide for same in legislation. Already there are District Land Reform Committees in place.</li> <li>- The Courts. Section 20 (Land Claims Court) must be amended to provide that the LCC can only uphold an eviction order after any appeal process in a superior court has been finalised.</li> <li>- Offences. Section 23(1) must be amended to make it obligatory for the police to <u>immediately investigate cases of unlawful evictions</u> and <del>for the</del> NPA to prosecute.</li> <li>- The court hearing an eviction order must require proof that the occupier was aware that the resolution of a labour dispute meant that he / she should be evicted. (see section 8(3)).</li> <li>- Probation reports (section 9(3)). Report's <u>consideration</u> by the court must be <del>obligatory</del>.</li> <li>- Alternative accommodation for former occupiers (Clause 2: sec 4). Former occupiers and scope ito time frame not defined and thereby making it impractical to determine.</li> </ul>	<ul style="list-style-type: none"> <li>- To be revised accordingly but leave adjustment to regulations or delete par (c) that refers to income.</li> <li>- Grants mostly to assist occupiers but also to compensate owners for services rendered to occupiers</li> <li>- In the Act it appears as a right. Words "<i>to take reasonable measures</i>" to be revised as it sounds obligatory.</li> <li>- Board's role is advisory.</li> <li>- Committees' role advisory</li> <li>- This is a matter not provided for in the Bill. However, ordinarily, appeal proceedings would have the effect of halting the eviction order appealed against.</li> <li>- The proposed amendments can be effected but it will be stating the obvious and prescribing how other Departments must perform their functions (SAPS/NPA).</li> <li>- The proposed amendment can be effected in section 8(3) although the section is not referred to in the amendment Bill.</li> <li>- Section 9(3) to be amended to make consideration of report obligatory.</li> <li>- Former occupiers refer to those who were residing on farms on 4/2/1997 and can still reasonably expect to be restored in terms of section in terms of section 14.</li> <li>- Reference to former occupiers may be deleted or least defined ito time frame.</li> </ul>
--	--	---

3	Commission for Gender Equality	<ul style="list-style-type: none"> <li>- Enforcement of the Act in relation to unlawful evictions weak.</li> <li>- Cases heard by the LCC must be gender disaggregated.</li> </ul>	<ul style="list-style-type: none"> <li>- Enforcement dependant upon other Departments (SAPS/Justice).</li> </ul>
4	Agricultural Workers' Empowerment Trade Union Council (AWETUC)	<ul style="list-style-type: none"> <li>- Awetuc requests more time to submit comments on the Bill.</li> </ul>	Request directed at the Portfolio Committee.
5	TAU	<ul style="list-style-type: none"> <li>- Definition of "family" opposed as it many family members constitute a serious a burden for the owner <del>its</del> accommodation, and other many services which are ordinarily the responsibility of municipalities.</li> <li>- Tenure grants. No assurance is given that the grants will sufficiently cover infrastructure development for the owner.</li> <li>- TAU was not consulted by the Department on the provisions of the Bill. <i>(was part of the process)</i></li> </ul>	<ul style="list-style-type: none"> <li>- The definition is important as it makes the law more clearer. If not defined, the term may be interpreted in different ways by the courts as it is used in the Act.</li> <li>- It is difficult in law to prescribe the amounts.</li> <li>- Organised agriculture is one of the stakeholders consulted on the Bill.</li> </ul>
6	KWANALU (AGRI-SA)	<ul style="list-style-type: none"> <li>- "Family" not defined in the Act. It must be defined restrictively as commercial farms are places of production and <u>not</u> accommodation.</li> <li>- Tenure grants. Funding must be ring fenced in the Department.</li> <li>- Maintenance of dwellings must not extend to expansion or erection of new dwellings.</li> <li>- Clause 4. On legal representation, proposed section 9(1)(b) is opposed as <u>legal</u> representation cannot be a <u>pre</u>condition for evictions.</li> </ul>	<ul style="list-style-type: none"> <li>- "Family" is defined in the Bill.</li> <li>- This is an implementation matter.</li> <li>- In terms of section 6(2), the rights of occupiers must be balanced with the rights of owners.</li> <li>- Provision of legal representation is in the interest of justice, both from owner or occupier's point of view.</li> </ul>

