9. TENURE REFORM: FARM WORKERS AND LABOUR TENANTS

Introduction

This chapter examines the content and effects of laws which, since 1994, have sought to protect the residential and employment status of farm workers and labour tenants. In particular, the Land Reform (Labour Tenants) Act 3 of 1996, and the Extension of Security of Land Tenure Act 62 of 1997. The first section of the chapter presents demographics in order to create a clear picture of the living and working conditions of South Africa’s farm workers and labour tenants. The “demographic” section includes a brief discussion of the continuing violence and paternalism on many of South Africa’s farms. It is important to note, however, that the information presented is drawn largely from “aggregates” and, therefore, does not adequately reflect the differences among regions, agricultural sectors, or even among farms in the same regions and sectors. The purpose of this section is to provide a context for the subsequent analysis of post-1994 legislation. This is followed by a discussion of examples of labour tenant and farm worker reform programmes employed elsewhere - in particular, land to the tiller programmes and the extension of labour legislation to rural areas. The bulk of the chapter is contained in section three, which includes an analysis of equity schemes, the redistribution programme as it applied to labour tenants and farm workers, and the two acts mentioned above. In addition, I discuss the extension of labour legislation to rural areas in the context of South Africa’s agricultural sector’s entry into highly competitive global markets under conditions of deregulation. This includes a discussion of the arguable shift from permanent labour to casual labour and labour contracting. The concluding section contains a number of recommendations for future policy development.

I. Demographics

In 1992, the Agricultural Survey estimated that there were 1 068 831 farm workers in South Africa (77.2% black and 72.9% male).1 The survey also found that there has been a long-term decline in the number of farm workers in South Africa (from 1 219 000 in 1988 to 930 141 in 1996).2 The decline is partly the result of increased retrenchments and evictions in a context of political change and economic restructuring. (Economic restructuring, in the form of structural adjustment, has had similar consequences in Zimbabwe, resulting in increased land demand in Zimbabwe’s communal areas.)3 In 1996, farm workers still made up approximately 16.5% of the economically active population in South Africa.4 The actual number of people resident on white-owned farms is much larger, however. According to the National Land Committee (NLC), dependants constitute an additional four to five members of the family unit and, by implication, the

1 Farmworkers’ Research and Resource Project, Farm Labour Review, November 1996
2 The long-term decline in the number of farm workers in South Africa will be addressed in more detail in section 3.4 of this chapter, which deals with the extension of labour legislation to rural areas.
total number of employees and resident dependants on South Africa’s farms is four million. Furthermore, this number does not include families and people resident on farms who are neither employed, nor dependent on an employee. The NLC argues that, when these people are taken into account, the total number of people resident on South African farms increases to between five and six million.

Farm workers and labour tenants are one of the most impoverished and isolated groups in South Africa and are the poorest group of people in the formal sector of the South African economy. In 1986, the average income of farm workers in South Africa (including payment in kind) was R104 per month. The average wage had increased to R225.25 in 1992 but, by 1996, almost three-quarters of farm workers still lived below the poverty line. Workers continued to receive 21.1% of their wages in kind (food, housing and land). In the Western Cape wine industry, which is one of the most opulent and profitable agricultural sectors in South Africa (with an annual profit of R1 500 million), the average farm worker wage was less than R800 in 2000. A 2001 study, by the University of Stellenbosch, indicated that one, out of five of farm workers’ children, was underweight, while only one out of five farm workers’ children had access to safe nutrition. A report on health conditions on farms, in 1986, indicated that many farm workers suffered from psychosomatic diseases resulting from excessive stress, exhaustion and monotony. The illiteracy rate is very high among farm workers - even higher than the rate for the urban unemployed (in 1991, 30% of coloured and 49% of black farm workers had no formal education).

In terms of access to social services and basic amenities only one fifth of farm workers had access to flush toilets in 1991. Less than three-quarters of farm workers obtained water from taps in 1994. More then a third of farm workers had to travel more than one kilometre to the nearest water supply (although this situation had improved significantly in KwaZulu-Natal and the Western Cape by 1996). Three quarters of farm workers had to travel more than five kilometres to the closest medical service and, only one fifth of farm workers had a telephone within 100 metres of their homes. In 1996, 63% of farm workers in KwaZulu-Natal, 83% in the Western Cape and 46% in the Northern, North-

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5 NLC, “Tenure Reform Media Fact Sheet”, not dated
6 Farm workers and labour tenants represent one of the largest constituencies of the National Land Committee, and as representatives of these groups, the National Land Committee has an interest in selecting and presenting figures that emphasise the importance of these groups, in order to prioritise the needs of farm workers and labour tenants in policy formulation and evaluation.
8 Section 3.4 of this chapter will briefly examine wage increases post-1994.
12 Beeld, September 14, 2001
14 Beeld, September 14, 2001
15 Farmworkers’ Research and Resource Project, Farm Labour Review, November 1996
West and Free State provinces had access to electricity.\textsuperscript{16} With regard to housing, 8.4% of black farm workers lived in shacks in 1994 and only 13.9% of black farm workers lived in formal housing that they owned.\textsuperscript{17} The total number of farm workers living in formal houses nevertheless jumped from 21.4% in 1991 to 55.6% in 1994. In 1999, some workers were still housed in the sties and stalls of the animals they tend.\textsuperscript{18} The best overall conditions tend to be in the Western Cape, where most farm workers are coloured due to the Coloured Labour Preference Policy of the apartheid era. The worst conditions tend to be found in the Northern, North-West and Free State provinces. Farm workers also have limited access to land. In KwaZulu-Natal, 41% of senior and middle ranking employees had access to (on average) 3.5 hectares, while 36% of rank and file employees had access to an average of 3.4 hectares. In the Free State, 41% of workers had rights to land for grazing. In the Northern, North-West and Free State provinces, only 15% of men and 10% of women were able to cultivate crops.\textsuperscript{19}

Despite the results of a Markinor\textsuperscript{20} survey, conducted amongst white commercial farmers in 2001, where 93% of respondents reported that labour relations on farms were “sound”, violence and paternalism remain evident on many of South Africa’s white-owned farms. The following examples serve to illustrate the point.

