

**What land reform has meant and could mean
to farm workers in South Africa
Theme: Farm Workers and Land Reform in
Southern Africa**

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**Paper presented at the SARPN conference on
Land Reform and Poverty Alleviation in Southern Africa
Pretoria**

4th and 5th June 2001

Abstract

Farm workers are among the poorest communities in South Africa. Despite legislation to protect the tenure rights of those who live on farms, and to secure the labour rights of those who work on them, there has been little improvement in poverty levels since South Africa's transition to democracy in 1994. This paper reviews the laws and policies which are in place to protect and extend farm workers' access to land and housing. In considering how these have benefited farm workers in practice, four themes are identified: first, weak formulations of rights at a legal and policy level; second, dependence on a weak bureaucracy and untransformed judiciary to enforce these rights; third, structural inequalities within the sector and changes in the rural labour market which undermine these rights; and fourth, insufficient budgets to fund land reform programmes.

1. Introduction

“The Land Shall be shared among those who work it!”. This tenet in South Africa's Freedom Charter declared that “Restriction of land ownership on a racial basis shall be ended, and all the land re-divided amongst those who work it, to banish famine and land hunger”. This formed the basis of the liberation movement's vision of what land reform would entail in a post-apartheid era. That was 1955.

In 1996, South Africa's new Constitution recognised tenure rights as fundamental human rights and entrenched these in the Bill of Rights as follows: “A person or community whose tenure of land is legally insecure as a result of past racially discriminatory laws or practices is entitled, to the extent provided by an Act of Parliament, either to tenure which is legally secure or to comparable redress” (S. 25(6) of 1996).

While this statement is a far cry from the vision of radical redistribution of land envisaged in 1955, it potentially provides for significant improvements in farm workers' (or rather, farm dwellers') access to land. This paper explains the tenure security legislation that applies to farm workers and reviews some of the problems associated with it. We then examine how farm workers have used the land redistribution programme to gain access to capital, land and housing. Finally, we discuss strategic directions for land reform in South Africa and point to some lessons that farm workers in other countries in the region may be able to draw from experiences here.

2. Farm Workers in South Africa

The commercial agricultural sector provides permanent jobs to about 640,000 people. Another 300,000 or more derive incomes from agriculture through seasonal, casual and contract work. Agriculture is the sector that provides the largest number of jobs in South Africa (Statistics South Africa, 1996). The Centre for Rural Legal Studies (CRLS) has found that, in the Western Cape, every farm worker's income supports another five people's livelihoods. The ratio of income earner to dependants is probably higher elsewhere in the country and is likely to rise further with the progression of the AIDS epidemic.

Farm workers rank as the poorest people in South Africa in terms of many development indicators, including cash income, education levels and nutritional status. The average cash wage received by farm workers is less than R600 a month. Farm workers, on average, have less education than other groups, *including* rural unemployed people (Statistics South Africa, 1996). One out of every three children who grow up on a farm is stunted from malnutrition (Department of Health, 1999).

Most farm workers live on the farms on which they work and are provided with housing, the quality of which is in most cases very poor. In certain pockets, largely in KwaZulu-Natal, Mpumalanga and the Northern Provinces, the practice of labour tenancy continues to exist, by which farm workers gain access to land as part – or all – of their remuneration for their labour.¹ Most farm workers, though, have no access to or control over land for cultivation or grazing purposes.

For farm workers and farm dwellers, the democratisation process in the 1990s raised expectations of rural development, increased job opportunities, better wages and working conditions and access to land.

3. Tenure Security for Farm Workers

The Extension of Security of Tenure Act (ESTA), No. 62, was passed in 1997 to protect the right referred to in the Constitution. ESTA protects people who lived on rural or peri-urban land with the permission of the owner of that land on 4 February 1997. Such people are referred to in the Act as “occupiers”. ESTA applies to all people who live on farms, regardless of whether they are employed on the farm or not.

Four specific objectives are pursued through this Act.