		<ul style="list-style-type: none"> <li>- Clause 7 on weather conditions opposed.</li> </ul>	<ul style="list-style-type: none"> <li>- It is only humane to provide for reasonable weather conditions.</li> </ul>
DCOG (Dept. Coop Gov.)		<ul style="list-style-type: none"> <li>- Tenure grants must also be allocated to municipalities as the latter are mandated to provide services.</li> <li>- Occupiers must be supported to access land for farming and production purposes.</li> <li>- Many comments not on the Bill but on general cooperation issues.</li> </ul>	<ul style="list-style-type: none"> <li>- Clause 2, section 4(4) empowers the Minister to provide tenure grants in agreement with municipalities or provincial government.</li> <li>- Section 4(1) provides for tenure grants to enable occupiers to acquire land as well.</li> </ul>
AGRI-SA		<ul style="list-style-type: none"> <li>- Definition of "family" appears open ended.</li> <li>- Tenure grants funds to be ring fenced. <i>problem with calculation</i></li> <li>- Maintenance of dwellings must not extend to expansion of same.</li> <li>- Provision for legal representation as condition for hearing is opposed.</li> <li>- Clause 5. Requirement for mediation before hearings will delay evictions.</li> <li>- Clause 7. Provision on weather conditions opposed.</li> </ul>	<ul style="list-style-type: none"> <li>- The definition is restrictive in that it lists categories of persons which means it excludes those not mentioned.</li> <li>- Implementation matter, not for the Bill.</li> <li>- Exercise of rights of occupiers is balanced against those of owners.</li> <li>- The provision does not make the right absolute. It gives some discretion to a court.</li> <li>- The rationale for mediations is indeed to ensure that there is no summary deprivation of the rights of occupiers.</li> <li>- Provision on weather conditions important to mitigate against the hardships that the occupier would already be faced with.</li> </ul>
AFRA		<ul style="list-style-type: none"> <li>- Definitions of "family" and "dependant" are narrow and serve the interests of owners.</li> <li>- Tenure grants. It is not clear how these will be calculated.</li> <li>- Land Rights Management Board / Committees. Their functions</li> </ul>	<ul style="list-style-type: none"> <li>- The definitions' scope is intended to protect occupiers and balance their interests against those of owners.</li> <li>- Calculation of grants is a matter for implementation of legislation, not for the Bill.</li> </ul>

		<p>overlap with those of the Department.</p> <ul style="list-style-type: none"> <li>- Ensure that the justice system is responsive to ESTA.</li> <li>- The Department must clarify the provision of emergency accommodation/shelter for evictees who must still be provided with alternative accommodation.</li> </ul>	<ul style="list-style-type: none"> <li>- <b>DDG to assist.</b> Make their functions more advisory instead of executive functions.</li> <li>- Implementation of legislation requires departments to cooperate.</li> <li>- This is a matter for the implementation of legislation.</li> </ul>
SALGA		<ul style="list-style-type: none"> <li>- The provision of tenure grants to municipalities is crucial as municipal provide services.</li> <li>- The establishment of Board / Committees is supported.</li> <li>- <i>Other comments not related to Bill directly.</i></li> </ul>	<ul style="list-style-type: none"> <li>- Provision is made for provision of grants to municipalities</li> </ul>
GENERAL COMMENTS FROM PUBLIC		<p><i>Comments hereunder relate mainly to the conditions on the farms as experienced by occupiers. As these are challenges, reference is made to the relevant sections of the Act dealing with the matters where such provisions already exist.</i></p> <p><i>Where there are no provisions dealing with such challenges, this is also indicated and thereby pointing to a gap in the Act. We also comment on how such gaps may be addressed.</i></p> <ul style="list-style-type: none"> <li>- When main occupier (husband) dies, family members including wife are evicted even though they are permanently employed.</li> <li>- Family members are made to pay rent.</li> <li>- Definition of "dependant" must not exclude children above 18 who are unemployed or still at school</li> <li>- Moratorium on evictions to be imposed.</li> </ul>	<ul style="list-style-type: none"> <li>- The eviction of family members is not automatic upon death of main occupier. It must still follow the normal process in terms of sections 10 and 11 of the Act.</li> <li>- Payment of rent is per agreement.</li> <li>- Definition to be amended accordingly.</li> <li>- Minister has no authority to suspend operation of legislation.</li> </ul>