- In July 2002, the Centre for Rural Legal Studies in Cape Town conducted a survey and found that farmers regarded it as their right to “discipline workers” (including severe beatings) and, that some farm workers regarded it as normal to “receive a beating”.\textsuperscript{21}
- In June 1999, a farmer covered a neighbour’s employee in toxic silver paint in punishment for taking a short cut across his farm.
- Landowner Nicholaas Steyn, shot and killed a six-month old baby (Angeline Zwane), strapped to the back of her 11-year old cousin, as they walked across the smallholding on which their families lived and worked. Steyn was given a suspended sentence.
- In Mpumalanga, a commando unit active in the Wakkerstroom, Piet Retief, Volksrust and Ermelo areas has been accused of torturing and killing farm workers between 1996 and 2000. One worker was blinded by teargas. Another worker was handcuffed, badly beaten and given electric shocks by members of the commando in early 2002. Another man was blindfolded, kicked and beaten before corrosive liquid was pored over him. Although 18 members of the commando are facing charges ranging from murder to assault and abduction, farm workers in the area say that the police botched or ignored charges laid against the farmers.\textsuperscript{22} This case subsequently took an interesting turn. Two of the assaulted workers are suing the Minister of Defence for almost R2 million, since the commando\textsuperscript{23} units form part of the defence

\textsuperscript{16} NLC, “Tenure Reform Media Fact Sheet”, not dated
\textsuperscript{17} Farmworkers’ Research and Resource Project, Farm Labour Review, November 1996
\textsuperscript{18} Mail & Guardian, “Abuse deeply rooted in the land”, June 30 – August 7, 1999
\textsuperscript{19} NLC, “Tenure Reform Media Fact Sheet”, not dated
\textsuperscript{20} Mbeki T, “Strong support from all side for meaningful land reform”, Land Info, Volume 8, no.1, 2001
\textsuperscript{21} Land and Rural Digest, “Trapped in feudal times”, July/August, 2000
\textsuperscript{22} Land and Rural Digest, “Farm workers’ tales of terror near Volksrust”, May/June, 2000
\textsuperscript{23} These commando units were initially established as part of the apartheid establishments military operations in the rural areas.
force. At the same time, the South African National Defence Force (SANDF) is covering the legal fees for the farmers/commando members.\(^{24}\)

- Farmer, Pieter Henning, was sentenced to 30 years in prison for beating, strangling, driving over and decapitating (with an axe) two of his farm workers because one of the workers called him Piet instead of “baas”.\(^{25}\)

- Further examples include a farmer that was given a suspended sentence for murdering one of his employees after the employee accidentally drove a tractor over the family dog. Or, the farmer whom police declined to charge for putting a bullet through the head of a black teenager he suspected of stealing fruit. Or, the farmer in Louis Trichardt who walked free after shooting one of his employees because he “mistook the man for a dog”.\(^{26}\)

- In 1998, the Human Rights Commission conducted a study into the abuse of farm workers in the northern parts of the country. In one case, a farmer turned his dog on a woman, ordered her to strip naked and to lie in a coffin for five hours and, fined her R800 (three months wages) for taking dry wood from his land. The farmer was not prosecuted.

- A report, by New York based Human Rights Watch, states that while attacks against farm owners get most of the attention “farm workers and other rural dwellers are more vulnerable to violence, including from their white employers and less likely to get help from the police and courts”.\(^{27}\)

Paternalism and high levels of violence result from, among others, the following five factors. It is partly a result of the fact that farm workers are dependent on farmers, not only for employment, but also for family cohesion, land, housing, education, basic necessities, food and social services (including health care and electricity). Farmers have the power to split up families by refusing to allow children or other family members to stay on the farm. Families’ access to housing is also tied to the farm worker’s employment contract. Termination of employment usually means eviction of the whole family.\(^{28}\) The Centre for Rural Legal Studies in Cape Town points out that since farmers often control transport, workers are forced to purchase supplies, including basic foodstuffs from farm shops. Prices are set at the discretion of farmers and purchases made on credit are deducted from farm worker’s salaries. Farm workers are not provided with a written (or any other) record of monthly deductions. Secondly, high unemployment levels and the isolated nature of rural communities result in a lack of mobility among farm workers. The 1992 Agricultural Survey found that 32.3% of farm workers had been living on the same farm for 10 years or more. Thirdly, political change and economic restructuring since 1994, as well as, white farmers’ apprehension in a changing social, political and economic environment, have arguably led to an increase in violence.\(^{29}\) Violence appears to be more prevalent in specific sectors and specific areas indicating that the level of economic development also plays a role. According to the

\(^{24}\) Mail & Guardian, July 6-12, 2001

\(^{25}\) Mail & Guardian, “Abuse deeply rooted in the land”, June 30, 1999

\(^{26}\) Mail & Guardian, “Abuse deeply rooted in the land”, June 30 – August 7, 1999

\(^{27}\) Business Day, “Agri South Africa looks at labour issues”, August 23, 2001

\(^{28}\) Land and Rural Digest, “Trapped in feudal times”, July/August, 2000

\(^{29}\) This argument is made by a number of land and rural NGOs, but more particularly by the Centre for Rural Legal Studies in Cape Town.
Black Sash, extensive violence is more often reported in the most isolated and marginalised farming communities. In the richer, more capitalised agricultural regions such as the Natal Midlands, the Western Cape and the former Western Transvaal, there is less evidence of violence. In the poorer areas of the former South Eastern Transvaal, Northern Natal and parts of the Free State, violence appears to be more prevalent.\textsuperscript{30}

Finally, cases of violence are often not reported because of an inefficient and arguably biased system of policing and court procedures. It is evident, from the above mentioned examples, that perpetrators are often not arrested and in the rare cases where arrests do occur, farmers tend to be found innocent or lenient sentences discourage farm workers from pressing charges. When approximately 120 farm workers’ delegates met in Wakkerstroom, under the auspices of the NLC, for example, they stated that “the criminal justice system on farms is run for the protection of farmers. In many cases local police, prosecutors and magistrates are farmers or are related to the farming community”. The delegates also called on the Minister of Defence to “disband the commandos, which are just private armies of farmers used to terrorise us out of land”.\textsuperscript{31} Without exception, (i.e. 100\%) respondents to the interviews that I conducted in Mpumalanga, in 2001 at the Sheba and Solane communities, stated that violence was prevalent on farms and that the police did not respond to grievances.\textsuperscript{32} A member of the Sheba community, who was employed as a farm worker on one of the neighbouring farms explained that “these people will shoot and kill you for maybe taking one fruit for your family . . . if you say anything you will go to jail for stealing and the farmer will go home”.

Conditions, such as those described above, are not exclusive to South Africa. In Zimbabwe, for example, farm workers have failed to derive significant benefit from their participation in the large-scale commercial agricultural sector that arguably drives the Zimbabwean economy. Like their South African counterparts, they remain dependent on paternalistic (sometimes violent) farmers. Moreover, in terms of infant mortality, nutrition, education standards, occupational health mobility and overall living conditions, farm workers have close to the lowest rates of any social group in Zimbabwe.\textsuperscript{33}

Labour tenants (in South Africa) have a similar demographic profile and also depend on farmers for access to land, housing and income. The prospects of political change led to an increased wave of labour tenant evictions in the early 1990s, as many farmers feared the imposition of land to the tiller reform programmes. Increased conflict in KwaZulu-Natal and Mpumalanga and, a march by labour tenants on the police station in Colenso (Natal), prompted Derek Hanekom to pledge that the new government would refuse to

\textsuperscript{31} NLC, Press release, April 22, 2001
\textsuperscript{32} Interviews with Sheba community members, June 27,28 & 29, 2001 & Interviews with Solane Community members, June 29, 2001
\textsuperscript{33} The entire paragraph is based on Moyo S, Rutherford B & Amanor-Wilks D, “Land reform and changing social relations for farm workers in Zimbabwe”, Review of African Political Economy, 84, 2000
validate evictions.\textsuperscript{34} The South African tenure reform programme, for farm workers and labour tenants, was developed partly in response to the perceived increases in evictions that accompanied the period immediately before and after the 1994 elections (as is discussed in section three). It is argued that it is the reactionary basis of tenure policy and accompanying legislation that undermined the success of the farm worker/ labour tenant tenure reform programme.

