

Definitions	What are the issues in the Bill?	How to address these issues?	Organisations
Reside and Residence	Not defined in the Act, despite the Land Claims recent definition - LCC72/2015.	Reside is not limited to mere physical presence at a particular place at a given point in time.	LRC, PLAAS
	The definition in the amendment Bill is narrow, and it defeats the purpose of this Bill. The result is that occupiers who are not on the farm on daily basis will be regarded as not residing on farms. The purposes seems to be for exclusion of those who live on farms but spend long periods of time elsewhere, e.g. for work, education, etc.	The Committee should <u>adopt a more expansive definition.</u> Or PLAAS proposes that this <u>definition be removed</u>	LRC, PLAAS
Occupier	The deletion of "has or" has serious implications. It leaves the term occupier applying only to those who had rights as of 4 February 1997. Not those who do now.	Since 1998, this has not been reviewed to take into consideration <u>inflationary adjustments.</u> If adjusted on 6% inflation per annum, this would figure would translate to R15,128 in 2016	PLAAS
	ESTA (par C) together with ESTA regulations prescribes qualification of an Occupier; i.e. a person with an income exceeding R5000 does not qualify.	<u>The income threshold should be increased to a 2016 rand value, thereafter increased annually based on a national Consumer Price Index.</u>	LRC, PLAAS
Dependants	The definition of dependant as "a family member to whom the occupier has a legal duty to support" defeats the purposes of protection of people against evictions. Consider the lived reality of many dependants in African culture. Dependants in SA common law includes persons to whom a person has no legal duty. The only reason for defining this seems to be for exclusion of non-relatives and relatives who live with occupiers	Creation of primary and secondary rights status in ESTA, and continued under this Bill is a major problem. This mostly affect women and children <u>PLAAS proposes that this definition be removed.</u>	LRC, AFRA, PLAAS
Family	Family is defined as "the occupier's spouse, including spouse in customary marriage...child including an adopted child, grandchild. There is a need to adapt definitions to the reality on the ground. AGRISA wants safeguards against open-ended definition of a family as commercial farms are places of production. TAU opposed the definition of family because it impose on the farmer the responsibility to provide accommodation and services for extended family members- see as encroachment on land legally acquired by the owner	This definition does not protect partners living together and not married. It is limited. COSATU suggests an expanded definition of a family too, it suggests guarding against legalistic definition of family, dependants and residence – without due consideration of cultural and socio-economic definitions	LRC, AFRA, COSATU, PLAAS Respect of custom and tradition is taken into consideration in clause 6(4) – re: burials

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Eviction procedure	The Bill leaves Section 8(2) and (3) unchanged. Experience has shown that these sections have been used to evict people from farms. They do not offer adequate protection of occupiers who are also providing labour and faces dismissal from employment	There is a need for safeguards to ensure that farm workers have a fair hearing or arbitration at the CCMA with full awareness of implications of the proceedings to their tenure rights	LRC, Department of Labour showed that the linkages of labour and tenure rights have been problematic,
		Amend the two sections to provide greater protection of farm workers who are also occupiers	LRC
	Amend Section 9(3) to ensure that courts cannot grant an eviction order without a probation report and a report from the local municipality on emergency house. This should be mandatory	Absence of the probation report can be blamed on DRDLR officials	LRC, COSATU
	Proposed that the Bill should provide that each eviction application should cite municipality and the DRDLR as necessary parties		LRC
	There is a concern over conflation of ESTA and PIE as in the case of Odvest v. Occupiers of Klein Akker. This results in burdening of municipalities in relation to provision of alternative accommodation.		Department of Human Settlement suggested that there is a need for synergy between ESTA and PIE
	AGRISA objected to Clause 4(1)(b) ; Legal representation cannot be made a pre-condition for eviction. It is not practicable to impose on court determination on weather conditions for evictions (clause 7).		AGRISA, AgBiz,

COSATU further noted that there were a number of clauses that were agreed to during the NEDLAC process. However, those were omitted in the final version of the Bill tabled in Parliament. Such includes: genuine consultation with those affected, reasonable notices to all affected parties prior to the date of evictions, information on the eviction and alternative purpose of the land use – if cited as a reason for eviction, government representative be present during eviction, all person conducting eviction be identified, evictions not to take place during bad weather, legal remedies, not render people homeless, no eviction without probation report and reports from local municipality on emergency housing.

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Women and Children's rights	The Bill has not address the question of primary and secondary rights arising from Section 8(4) and 8(5).	The Committee should consider greater protection of women and children	LRC
	Women and children are vulnerable due to evictions arising under circumstances envisaged in 8(5), which requires upon the death of male occupiers for their spouses and dependants to be evicted at the end of 12 calendar months' written notice	Ensure that there is independent access to land for women and children. Explore the equity-scheme arrangements that targets farmworkers.	CGE, LRC
	Transformation of farmworkers into farmers through targeted programme for land redistribution.		