	<ul style="list-style-type: none"> <li>- No evictions must occur until alternative accommodation is arranged.</li> <li>- Constructive evictions rife. Occupiers are denied access to water, electricity, grazing for livestock, restrictions on livestock, and other services and thereby making conditions difficult for occupiers to continue residing on the farm.</li> <li>- When ownership of farms change, the conditions of occupiers usually change for worse.</li> <li>- Occupiers above 60 not allowed to retire.</li> <li>- There must be a clear distinction between tenure rights and labour relations rights. Evictions should not necessarily follow because there is termination of employment.</li> <li>- Police do not stop evictions when they are reported to them.</li> <li>- Occupiers or former occupiers not allowed to bury their dead on farms where they reside.</li> <li>- The State must have servitudes over schools on farms so that services can be provided by the State and the schools are not left to absolute control of owners.</li> </ul>	<ul style="list-style-type: none"> <li>- Provision of alternative accommodation is one of the considerations by the court before an eviction can be ordered. However, it is not a prerequisite.</li> <li>- Occupiers do not appear to have easy access to dispute resolution mechanisms in terms of the Act. This is an implementation matter that the Department can address.</li> <li>- Section 24 provides that the rights of an occupier bind successors in title. However, in practice this depends on access by occupiers to assistance to enforce their rights.</li> <li>- Section 8(4) generally protects occupier who is above 60 from eviction.</li> <li>- Tenure rights of occupiers are linked to employment in that the owner must consent to the occupier residing on the farm. Usually the consent is on condition that the occupier provides labour / service to the owner.</li> <li>- This is an enforcement matter that requires cooperation between the Department and SAPS. An MOU between the two departments may assist.</li> <li>- Section 6(2)(dA) entitles an occupier to bury a family member on the farm if that family member was residing on the farm. Section 6(5) entitles family members to bury an occupier on the farm.</li> <li>- Section 26 empowers the Minister to expropriate land or part of it for purposes of development. It can also be used for public purpose. Actually, this section can also be used by the Minister for on sites development for occupation by those who have been evicted or those seeking better living conditions.</li> <li>- The following are some proposals that can be considered</li> </ul>
--	--	--

		<p>- Enforcement of the Act is weak.</p>	<p>for general enforcement of the Act-</p> <ul style="list-style-type: none"> <li>(a) The establishment of a Unit in the Department that will be dedicated to the implementation and enforcement of the Act.</li> <li>(b) The Unit must have the functions that we are proposing for the Board/Committees including <i>receiving and acting on section 9(2)(d) eviction notices, receiving and acting on complaints relating to violations of occupier rights, coordinating dispute resolution mechanisms, coordinating legal assistance including responding to threats of evictions including interdicting evictions, data collection, etc.</i></li> <li>(c) The Unit must work with the SAPS and follow on all unlawful evictions and insist on arrests and investigations. This may require an MOU on cooperation in training on the Act etc.</li> <li>(d) The Unit must work with the NPA to ensure that there are prosecutions on unlawful evictions.</li> <li>(e) The Unit must also implement section 14 dealing with restoration of residence or use of land and compensation where unlawful evictions occurred. The Unit must through the panel of attorneys vigorously pursue restoration proceedings in cases of unlawful evictions.</li> <li>(f) The Department must seriously consider having discussions with the Department of Justice with a view to have the Land Claims Court as the only court of first instance dealing with evictions. This will ensure specialization by the court. It will also deal with the challenge of perceived bias by Magistrates Courts who are seen to be colluding with owners.</li> </ul>
--	--	--	--

**Adv. Sello Ramasala, Legal Services, Department of Rural Development and Land Reform, 21/11/2016.**