\textbf{2. Labour Tenants, Farm Workers and Land Reform: International examples}

International evidence indicates that there are primarily two methods to address the plight of farm workers and labour tenants through land reform. The first method is land reform based on land redistribution to labour tenants and farm workers (i.e. land to the tiller programmes). The second includes attempts to improve the employment and living conditions of farm workers and labour tenants through reduced rents and the extension of labour legislation to rural areas. In another group of countries, notably Zimbabwe, farm workers and labour tenants were displaced or dispossessed by land reform programmes.

Land to the tiller programmes were relatively successful in Taiwan, the Philippines and South Korea. The Taiwanese land reform programme, initiated in 1949, adopted a land to the tiller programme in 1953. This involved a legally imposed land ceiling and the selling of land to tenants and farm workers. Between 1951 and 1953, 62 000 hectares of farmland was sold to approximately 122 000 new owners and, by 1971, 90\% of Taiwanese agricultural land was owner cultivated, as opposed to, 55\% in 1949.\textsuperscript{35} South Korea embarked on a similar programme between 1955 and 1985. Approximately 60\% of the total cultivated area was redistributed, resulting in sustainable agricultural development and one of the most equal systems of land distribution in the world.\textsuperscript{36} A similar programme, in India, however, was largely unsuccessful\textsuperscript{37} (with the exception of the state of Kerala. In the state of Kerala, the land to the tiller programme was initiated in 1969 under the elected Communist government. Under the Kerala Land Reform Amendment Act, approximately 40\% of the total farm area had been distributed to tenants and farm workers by 1980.\textsuperscript{38}) The land to the tiller programme in Bangladesh was also unsuccessful. In 1950, the East Bengal State Acquisition and Tenancy Act was introduced to ensure that “\textit{all land shall belong to the real cultivators as owners}”. Three decades later, however, landlessness in Bangladesh had more than doubled.\textsuperscript{39} In most cases, land to the tiller programmes consisted of landowners compulsory selling land to tenants.

\textsuperscript{34} Williams G, “Transforming Labour Tenants”, \textit{Land, Labour and Livelihoods}, Volume 2, Lipton M, Ellis F, Lipton M (Eds.), Indicator Press, December 1996
\textsuperscript{35} Cloete F, ”Comparative lessons for land reform in South Africa”, \textit{Africa Insight}, Vol.22, No.4, 1992
\textsuperscript{36} El-Ghonemy M R, ”South Korea”, \textit{The Political Economy of Rural Poverty}, Routledge, London, 1990
\textsuperscript{37} Byres T.J, ”Land Reform, Industrialisation and the Market Surplus in India: An Essay on the power of rural bias”, \textit{Agrarian Reform and Agrarian Reformism}, Faber & Faber, London, 1974
\textsuperscript{38} Christodoulou D, ”Agrarian Reform: Solution, Holding Operation or Trojan Horse”, \textit{The Unpromised Land}, Zed Books, London, 1990
\textsuperscript{39} Hargreaves S, “Chilli powder and kitchen knives”, \textit{Land and Rural Digest}, May/June, 2001
Land reform programmes based on redistribution to labour tenants and farm workers have several advantages. Firstly, resettlement costs are either absent or very minimal. Second, it is often not necessary for the government to invest in training programmes because labour tenants already have (in most cases) years of experience farming a particular piece of land. Thirdly, the production process is not significantly altered or affected. The costs of providing infrastructure and continued support are low because tenants tend to already have access to roads, markets and services. Fourth, communities remain intact, minimising the negative impact land reform programmes may have on social cohesion. Land to the tiller programmes, however, have limited applicability to the South African situation. Firstly, because there are far fewer labour tenants and farm workers so that redistribution of large farms to workers would require that additional groups of people be resettled on farms. Secondly, farm workers and labour tenants in South Africa generally do not have access to the resources necessary to acquire a farm or start production.

Examples of attempts to improve the employment and living conditions of farm workers and labour tenants through reduced rents and the extension of labour legislation to rural areas can be found in South Korea, Taiwan, Peru and Mexico. In South Korea and Taiwan, a significant reduction in rent payments created greater income equality between landowners and tenants. In Taiwan, for example, a legal limit was placed on the amount of rent that could be charged on land. Although of limited applicability to South Africa, it seems reasonable that rents payable by existing labour tenants and sharecroppers should be subject to some form of regulation. For any such legislation to be effective, however, consistent and effective implementation and, hence, increased human capacity is required.

The Agrarian Reform Law of 1960, in Peru, included an interesting stipulation that farms that did not comply with labour legislation would be expropriated. This appears to be an innovative way of making land available for redistribution, while also improving the conditions of employment for farm labourers. Given the performance of the Department of Land Affairs thus far, however, it appears unlikely that the DLA will develop the necessary capacity to effectively implement this kind of policing strategy. The Mexican government in the 1930s, acknowledged that not all landless people would benefit from a land reform programme and, therefore, included provisions to improve the working conditions of farm labourers in the overall agrarian reform programme. The Federal Labour Law stipulated minimum wages, regulated resource access on farms and guaranteed free housing, medical care and education. Most of the objectives of the law were, however, only partially achieved. Land reform in Kerala – the only Indian state where land reform was successful – was accompanied by comprehensive rural labour market reform that provided workers with collective bargaining rights, minimum wages and more secure employment conditions.

40 See also the section Efficiency Debate: Small-scale vs. Large-scale agriculture
Despite the apparent shortcomings of such policies, legislation stipulating minimum wages and regulating working conditions and accommodation could improve the economic situation of thousands of farm workers and labour tenants in South Africa. In order to have a positive impact, however, such legislation must be effectively enforced and accompanied by policies and legislation that pre-empt and discourage the possible discharge and evictions preceding and following the implementation of, for example, minimum wage laws. The biggest obstacle in South Africa is that the Departments of Agriculture and Land Affairs do not have the capacity to monitor and enforce the implementation of such laws. Nor are the Departments of Agriculture and Land Affairs likely to develop such capacity in the near future, given the national government’s macro-economic policy of fiscal restraint and the emphasis on scaling down government bureaucracy.