First, ESTA accords occupiers a secure legal right to continue to live on and use the land they occupy. It therefore promotes security of tenure and, for the first time in South Africa’s history, protects farm workers from unfair or arbitrary eviction. ESTA protects owners and occupiers’ rights such as human dignity, privacy, freedom and security.

Occupiers have a right to reside on and use land where they have consent of the land owner or person in charge, and have the right of access to services agreed upon, such as electricity, water and sanitation and may not be denied access to educational or health care services. Occupiers have the right to stay with their families, in accordance with the culture of that occupier's family. Occupiers may visit and maintain their family graves.

Second, as well as protecting their rights, ESTA places duties on occupiers, thereby regulating the relationship between owners and occupiers. Occupiers' tenure rights are contingent on the following: they may not unlawfully damage property of the owner or cause harm to other occupiers, and may not help other persons to set up new dwellings without the authority of the land owner.

¹ The tenure rights of labour tenants, including second generation labour tenants, are protected by the Land Reform (Labour Tenants) Act of 1996.

Third, ESTA places specific requirements for the processes which must be followed in order for an owner to evict an occupier. These are intended to provide clear guidelines that will help to avoid and to resolve disputes. ESTA also sets out the conditions under which the right of occupiers to reside may be terminated. A key concern in designing ESTA was to put in place mechanisms which would standardise the legal procedures involved with evictions.

Occupiers may only be evicted if a court issues an eviction order to the owner. Specific procedures are required before an eviction order may be granted by a court. As result of ESTA the problem of seeing helpless people thrown, together with their belongings, out of houses they were lawfully occupying has been effectively reduced. Where this still happens the Act provides for an urgent remedy to victims.

ESTA gives even greater protection to those that are sixty years of age or older, or are living with disabilities, or have been occupiers of that land for ten years or more. These people are considered to be long term occupiers and have the right to continue to live where they are for the rest of their lives.

Fourth, ESTA creates opportunities for occupiers to strengthen their rights to land, including the opportunity to become land owners. This ‘developmental’ aspect of ESTA enables occupiers to apply for settlement grants from the Department of Land Affairs (DLA) with which they can purchase land, individually or collectively.

They can use these grants to either upgrade their tenure by buying the houses in which they live – which requires a farmer to subdivide land – or to acquire housing off-farm. These grants have been set at R16,000 per household but are set to increase to R20,000 in line with the new redistribution grant. Very few people have accessed the ESTA settlement grant.

Last year, the DLA restated its vision for ESTA:

“By the year 2001 a *land rights culture* should have been established so that the relationship between owners and occupiers is one of *mutual respect* based on an informed understanding of their respective *rights and duties as set out in ESTA*. There should be a marked reduction in legal evictions while illegal evictions should be the exception. There should be a sound and responsive programme which supports on-site and off-site solutions which improve the *quality of life* for occupiers and owners.” (ESTA mid-term review, discussion paper, Department of Land Affairs, 2000)

The CRLS’s experience in assisting to implement ESTA, and monitoring legal and illegal evictions, has led us to identify three stumbling blocks in the realisation of this vision: the justice system, farmers’ responses and ongoing gender bias.

The Justice System and ESTA

Section 23 of the Act makes a breach of ESTA a criminal offence and provides for some specific actions to be taken against those in contempt of law. However, so far there has not been a single conviction for illegal eviction despite evidence of continued illegal evictions. Where eviction orders are sought through the correct channels, courts regularly grant such orders. The enforcement of ESTA, then, has not

contributed to fewer legal and illegal evictions. We have identified a few reasons for this weak enforcement.

First, the justice system – police and magistrates – does not appear to regard illegal evictions as ‘crimes’ and fail to take effective action. Police have been seen to refuse to deal with these cases, viewing them as purely private disputes between land owners and occupiers. In rural towns, the social networks between magistrates and the police, on the one hand, and farmers on the other, have contributed to the justice system’s failure to take ESTA seriously and to enforce occupiers’ rights. NGOs continue to call on the DLA to commit more people and funds to enforcement and the training of staff in the justice system. Ultimately, though, the challenge is to transform the judiciary and to discipline those law-enforcers who enforce laws selectively.

