

Lawyer
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Lawyers for Human Rights

Security of Farmworkers Project

Presentation to the Portfolio Committee on Land Reform
and Rural Development

'Land and tenure rights for farm dwellers and workers:
evidence from the ground'

16 March 2011

Overview of presentation

- Introducing Lawyers for Human Rights
- The LHR Security of Farmworkers Project
- Key land tenure security and human rights issues affecting farm dwellers and workers
 - Strengths and weaknesses of relevant legislation
 - Conclusions and recommendations

Introducing LHR

- Independent human rights organisation established in 1979
- Focus on human rights activism and public interest litigation in South Africa
- LHR Security of Farmworkers Project advocates for, promotes and enforces the constitutional rights of farm dwellers and workers in the South African agricultural industry

The Security of Farmworkers Project

- Established by LHR in 1998
- Major focus of the SFP is on farm dwellers and workers in the Western and Northern Cape
- Main areas of work:
 - defending farm dwellers and workers in eviction cases
 - challenging unlawful evictions
 - enforcing the right of access to adequate housing
 - ensuring protection of the right to fair labour practices
 - enforcing constitutional rights of vulnerable occupiers

Key land tenure security issues affecting farm dwellers and workers

- Illegal actual and constructive evictions on farms continue unabated
- Historical link between housing and employment on farms renders farm dwellers and workers vulnerable to eviction
- Court ordered evictions result in homelessness: evictions orders are routinely granted by Magistrates Courts and the Land Claims Court in the absence of suitable alternative accommodation being available
- ↳ Inability of farm dwellers and workers to access off site and on site housing subsidy schemes for long term security of tenure
- ↳ Systematic failure by local government to implement national Emergency Housing Programme, respond to and plan for evictions of farm dwellers which result in homelessness

Key human rights issues affecting farm dwellers and workers

- Constitutional rights of access to adequate housing, shelter and security of tenure remain illusory for millions of farm dwellers and workers
- Inadequate regulatory enforcement of existing legislation (LRA, BCEA, Sectoral Determination 13) has resulted in widespread violations of the right to collective bargaining and fair labour practices
 - └ Poor housing conditions and lack of access to basic services on farms violate the rights of farm dwellers and workers to equality and dignity
 - └ Significant failure of the COIDA compensation system to deal with compensation claims by farm workers injured or disabled in occupational accidents

Strengths and weaknesses of existing legislation regarding farm dwellers and workers

- Provisions of ESTA and LTA regarding subsidies / grants for long term security of tenure in the form of off site and on site site developments have not been implemented by DRDLR
- ESTA and LTA largely operate as legislative mechanisms to effect evictions rather than a means to protect and enforce substantive rights of occupiers on farms. ESTA and LTA permit evictions even if they lead to homelessness
- ↳ Currently no legislative requirement for the monitoring and data capturing by DRDLR of eviction statistics
- ↳ Provisions of ESTA and LTA are inextricably linked to continued employment on farms thereby compounding vulnerability of farm dwellers to eviction in both no-fault and fault based dismissals

Conclusions and recommendations

- Provisions of Draft Land Tenure Security Bill increasing the legal threshold for evictions and prohibiting evictions leading to homelessness must be defended
- All spheres of government must plan for and respond to the emergency housing needs of farm dwellers and workers who are evicted without suitable alternative accommodation
 - └ Allocation of financial and human resources to fully enforce labour legislation on farms
 - └ Provisions of Sectoral Determination 13 regarding standards of housing and working conditions on farms requires urgent and comprehensive review