A third possibility is that farm workers and labour tenants are omitted from, or negatively affected by, land reform programmes in terms of displacement or loss of employment. In Zimbabwe, for example, Gadaga argues that the government resettled 70 000 peasants at independence on three million hectares of commercial farming land and in the process displaced 40 000 farm workers. Figures are disputable and are often used as anti land reform propaganda, but the issue is real. In the new National Land Policy of 1999, the Zimbabwean government committed itself to focus policy attention on farm workers’ rights to land and resettlement. Nevertheless, in July 2000, the Agricultural and Plantation’s Workers Union of Zimbabwe warned that 50 000 farm workers would lose their jobs and their homes if the government went ahead with the confiscation of the 804 farms listed for take-over. The Sunday Times reported, in August 2001, that 18 000 Zimbabwean farm workers had been displaced by the land related violence that erupted in July 2001. In September 2000, in Beatrice (Zimbabwe), farm workers retaliated against “land invaders” and are quoted as saying that “these people are occupying land on which we are supposed to grow tobacco . . . if we stop working on this land we have no reason to be here. We agreed . . . to remove them so that we can save our families from poverty”. These examples underscore the importance of putting policies and legislation in place to protect farm workers’ and labour tenants’ interests during the process of reform.

3. Labour tenants, farm workers and land reform in South Africa

The African National Congress has committed itself to address the plight of farm workers and labour tenants since its inception in the early 1900s. The Freedom Charter went through at least one surviving preliminary draft that focussed a considerable amount of

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43 See section 2.4 in this chapter
44 Gadaga N, "The Farm workers will suffer too", New African, February 1998
47 Sunday Times, “Farm workers next in line of Mugabe’s fire”, August 26, 2001
detail on the rights of farm dwellers. “For the farm tenants we demand land, homes and security. No man shall live out his life squatting on a small patch of earth he will never own at the whim and mercy of another. Farm workers should be protected by welfare legislation, assured paid leave, sick benefits and overtime payments. Child labour on farms should be abolished. The tot system must be ended. The system of coercing men to work on farms and the wicked farm prisons should be abolished for all time”.

In the pre-negotiation period, some academics, as well as ANC activists emphasised the need to protect the rights of, and support the agricultural endeavours of, labour tenants. In the May 1990 ANC meeting in Harare to discuss post-apartheid economic policy, some land reform activists (notably Mike De Klerk), were arguing for the large-scale reintroduction of sharecropping. This argument was based on a concern that emerging black farmers should not gain access to land reform deals that were laden with the potential for bankruptcy. Others objected that such a policy would leave the racially defined power relations in rural areas unchanged. The argument for the expansion of sharecropping arrangements subsequently disappeared from the dominant land reform discourse. (More discussion seems warranted, however, since sharecropping/labour tenancy is a feature of large-scale commercial farming in many countries. It is not labour tenancy as an institution that is objectionable. What is objectionable is “the exploitative terms of some contracts”.

In a context of land scarcity and unemployment, labour tenancy and sharecropping offers an opportunity for those who lack sufficient resources to engage in independent farming. In Lesotho, for example, sharecropping is becoming more frequent for precisely these reasons. Furthermore, labour tenancy has survived decades of policies aimed to eliminate it and will continue to exist (or re-emerge) as long as it is economically rational (in the interest of landowners and tenants). Sharecropping and labour tenancy may also contribute to greater productivity, as those who are unable to farm may surrender their land to those who can. In Lesotho, widows especially see land as the only productive asset over which they retain control. Lacking the necessary resources to farm productively, however, they often use land as their contribution to a sharecropping arrangement. It is therefore crucial that legislation relating to tenure contracts is developed.)

The ANC’s 1992 land policy document also specifically called for “the promotion of human and employment rights for farm workers”. World Bank representatives and commissioned researchers entered the debate in the early 1990s (1993). These representatives argued that “labour tenants and workers who have resided on farms for a

50 See chapters one and three for definitions, history and agricultural implications of labour tenancy, sharecropping and farm workers in South Africa and elsewhere.
51 Dolny H, Banking on Change, Penguin Books, South Africa, 2001. Also see chapter 4 for an explanation of the relationship between access to credit and impoverishment.
long time will have retroactive claim to some land and housing, irrespective of whether they have been recently evicted" and suggested equity schemes as an option. The commitment to improve the living and working conditions of farm workers and labour tenants was also contained in Section 4.5.2.5 of the Reconstruction and Development Programme. This section called for “comprehensive measures” to improve the “living and working conditions of farm workers” emphasising the extension of labour legislation to farm workers.

During the policy formulation process, particularly around the 1996 Green Paper on Land reform, the question of how to address the plight of labour tenants and farm workers within a national land reform programme generated some heated debate. Representatives from the ANC were arguing that the land rights of labour tenants and farm workers should be dealt with in the context of redistribution and not tenure reform. Land and rural NGOs argued that the Green Paper paid insufficient attention to the plight of labour tenants and farm workers, and pointed to the continuing (arguably increasing) evictions and unfavourable employment conditions on South Africa’s farms.

The 1997 White Paper on Land Reform in South Africa clearly reflected these debates. The land rights of farm workers and labour tenants would be addressed in the context of the Redistribution programme (i.e. access to grants). Two pieces of legislation attempting to address evictions and tenure security were enacted. These are the Land Reform (Labour Tenants) Act of 1996 and the Extension of Security of Tenure Act of 1997. In addition, the Basic Conditions of Employment Act was later extended to farm workers.

In terms of the Redistribution programme farm workers and labour tenants could qualify for the R15 000 (later R16 000) Settlement Land Acquisition Grant (SLAG). The grant could be used to purchase land or housing (on-farm or off-farm). The paper also stated that the grant could be used for equity schemes or similar agreements between farmers/the private sector and farm workers. Options mentioned in the White Paper include:

1. A contractual agreement between the state, farm workers and the farm owner in which the farm worker and his/her family use the grant to enhance the housing, stock and/or non-bulk service provision on the farmer’s land, subject to the right of occupancy for the farm worker and his/her family. The agreement should also ensure that the farm worker will be financially compensated by the owner for any improvements effected by the farm worker, in terms of own investment and as a beneficiary of the grant, should the occupancy be terminated, and that the funds would be reinvested to provide for alternative settlement opportunities.

57 Interview with Dave Husy (Former Deputy Director of the NLC), May 31, 2001
An equity share holding agreement between the farm worker and the farm owner whereby the value of the grant that is invested in the farm enterprise is held as an equity share by the farm worker.\textsuperscript{58}

The 2002 Land Redistribution for Agricultural Development Programme’s (LRAD) Strategic Plan placed specific emphasis on the “resettlement” of “vulnerable” groups, which include labour tenants and farm workers. Under the LRAD programme, farm workers and labour tenants also qualify for grants (subject to the same conditions as other beneficiaries) that can also be used to purchase equity shares.