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Improvements of dwelling structures	<p>Clause 6(2) of the Bill imposes an obligation for farm occupiers to maintain their dwelling structures at their own cost.</p> <ul style="list-style-type: none"> - It presumes that occupiers have means with which to conduct maintenance (this may not be the case.) - Where an owner construct dwellings, fixed property, maintenance accrues ultimately to the owner <p>AGRISA suggests that occupiers must maintain houses they built on their own account. Recognise diversity</p>	<p>There is a problem with giving grants to owners for development of housing and putting an obligation to farm workers to maintain their dwellings at their own cost.</p> <p>Possibilities:</p> <ul style="list-style-type: none"> - <u>Amend Section 6(dB) to provide occupiers with the right to maintain and improve their dwellings but not to impose a duty on them to do so</u> 	LRC, PLAAS, AGRISA

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Land Rights Management Boards and Committees	A need for more consultation on this provision	What are the powers and any form of relief from an adverse decision?	COSATU proposed 50% representation of man and women.
	The Board is given broad powers without any guidance on how the exercise of their powers will be regulated	Address the question of accountability of the Board	
	Qualification of the Board member is vague and too broad	It takes functions of the Departmental officials across national, provincial and district offices	
	Clause 15(D) of the Bill and Section 21(1) of the Act	There is a need to clarify this in the legislation Composition should include occupiers, landowners, and organised labour.	COSATU
	The Connection of the Boards and Municipalities, especially in the IDPs and LED processes is unclear. Same applies to the Land Rights Management Committees, especially w.r.t. identification of land for settlement.	They do not seem to complement one another	
	The functions of the LRMB are essentially the responsibilities of the DRDLR, this is simply outsourcing the responsibilities to a 9-person Board.	Tenure grants should include the provision for services, and that grants be secured before plans for development are included in the budget and IDPs	SALGA
	Overlap with the LRMF The scope for the Board is inconsistent with ESTA, in so far as rural freehold and communal areas are concerned Operating in parallel to land reform district committees, will result to splitting of functions of land reform institutions at local level	The RIA refers to this as a stakeholder's forum, whereas the Bill suggests that the DG may refer cases for mediation to the Board. <u>Revise the LRMBs and align the LRMC and DLRC</u>	PLAAS LRC

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Tenure Grants	<p>Subsidies will be replaced by grants; there is an assumption that the farm owners, as opposed to farmworkers, will make applications for these grants</p> <p>Tenure Grants would be made available to land owners or persons in charge for provision of accommodation and services to occupiers.</p> <ul style="list-style-type: none"> - Nature of payments, criteria for eligibility not clear, monitoring not provided for - Why does government want to divert scarce public money for land reform to farm owners? <p>How are these grants to be calculated?</p>	<p>No quantum of the new tenure grants has been defined nor a criteria for qualification. There needs to be some guidance on how this should be done.</p> <p><u>Propose that payment of grants to owners be removed. Provision of accommodation is part of the cost of labour, and therefore an operating cost.</u> If it continues, this is tantamount to subsidisation of the farming industry</p>	LRC, PLAAS, AFRA
	<p>If this provision is passed, it reverts to a situation where farmers were subsidized for their farm labour without better rights for the workers</p>	<p>Criteria is important -; it is unclear how attractive the provision would be for farm owners. Section 4 was not enticing to owners.</p>	
	<p>Budgetary constraints should be a major concern</p>		
	<p>No direct obligation on municipalities in terms of factors considered or to apply for a grant.</p> <p>ESTA is not putting any responsibility on municipalities to provide alternative accommodation, except probation officers report reflecting on alternative accommodation</p>	<p>Greater role for municipality need to be included in the legislation</p>	SALGA
	<p>DHS housing schemes for farm dwellers have not been taken up by farm owners.</p> <p>No projects have been implemented</p>	<p>There has not been any analysis of the constraints for human settlements and how to control it.</p> <p>DHS foresees duplication between DRDLR and DHS (e.g. on tenure grants and its housing programmes for farm dwellers)</p> <p>PLAAS sees payment of grants to owners being in conflict with the DHS National Housing Programme for Rural Residents (2008) and the Farm Worker and Occupier Housing and Assistance Programme (FHAP)</p>	<p>DHS, PLAAS</p> <p>Provision of housing is the responsibility of DHS rather than the Department of Rural Development and Land Reform</p>

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Obsolete parts of the Act	Section 23 (5) has reference to Attorney General. Such office does not exist anymore. It is Director of Public Prosecutions		LRC

AFRA calls for national consultative workshop with farm dwellers.

Other proposals

EVICCTIONS

1. The Land Claims Court can only uphold an eviction order on review after any appeal process in another court is complete and the eviction order uphold
2. Add Section 23(1) further provisions which require SAPS to respond to charges of illegal eviction and other infringements of occupiers' rights under ESTA, and the NPA to prosecute these
3. Amend Section 8(2) and (3) to require that a court hearing an eviction application must require proof that an occupier was aware that the resolution of a labour dispute at the CCMA would constitute grounds for an application for an eviction order, and any notice periods should not run concurrently.

ALTERNATIVE ACCOMODATION

1. Insert an amendment to the Bill, requiring that Section 9(3) reports to be presented to any court that hears an application for an eviction under ESTA,
2. Reinstate the eight limitations that were contained in Section 20(10) of the Draft Land Tenure Security Bill of 2010

FORMER OCCUPIERS

1. This must be defined.
2. Eligibility and prioritisation criteria

INCREASE ACCESS TO LAND FOR FARM WORKERS

1. Use of commonages to target farm workers
2. Audit all commonages
3. Enforce laws relating to commonages
4. Review leases on commonages to give chance to new persons
5. National Revolving fund to assist the farm workers