Second, the legalistic nature of eviction procedures requires that legal expertise is brought to bear on behalf of occupiers threatened with eviction. The Legal Aid Board was established to help indigent people in urban and rural areas to seek justice through the provision of paralegal advice and attorneys. Although the Legal Aid Board makes a contribution towards enforcement of the Act by providing paralegals, there is a need to assemble more attorneys to defend eviction applications. Paralegals have limited capacity in that the system does not allow them to appear in formal courts (i.e before magistrates and judges) to represent clients.

Unfortunately NGOs that provide legal services do not have sufficient financial resources and personnel to defend every eviction case, but rather opt for only precedent-setting or public interest matters. Clearly that still does not help most occupiers against unlawful eviction.

Moreover, private lawyers are not keen to help those facing eviction, for financial reasons. Most occupiers cannot afford to pay the legal costs of their cases. The Legal Aid Board does not have eviction matters on its priority list. Instead, most of these cases are being referred to legal aid clinics at universities. Unfortunately, there are few, if any, experienced legal practitioners there who can effectively handle eviction matters due to their complex nature.

At the same time, there has been insufficient support provided by the state to assist farm workers to claim their rights. Most farm workers are unaware of the provisions of ESTA and so are not well positioned to seek help. This is compounded by the isolation that many farm workers experience, living on farms and not having easy access to transport or telephones.

Farmers’ Responses to ESTA

Many farmers and their representative organisations remain hostile to ESTA and the protection it provides to farm workers. The CRLS has found that farmers have responded to ESTA in three ways. **First**, it has led farmers to be much more cautious about building new houses or providing access to existing housing to those who are not already living on the farm. At workshops held by the CRLS and through research in the Western Cape, we have heard from farmers that many of them have empty houses on their farms that they will not allocate to workers because of ESTA.

A characteristic view among farmers of why ESTA is a problem is "... if they stop working, you can't get them off the farm" (anonymous quote by a deciduous fruit farmer, CRLS research, 2000). This is because of the rights that such farm dwellers would acquire through ESTA and because farmers see this as entailing future costs (Taylor, 1999: 10). Also, in a context where farmers have historically been 'masters' over all aspects of life on a farm, ESTA undermines the extent of control farmers can exert over those who live on their land. An extreme form of this trend is that some farmers have taken the step of demolishing houses on their land.

Second, farmers have become more reluctant to improve the standard of housing they offer. Employers and their associations have confirmed that this is happening and that it is a direct response to ESTA.² This is because the Act requires that if a farm worker's right of residence is terminated, they are entitled to 'suitable alternative accommodation' which is defined as "no less favourable to the occupiers' previous situation, having regard to the residential accommodation and land for agricultural use available to them prior to eviction" (Taylor, 1999: 10). Given the already poor state of farm worker housing across the country, with a minority having access to electricity, running water and sanitation, it is a real problem that farmers perceive ESTA as a disincentive to invest in decent housing standards.

Third, farmers continue to evict people off their farms in an illegal manner. There seems to be little fear of consequences among farmers. Among those who follow the prescribed route of seeking an eviction order from a magistrate, most have found that this process does not prevent an eviction. The procedures required take approximately three months and are almost certain to result in the courts granting an eviction order. Agricultural labour consultants have become expert at advising farmers how to get around ESTA.

On the other hand, some farmers who have wanted to get farm workers off their farm have been willing to contribute financially to ensure that workers can obtain housing elsewhere. In such cases, workers have been able to combine their grants and money from farmers to build houses.

Women Farm Workers and ESTA

Despite ESTA's protective provisions, in practice women's security of tenure is contingent on the presence of a male partner. ESTA necessarily relates to both land and labour rights, since farms are the locus of both employment and housing in many instances, with housing and/or access to land being included in a remuneration package. This concept of 'tied housing' has as its basis the notion that only a man can be the head of a rural household. It has denied women access to both work and housing on farms, except indirectly via a male partner or family member. Single women find it exceedingly difficult to obtain employment and housing on farms. This results in women being dependent on men for access to both an income and a place to live. We have noted many cases in which women who are 'casually' employed on

² Mr van Dyk, chairperson of the Cape Fruit Producer Employers' Organisation has confirmed that none of the organisation's membership has plans to make housing improvements because of ESTA, that some have plans to demolish and that the availability of housing for farm workers on-farm has been reduced drastically since ESTA came into force.

farms have lost not only their jobs but also their homes when their male partner is evicted following retrenchment or dismissal.