Share-equity schemes consist of a joint enterprise between farm workers and a commercial farmer and/or a third party investor. Workers acquire a legal and financial interest in the venture, participate at management and decision making level and receive a share of the profits.\textsuperscript{59} For example, in Olifants Fontein one of Nulaid’s egg farms decided to sell shares to 14 farm workers and the farm manager, in 1996, for R8 million. In terms of the agreement, the workers acquired the farm property, poultry sheds, equipment and 163 000 hens. Nulaid retains responsibility for grading, packing and distribution and has also committed itself to purchasing 85% of the produce.\textsuperscript{60} In Paarl, 59 families acquired 17.4 hectares for settlement and agriculture, agricultural implements and a wine cellar. In terms of the agreement, grapes will be sold to beneficiaries at cost and, income from the venture, which includes tourist accommodation, will be used to build houses for the 59 families.\textsuperscript{61} A further example can be found on the Olifants River in the Western Cape, where 36 workers acquired equity-shares in prime citrus land in May 1999. The shares were bought with the Settlement Land Acquisition Grant and have a guaranteed minimum return of 10%.\textsuperscript{62} In Mpumalanga, 74 farm workers embarked on an equity scheme with Hall and Sons (the largest citrus producer in the lowveld) and secured a 20-year contract to supply a United States soft-drink company with 875 tons of lemons a year. If the scheme succeeds, the farm workers will earn approximately R1 million per year. Funding for the scheme came from the DLA (R900 000 to purchase the land) and from the private sector (R1.5 million in loans, gifts, training and the appointment of 16 project managers).\textsuperscript{63} If successful, this kind of venture could significantly increase the income earning capacity of the workers involved.

Proponents of equity schemes argue that these schemes meet the objectives of the land reform programme (and particularly the LRAD programme) by giving beneficiaries a meaningful stake in the economy (measured not in terms of hectares redistributed, but in terms of actual and potential income).\textsuperscript{64} They also point to a number of advantages that

\textsuperscript{58} Department of Land Affairs, White Paper on South African Land Policy, Pretoria, April 1997
\textsuperscript{59} Fast H, “Who holds the share? Gender dynamics and share-equity schemes”, Agenda, 42, 1999
\textsuperscript{60} Mbatha S, "Well Laid Scheme", Enterprise, May 1998
\textsuperscript{61} Hadland A, "New Season begins in the Cape Winelands as workers get land to call their own", Sunday Independent, February 15, 1998
\textsuperscript{62} The Farmer, “Uitsoek sitrusgrond vir plaaswerkers”, June 1999
\textsuperscript{63} Mail & Guardian, “Life is sweet for lemon farmers”, August 2 – 7, 2002
\textsuperscript{64} McKenzie C, “Providing access to commercial farming in the Western Cape: An analysis of the fiscal performance of alternative farm models”, Land, Labour and Livelihoods Volume 1, Lipton M, Ellis F & Lipton M (Eds.), Indicator Press, December, 1996
equity schemes have over other redistribution projects. Equity schemes are a method of redistribution that has no, or minimal, negative effects on agricultural productivity. Furthermore, because equity schemes increase farm worker participation in decision making, it leads to greater job satisfaction and accordingly could result in increased productivity.\textsuperscript{65} According to TRAC’s director in Mpumalanga, equity schemes “have outperformed all other types of land reform from a commercial point of view”.\textsuperscript{66} Equity schemes can effectively address (rather than alleviate) poverty and, can overcome the problems of lack of resources encountered in the majority of redistribution projects because, these schemes provide new entrants into the agricultural markets with access to higher value capital intensive agriculture.\textsuperscript{67} As the case studies indicate, equity schemes afford beneficiaries with a greater chance to access private sector capital and credit. As discussed in chapter seven, the absence of these additional financial resources in the majority of redistribution projects (under the SLAG programme) meant that beneficiaries were unable to commence productive activities. In addition, farm workers have access to increased income and are able to accumulate capital. Equity schemes also imply lower initial costs for both the government and beneficiaries (i.e. not having to buy land, provide infrastructure or pay the start-up costs for first seasonal crops) and immediate, and ongoing, returns. Further benefits include greater tenure security and the opportunity to develop skills that could later be used in independent agriculture projects. Farm worker partners in equity schemes benefit from the skills and experience of the previous owner, while the owner, as partner, benefits from a more stable and productive workforce.\textsuperscript{68}

Nevertheless, equity schemes have not all been equally successful and have generated considerable controversy. In Mpumalanga, a group of 2 000 farm workers, co-owners of the R16 million Inala export farm near Malelane, are taking legal action against their equity partner for failure to disclose financial records. The workers point out that, after seven years, their living conditions have not improved, that no dividends have been paid to them and that they are still earning as little as R500 per month.\textsuperscript{69} Critics argue that equity schemes afford unscrupulous farmers an opportunity to re-capitalise their operations or, to access cheap labour.\textsuperscript{70} The ministry of Agriculture and Land Affairs pointed out that equity schemes do not significantly change the racial distribution of land ownership and, therefore, leaves the racial division of power in rural areas relatively

\textsuperscript{66} Interview with Chris Williams (Director of TRAC Mpumalanga), May 24, 2001
\textsuperscript{68} McKenzie C, “Providing access to commercial farming in the Western Cape: An analysis of the fiscal performance of alternative farm models”, Land, Labour and Livelihoods Volume 1, Lipton M, Ellis F & Lipton M (Eds.), Indicator Press, December, 1996
\textsuperscript{69} Mail & Guardian, “Farm workers in historic court battle with equity partner”, July 12 – 18, 2002
unchanged. Some of the first equity schemes in the Western Cape were also enormously expensive.\footnote{Interview with Helena Dolny (Former Director of Land Bank), June 22, 2001 & see Mather C & Adelzadeh A, Macro-economic strategies, agriculture and rural poverty in post-apartheid South Africa, National Institute for Economic Policy, Occasional Paper Series, 10, JHB, 1997}

### 3.1. The Land Reform (Labour Tenants) Act

The Land Reform (Labour Tenants) Bill was propounded in the 1996 Green Paper and became the Land Reform (Labour Tenants) Act 3 in 1996 (effective from June 2, 1995). The Act (LTA) introduced legal procedures for the eviction of labour tenants (as defined by the Act) so that only the Land Claims Court could legally evict tenants.\footnote{Department of Land Affairs, White Paper on South African Land Policy, Pretoria, April 1997} Chapter two of the Act aims to protect the tenure rights of existing labour tenants, chapter three enables land acquisition by tenants, chapter four deals with the powers of the court and chapter five includes provision for mediation and arbitration services in cases of dispute.

The Act has two broad objectives, protecting existing tenure rights and redistributing land to tenants by means of grants.

In terms of chapter three, a labour tenant or her/his successor may apply for a grant of (a) the land, which he or she is entitled to occupy or use. (b) The land, which he or she or his or her family occupied or used during a period of five years prior to 1996 and of which he or she or his or her family was deprived contrary to the terms of agreement between the two parties. (c) Rights in land elsewhere on the farm or in the vicinity, which may have been proposed by the owner of the farm and (d) such servitudes of rights of access to water which are necessary for the exercise of the rights which he or she enjoys or has previously enjoyed as a labour tenant”.\footnote{Williams G, “Transforming Labour Tenants”, Land, Labour and Livelihoods, Volume 2, Lipton M, Ellis F, Lipton M (Eds.), Indicator Press, December 1996}

The Land Claims Court may thus order that the rights of a person, who was evicted between June 2, 1995 and the date of enactment, be reinstated. The cut-off date for reinstatement applications was March 23, 1997. Financial grants to labour tenants are not automatic and do not consist of fixed amounts as in the case of the Settlement/Land Acquisition Grant.\footnote{Hornby D, "All we need is a piece of land", National Land Committee Investigation into the Current Status of Labour Tenancy, March 1998}

Sections 11 (notice of eviction), 17 (application and procedures to acquire land) and 18 (mediation) of the Act define the responsibilities of the DLA. In terms of Section 11, a landowner is obliged to give the DLA and the labour tenant a two-month written notice of the intention to evict. The Director General is obliged (shall) to convene a meeting in an attempt to settle the dispute. Once the Director General receives the application to acquire land, s/he has to notify the landowners immediately, as well as publish the application in the government Gazette. The Director General then requests the landowner to provide (within 30 days) details of unregistered rights holders and any other relevant information about the land. The owner also has to stipulate (within 30 days) whether the applicants are labour tenants and provide arguments in support. The LTA allows any other person whose rights may be affected to participate and obliges the DLA

\footnote{\textit{\textsuperscript{71}} Interview with Helena Dolny (Former Director of Land Bank), June 22, 2001 & see Mather C & Adelzadeh A, Macro-economic strategies, agriculture and rural poverty in post-apartheid South Africa, National Institute for Economic Policy, Occasional Paper Series, 10, JHB, 1997} 
\footnote{\textit{\textsuperscript{72}} Department of Land Affairs, White Paper on South African Land Policy, Pretoria, April 1997} 
\footnote{\textit{\textsuperscript{73}} Williams G, “Transforming Labour Tenants”, Land, Labour and Livelihoods, Volume 2, Lipton M, Ellis F, Lipton M (Eds.), Indicator Press, December 1996} 
\footnote{\textit{\textsuperscript{74}} Hornby D, "All we need is a piece of land", National Land Committee Investigation into the Current Status of Labour Tenancy, March 1998}
to inform these parties. Section 18 gives the Director General the authority to appoint mediators.\footnote{The whole paragraph draws on Hornby D, "All we need is a piece of land", National Land Committee Investigation into the Current Status of Labour Tenancy, March 1998}

In order to qualify as a labour tenant section one of the Act requires that a person,

\begin{enumerate}
  \item[a)] Must stay or have a right to stay on a farm.
  \item[b)] Must have had cropping or grazing rights on the farm in (a) or another farm which belongs to the owner. In return for the cropping or grazing rights the person must have worked for the owner.
  \item[c)] Must have or must have had a parent or grandparent who had cropping and grazing rights on the farms mentioned in (b). This parent or grandparent must also have worked for these rights.
  \item[d)] These requirements must have been met on June 2, 1995.\footnote{Land Claims Court of South Africa, Van Zydam v. Zulu, LCC 27/98, January 12, 1998}
\end{enumerate}

Initially the Labour Tenants Act placed the onus on farm dwellers to prove their labour tenancy. This resulted in an amendment, in late 1997, shifting the onus to landowners to prove that a labour tenant is a farm worker. Further conditions for evictions include a prohibition on the eviction of persons older than 65 or disabled persons who have nominated a successor and, the prohibition on the eviction of a person while an application to acquire rights in land in terms of Chapter three is pending.\footnote{For more detail see Land Claims Court of South Africa, Van Zydam v. Zulu, LCC 27/98, January 12, 1998} The Act allows a labour tenant to appoint a successor and landowners may not unreasonably object to the person the tenant names to provide labour in her/his stead. In cases of death, labour tenant families may be given 12 months notice of eviction. The LTA also entitles labour tenants to conditions of employment equivalent to those legislated for farm workers under the Basic Conditions of Employment Act 3 of 1983.

The Act was a compromise and, from the time of its promulgation, both the National Land Committee and the South African Agricultural Union expressed dissatisfaction. The DLA had initially argued that the Labour Tenants Act would provide more than 250 000 farm workers and labour tenants in parts of KwaZulu-Natal and the Eastern Transvaal with rights to live on white owned farms without fear of eviction.\footnote{Mail & Guardian, "Hanekom's Bill to bury slavery", June 2, 1995} The Act has had some successes. By 2000, 20 000 labour tenants had been registered under the LTA and there were 674 registered labour tenant projects involving 3 701 households of which 12\% were female-headed.\footnote{Turner S & Ibsen H, "Land and agrarian reform in South Africa: A Status Report", Occasional Paper Series, PLAAS, UWC, November, 2000, p. 26} Nevertheless, the dominant analysis is that the Labour Tenants Act has not been particularly successful. In 1998, the South African Council of Churches argued that not one single court case had been resolved in favour of labour tenants.\footnote{Gillan D.S. (Ed.), Church Land and Poverty, SACC, NLC, SPP, CLP, Braamfontein, 1998} A further testimony to the failure of the Act is the April 2001 call, by
representatives of KwaZulu-Natal and Mpumalanga farm dwellers, for the scrapping of the Labour Tenants Act.\textsuperscript{81}

3.2. Problems with the Land Reform (Labour Tenants) Act

The precedent for subsequent Land Claims Court judgements was set in the case of Mahlangu vs. De Jager.\textsuperscript{82} The court judged that in order to qualify as a labour tenant all four conditions (as mentioned above) had to be met. Therefore, long-term first generation labour tenants (those without labour tenant parents or grandparents) were summarily excluded from the ambit of the Act.\textsuperscript{83} Many other groups were also excluded from the benefits of the LTA because of the narrow definition of labour tenants suggested by the Act and employed by the courts. Those who lost their labour tenancy status before June 1995 are not covered by the Act. Subsequent research has indicated that many labour tenants lost their status particularly in the period between 1990 and 1994, when political change made farmers apprehensive about the possibilities of land reform.\textsuperscript{84} The NLC has pointed out that labour tenants who moved opportunistically or, who were forced to move from farm to farm, are also excluded from the Act.