The Hanekom case (see Box 1) remains a single success story in an otherwise dismal performance by the justice system to enforce tenure rights. The implementation of ESTA has failed to counteract the traditional forms of women's dependence on men's relationships with employers and owners.

BOX 1: WOMEN AND *ESTA*

One landmark case stands out, in which a woman's independent right to tenure security on a farm was affirmed. Mary Hanekom, a permanent farm worker, was threatened with eviction after her husband was dismissed from his job. The farm owner applied for a court order to be able to evict the entire family, which was successfully opposed, largely through the intervention of Lawyers for Human Rights, an NGO representing Mary's interests.

The court found that Mary's tenure was *not* contingent on her husband, and that her independent tenure rights must be upheld. Further, the court ruled that the right to family life meant that Mary had the right to live with her husband. The eviction order was denied, and both were able to continue living on the farm on the basis of *her* independent tenure rights.

4. Equity Share Schemes

In a context of high land prices and an inflexible grant system, a new kind of land reform has been developed for farm workers through the redistribution route. Equity share schemes provide opportunities for farm workers to become beneficiaries while continuing to earn a cash income as employees. While ESTA was aimed at ensuring long term security of tenure for farm worker households, equity schemes allow for farm workers to acquire shares in agricultural enterprises.

Equity schemes aim to promote partnerships between farmers and workers in a manner that can produce benefits for both parties. Farm workers are able to apply for redistribution grants and use these grants to buy shares in the farm on which they are employed. This does not necessarily improve job security or tenure security, but has been seen as a means to bring about greater cash incomes among farm workers, provide them with a long-term capital asset and to shift the power relations between employers and workers.

Debate is still raging on whether equity schemes qualify as a kind of land reform and whether they meet their objectives. Farm workers do not get to own land directly, as the shares are normally in the operating enterprise rather than being shares in the land itself. A critical question has centred on whether equity schemes can – and do – really result in the redistribution of power and resources. According to this measure, many equity schemes have performed poorly.

- *Have the power relationships between farmers and workers changed as a result of equity share schemes?* Equity schemes usually result in workers, collectively, being minority shareholders in an enterprise. As such, they have little or no say

over operational, management and investment decisions. The deeply entrenched power relations being farmers and workers remains largely intact. That workers have no access to land for their own use is another factor which raises concern about the lack of autonomy.

- *Have farm workers' incomes increased as a result of their involvement in equity share schemes?* In some cases, yes, workers who work and hold shares in an enterprise that is profitable have received dividends (their share of profits) and continue to hold an asset that is equal to or greater than the initial investment of their land reform grant. In sectors of agriculture which have experienced turmoil and decreasing product prices, some farm workers have not received any dividends and the value of their shares has declined along with the overall profitability of the sector.
- *Do women and men benefit equally?* Grants are issued to households and shares are then registered to a household, normally in the name of a male "household head". Any dividends accruing to the shareholders are then paid out to the household heads. In a few instances shares have been registered in the names of individuals. This system is more equitable: in a household with two adult members, the value of the household shares would be split in half and registered separately in each of their names. Women can derive a separate income in this way although this does not necessarily translate into control over income or increased bargaining power for women. Another way in which women might not benefit as men do is where most permanent workers are men and most seasonal workers are women. Women are therefore excluded from participation in the scheme and do not stand to benefit. Also, women's capacity to engage in and influence the process whereby workers agree to an equity scheme is hampered by an environment in which male workers and male management make deals. There are indications that women's needs, insofar as they differ from men's, are not taken on board in such processes.

A further concern is how equity schemes are initiated, whose interests drive the applications for grants, how the terms of the deal are made and whether, as a result, farm workers' liabilities increase, instead of their assets (see Box 2). Equity schemes are frequently initiated by farmers rather than by workers. In many cases farmers do so with the best intentions at heart, but in struggling industries, farmers facing liquidity problems have initiated equity schemes in order to obtain an injection of capital into their enterprise. In this sense, equity schemes are sometimes put in place for precisely the wrong reasons: because the farmer is intent on sharing risk rather than on sharing profits. The question of whose interests inform an equity scheme is crucial and can probably only be resolved through quality facilitation by project planners who must assess the viability of a project prior to approval by government.

Hildegard Fast's analysis of the impact of equity share schemes on farm workers in the Western Cape and Mpumalanga³ has informed recommendations to the DLA that there minimum conditions for equity share schemes should be enforced. Greater security of tenure should be separate from the scheme and provide communal or

³ Fast, Hildegard (1999): "An examination of the impact of Share Equity Schemes on Beneficiaries in the Western Cape and Mpumalanga"; Surplus People Project; Cape Town. See also J. Eckert, J. Hamman and J. Lombard (1996): "Perceiving a New Future: Empowering Farmworkers through Equity Sharing"; *Development South Africa*; Vol 13, No 5.

individual title for farm workers. In this way, equity schemes could enable farm workers to gain more autonomy and tenure security through the schemes.

BOX 2: EQUITY SHARE SCHEME

One example serves to illustrate some of the practical complications of equity schemes. On a large apple export farm in the Western Cape, an equity scheme was designed which also involved a housing project. Workers obtained grants from government and also took out substantial loans from banks to fund the project. The workers do not have individual title to the houses; rather, a workers' Trust has 'corporate title'. The Trust was to repay the loans with the dividends it received from the farm profits. Farm workers were then indirectly paying back their loan by foregoing cash payouts of profits.

Because the world price for apples has plunged, and the variety grown on the farm is no longer in fashion in Europe, the value of their shares has dropped from about 60c when they were bought in 1995 to 14c this year. Facing a financial crisis, the farmer retrenched nearly half the workers. These workers are facing eviction and, in the meanwhile, have been told they must pay rent for the houses they are living in. Employment on the farm is a requirement for membership of the Trust, so those who have been retrenched have lost their shares in the enterprise and will only be paid out their reduced value in five years' time.

So some workers are now without a job, are about to be without a home, have used up their one chance to benefit from land reform and at present are still in debt to pay for a bad investment.

Government is silent on how seasonal workers and those who live, but don't work, on farms can participate in equity schemes. Most of these are women. Likewise, there are problems with the tradeability of shares. Economists are the first to argue that a share is not an asset unless it can be sold on an open market – and sold at a profit. This is complicated in equity schemes where shares are held by a workers' trust. In some cases, shares can only be traded internally. Further complications arise with questions on whether and how the shares can be inherited.

At present, the DLA has approved equity schemes as a legitimate use of the redistribution grant and has published guidelines on how such projects should be designed.

5. Rural Housing and Land Redistribution

During the 1990s, while the DLA developed a land redistribution grant to enable poor people to access land for settlement or other purposes, the Department of Housing (DOH) developed a housing grant to assist poor people to acquire their own homes. These two grants were initially set at the same level of R16,000 per household. Applications were recorded on the same database and each household could apply for only one or the other. In a rural setting, either grant could be used to obtain land for housing.

Farm workers who applied for ESTA settlement grants were not eligible for either of these grants but many occupiers opted to go the route of a housing grant through the DLA or DOH because it appeared to be a simpler process.

At present there is a process to delink the subsidies and create separate databases. This will enable people to apply for both the land redistribution and the housing grant. This process may be finalised in June this year. At present, though, according to officials in both departments, it is already possible to get a 'double grant' – a land subsidy to buy land and a housing subsidy to build a house on that land. The DLA will now support a redistribution grant application only if it will result in the land being used for some kind of agricultural activity.