The cut-off date to lodge land claims under the LTA was set for March 2001. The cut-off date is problematic for a number of reasons, including the fact that the DLA did not conduct a publicity drive (beyond publication in the government Gazette) to generate awareness among labour tenants of their rights. It was only in 1999 that the DLA launched an information campaign, which brought approximately 3 000 new applications for the transfer of land rights to labour tenants.\textsuperscript{85}

As mentioned, the process of settling claims under the LTA has been extremely slow and largely ineffective. There are two major reasons for this. Firstly, the limited capacity within the Department of Land Affairs (discussed below). Secondly, according to Lahiff\textsuperscript{86}, changes in Legal Aid Board tariffs coupled with the dissolution of the Independent Mediation Services of South Africa (IMSSA). This greatly increased the administrative and financial burden on the DLA and “caused considerable paralysis within the DLA”, as indicated by the lack of available statistics.\textsuperscript{87}

The most serious problems have emerged around the enforcement and implementation of the Labour Tenants Act. Capacity constraints, both human and financial, are major factors in this regard. In Mpumalanga, where an estimated 1 200 families live on white

\textsuperscript{81} NLC, Press release, April 22, 2001
\textsuperscript{82} Land Claims Court of South Africa, Mahlangu vs. De Jager, LCC SA235, 1996
\textsuperscript{83} Hornby D, "All we need is a piece of land", National Land Committee Investigation into the Current Status of Labour Tenancy, March 1998
\textsuperscript{84} Hornby D, "All we need is a piece of land", National Land Committee Investigation into the Current Status of Labour Tenancy, March 1998
\textsuperscript{86} Lahiff E, “Land reform in South Africa: is it meeting the challenges?”, Policy Brief, no.1, PLAAS, September 2001
\textsuperscript{87} Six months after the cut-off date, there were no figures available on the number of claims received, the number of owners notified or the number and cost of claims settled.
owned farms in the vicinity of Nelspruit, for example, TRAC has only 3 fieldworkers, while the Provincial DLA has only 12 fieldworkers responsible for monitoring evictions (over and above their other duties). As former Director General Geoff Budlender said, “we underestimated the ability of NGOs and of different parts of government to cope with the changes and accordingly people have become more vulnerable to a certain extent. We failed badly on implementation. We thought we would pass the law and things would change. We passed the law and things did not change.”

Gavin Williams points out that labour tenants are generally remunerated in terms of “right to occupy and use land” and not in cash wages. However, the LTA provides no way of measuring the value of “the right to occupy or use land”. The value could be determined by the rental value of the land, the income generated from the land or even the grazing capacity of (or number of cattle on) the land. This implies that the LTA does not address the complexities of relationships on South African farms.

The serious nature of the eviction problem called for immediate action, which partly explains some of the inadequacies of the Act. “We had no firm factual basis for the decisions we were making. You had to take a leap of faith because you could not sit down and conduct a five or ten year research programme to decide what you were going to do in order to stop evictions”.

Many critics have argued that the legislation protects the rights of a limited number of labour tenants but, that in a situation of land scarcity, political change and high unemployment, the LTA may limit the opportunities open to others. Farmers may respond by not allowing families to reside (or keep cattle) on farms in order to avoid their classification as labour tenants, thereby reducing the livelihood options available to South African farm dwellers.

Despite significant changes to the national land reform programme in 1999 and 2000, no new legislation was developed in an attempt to overcome the problems encountered during the implementation of the Labour Tenants Act. The new/current Minister of Agriculture and Land Affairs did extend the period for the submission of applications under the Labour Tenants Act by one year and, did commit the DLA to a publicity campaign around labour tenant rights. On a whole, however, labour tenant policies remain unchanged.

The Extension of Security of Tenure Bill, contained in the 1997 White Paper on Land Reform in South Africa, was underpinned by four principles:
(a) The law should prevent arbitrary and unfair evictions.
(b) Existing rights of ownership should be recognised and protected.
(c) People who live on land belonging to other people should be guaranteed basic human rights and,
(d) the law should promote long-term security either on the land where people are living at the moment or on other land.\(^94\)

The Extension of the Security of Land Tenure Act (ESTA) was passed by parliament, in September 1997, despite considerable controversy. ESTA was the first “really contentious” land reform Act to be passed by the ANC-led government.\(^95\) The South African Agricultural Union and other representatives of white commercial agriculture were fundamentally opposed to the Act, arguing that the Act elevated tenant rights above ownership rights. The conservative Transvaal Agricultural Union immediately adopted a motion distancing its members from any implementation requirements of the ESTA.\(^96\) The National Land Committee, and other representatives of farm workers and labour tenants, argued that the Act extended insufficient protection to farm workers and labour tenants and, in particular, did not address the needs of those already evicted or in the process of being evicted. According to the National Land Committee and, some of its affiliates, the Act was a “charter for legal evictions rather than an effective shield for the disadvantaged”.\(^97\) In a context where evictions appeared to be increasing, the Department of Land Affairs “had to do something to protect these people” despite of “encountering fierce resistance” to the Act.\(^98\) The National Land Committee played a particularly influential role in the promulgation of the ESTA. “They [the NLC] were an extreme voice. I think it was a good thing that this extreme voice existed because it allowed us to walk a middle road. If that voice was not there, we would have gone for an absolutely minimalist position”.\(^99\)

The Act aimed at preventing unfair evictions of farm workers. Section 19 of the Act legislates that local or regional court orders for eviction automatically need to be reviewed by the Land Claims Court. Section 9 of the Act contains the procedure for obtaining normal eviction orders, while the legal procedure to be followed during urgent evictions is set out in Section 15.\(^100\) Section 8 stipulates that employees/farm workers cannot be evicted prior to the settlement of labour disputes. Section 4 of the ESTA allows the Minister of Land Affairs to allocate grants for the purchase and/or

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\(^94\) Department of Land Affairs, White Paper on South African Land Policy, Pretoria, April 1997  
\(^95\) Interview with Derek Hanekom (Former Minister of Land Affairs and Member of Parliament), Hartebeestpoortdam, September 8, 2002  
\(^96\) Cook L, “Farmers pledge to fight to end over tenure security bill”, Business Day, September 4, 1997  
\(^98\) Interview with Derek Hanekom (Former Minister of Land Affairs and Member of Parliament), Hartebeestpoortdam, September 8, 2002  
\(^99\) Interview with Derek Hanekom (Former Minister of Land Affairs and Member of Parliament), Hartebeestpoortdam, September 8, 2002  
\(^100\) Land Claims Court of South Africa, Conradie v. Fortuin, LCC 19 R/98, February 16, 1999
development of land to ensure security of tenure for former or current farm workers. (By the end of 1999, the majority of the grants provided involved people moving off farms and into townships rather than acquiring land on farms for productive or secure residential purposes). Other key elements of the Act include greater tenure security for persons over the age of 60 who have lived on a farm for ten years or more, rights to land for grazing and cultivation and protection for farm workers’ families. In cases where long-term employees die, for example, dependants may only be evicted after 12 months. Section 26 of the Act gives the Minister of Agriculture and Land Affairs the power to expropriate land for the purposes of on-farm or off-farm development projects. By the end of 1999, expropriation powers had not yet been used and, only 9 development projects had been approved.