At the same time, the DLA is in the process of redesigning the ESTA settlement grant into a "Tenure Security Grant" which will be brought in line with the new redistribution grant, at R20,000. Farm workers and labour tenants will be eligible for this grant. As well as a higher level of grant, a key shift has been that the redistribution grant, under the new Land Redistribution and Agricultural Development (LRAD) programme, offers grants to individuals rather than to households. Many applicants stand to gain if they apply for the grant separately as individuals and then pool their grants. It is still unclear whether the Tenure Security Grant will also be obtainable by individuals rather than by households. The implications are massive.

It appears that it will be possible for ESTA occupiers to obtain a Tenure Security Grant as well as the LRAD grant (as long as some agricultural activity is undertaken). Right now, neither the DLA nor the DOH can clarify whether it will be possible to obtain a housing grant from the DOH in addition to these. There seems to be an expanding range of grant options, which might now not be mutually exclusive. In the face of diminishing government budgets to fund these grant schemes, though, a key concern is whether, or when, the money will run out, and for how many years applicants must wait to get to the front of the queue.

6. Conclusion: Lessons for and from South Africa

South Africa's land reform programme has been ambitious in its targets and has been slow to deliver tangible benefits. Securing the tenure rights of farm workers has been an important step at the level of legislation but has not met its objectives of transforming the relations between land owners and occupiers, which remain essentially paternalistic and entrenched in dependency.

Neither has it succeeded in maintaining the status quo of farm workers' tenancy on farms as evictions, both legal and illegal, continue and even increase in many parts of the country. Economic pressures associated with deregulation of agriculture have resulted in job losses and increased poverty, which in the long run undermines tenure security. Most farm workers have very little information on their rights and have insufficient support from the state or others to claim these rights. Extensive support mechanisms are needed to make these rights real.

The critical issues we have identified in the course of assisting farm workers to benefit from land reform can be summarised as follows:

- **Lack of policy clarity:** there has effectively been no redistribution programme for the past two years, since the Minister put in place a moratorium on new projects. The current confusion on the relationship between the various grants of the DLA and DOH is aggravating a situation in which poor rural people have little access to information on how to go about acquiring their own land;
- **Weak institutions to implement and enforce:** the bureaucratic procedures required within government and by non-state implementers hinder the process and are compounded by a lack of staff capacity, while the justice system has not been transformed to respond effectively and defend farm workers' rights;
- **Labour market changes:** farm workers are increasingly facing casualisation and retrenchment. Outsourced, contract and seasonal labour are becoming characteristic of the sector. Approaches to poverty reduction for farm workers can no longer focus exclusively on permanent workers living on-farm but need to look to rural squatter settlements, rural towns and the urban periphery.
- **Insufficient budgets:** budgets for land redistribution and tenure rights are declining, as is the housing budget. With pressure to deliver, and weak institutions and little capital for land acquisition within the market-led approach, the targets of government's programme has been called an "unfunded mandate".

Whether or not other countries in the region can derive lessons from South Africa's experience with land reform – and farm workers' experience of it – remains to be seen. Some legally enforceable form of tenure security for farm workers is important but is insufficient, in itself, to reduce poverty or inequalities within agriculture. What we have learnt is that farm workers should not be treated as a "special case" within a land redistribution programme.

Experiences here have shown that this has led to an over-emphasis on securing existing rights rather than on creating new opportunities, new forms of ownership and a greater range of land uses, production levels and agricultural methods in rural areas. Increasingly, the debate here is shifting towards a more holistic approach to rural livelihoods, in which access to and control of a land is a critical ingredient but must be linked to programmes that clarify rights over other natural resources, support job creation or self-employment and provide services and infrastructure. These are the conditions needed for land reform to reduce poverty levels among farm workers. Tenure security legislation cannot be successfully implemented in isolation and in the absence of programmes aimed at poverty alleviation.

If such programmes are to be successful, investments in the transformation of the justice system and rural governance institutions are needed. Decentralisation of responsibility to local government needs to be matched by devolved powers and budgets. Planning needs to happen at a local level if responses are to be appropriate and the institutions accountable to the local population. As part of this, methods of communication between government, non-governmental organisations and farm worker communities need to be rethought so that farm workers are informed of their options and able to access and defend their rights.

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