The ESTA faced its first test case in the Land Claims Court in February 1998. Sixty-four employees of a Johannesburg brickwork company (Consteen) claimed that they had been summarily and illegally evicted from their hostels in January 1998, while a labour dispute was still being settled. The Ranburg Land Claims Court ruled that the Extension of Security of Tenure Act prohibited the company/employers from evicting the workers before the labour court had settled the dispute over the termination of the workers’ employment. The employers could apply for an urgent eviction order under Section 15 of the Act only if it could be proved that the continued presence of employees presented a danger to lives and/or property. Since new workers already occupied the hostels, the Court ordered that Consteen pay each worker R20 per day towards alternative accommodation. Although a victory for the employees, lawyers for Consteen raised a number of issues that would continue to emerge in future cases. They argued that an overly wide interpretation of the Act could “unfairly strengthen the hand of labour and prejudice employers during protracted labour disputes”, and that Section 8 of the Act was “absurd”. There are, in fact, indications that Section 8 of the ESTA has made farmers apprehensive about employing permanent workers and about providing accommodation for workers on their farms.

A related issue is that the Extension of Security of Land Tenure Act, in its original form, did not recognise the rights of farm dwellers to be buried on the farms on which they lived and worked. Some farmers, fearing that burials could strengthen land claims, have refused burials on their land. In the Northern Province, some farmers went as far as making workers sign contracts preventing them from using existing graves as evidence in

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101 Lahiff E, “Land reform in South Africa: is it meeting the challenges?”, Policy Brief, no.1, PLAAS, September 2001
102 Certain categories of farm residents over 60-years of age may not be evicted at all.
103 Lahiff E, “Land reform in South Africa: is it meeting the challenges?”, Policy Brief, no.1, PLAAS, September 2001
104 The brickwork company in question
106 Section 8 stipulates that farm workers or employees may not be evicted before a labour dispute has been settled.
land claims. In 1999, a Mpumalanga farmer took a case to the Bloemfontein Supreme Court of Appeal. The court ruled that burials are prohibited on farms without the landowner’s permission. Consequently, parliament passed an amendment to the Act in December 2001, which provides that farm dwellers have the right to be buried on a farm if they die while living there. This issue was still not resolved in October 2002, when farmer Wessel Fick disrupted the funeral of farm worker Elijah Nhlabathi (65) on his farm. The farm worker’s body had to be kept in the mortuary while Fick’s lawyers argued in court that the legislation pertaining to burial rights was unconstitutional and undermined current owners’ property rights. The case was only settled in April 2003, when the Mpumalanga Land Claims court ruled against Fick and ordered that Nhlabathi be buried on the farm (Mooihoek).

The dominant analysis appears to be (and this was supported by my limited fieldwork) that the Extension of Security of Land Tenure Act was nothing more than a “stop mechanism” and that evictions continue either unabated or have, in fact, increased. During the interviews and community discussions I had with members of the Sheba community in mid-2001, respondents argued (without exception) that evictions were continuing at the same rate that it had under apartheid. As a former farm worker argued, “this law the government tells us about does not happen here”. The Deputy Minister of Agriculture, Dirk du Toit, said, in May 2000, that “the Extension of Tenure Security Act was not working”. He added that evictions and human rights abuses on farms were continuing and that only a fraction of South Africa’s farm workers had gained any tangible tenure security under the Act, while employment on South Africa’s farms had fallen by 24% in 1999. When 120 delegates representing farm dwellers from KwaZulu-Natal and Mpumalanga met in Wakkerstroom under the auspices of the NLC on April 22, 2001, they stated that evictions continue unabated and that they did not “know of a single farmer ever sentenced for illegal evictions”. Delegates called for the scrapping of the ESTA and a moratorium on all evictions. Between February and March 2000, at least 4 228 people were evicted in Gauteng and the Northern Province. Others estimate that 60 000 farm workers lost their jobs in the first six months of 2000. Evictions continue to result in severe social disruption, ranging from traumatic deaths, suicides, hunger, disruption of children’s education, loss of livelihoods and housing,
impounding of livestock and conflict with established communities in areas where these evicted persons are forced to settle.\textsuperscript{117}

The three major reasons for the perceived failure of the Extension of Security of Land Tenure Act, therefore, were around implementation (including lack of capacity in the DLA), enforcement (the ability of farmers to circumvent the legislation or exploit loopholes) and the failure to publicise the Act. These problems were exacerbated in a context where farm workers remain isolated and have very limited access to the overburdened state legal aid services. A Western Cape example illustrates the problems around inefficient and excessive bureaucracy and consequent implementation problems. A group of 14 Stellenbosch farm workers made a deal with their former employer to purchase Babin farm near Klapmuts for their resettlement in July 1999. The whole deal depended on access to grants as provided for in Section 4 of the ESTA. Almost two years later, and with the intervention of representatives of Lawyers for Human Rights, the grants had not materialised. It seems that the grant applications were referred by the DLA to the provincial housing department, which felt that the matter fell outside its area of responsibility.\textsuperscript{118}

These, and other problems, prompted the current Minister of Agriculture and Land Affairs to commit the DLA to making the Act more efficient and to place greater emphasis on the development aspect of the Act. In July 2000, the Director General of the DLA stated that his department was considering the deployment of security forces to combat illegal evictions and acts of brutality by white farmers against their workers.\textsuperscript{119} There has also been talk around the possibility of expropriating farms that do not comply with labour regulations and, a possible merger of the ESTA and the Labour Tenants Act.

3.4. Labour legislation and conditions of employment

In section two of this chapter I briefly discussed a number of examples where the extension of labour legislation to rural areas was used, relatively successfully, as a method to improve the living and working conditions of farm workers and labour tenants – i.e. South Korea, Taiwan and Peru. In South Africa, an attempt was made to extend labour legislation to rural areas in 1993, when the Basic Conditions of Employment Act (with several differences making it more applicable to the agricultural sector) was extended to farm workers as the Agricultural Labour Act. Differences include greater flexibility in terms of working hours, remuneration systems and dispute resolution.\textsuperscript{120} The Agricultural Labour Court was established to settle disputes in cases where negotiations failed and because of the prohibition on strikes in the agricultural sector.

\textsuperscript{117} O'Connor R, "Welcome to life by the side of the road in rural South Africa", \textit{Land Update}, No.53, November 1996
\textsuperscript{118} \textit{Mail & Guardian}, “Land affairs fail farm workers”, February 18 – 24, 2000
\textsuperscript{120} For more detail see Hamman J, “The impact of labour policy on rural livelihoods on Western Cape Wine and Fruit Farms”, \textit{Land, Labour and Livelihoods}, Volume One, Lipton M, De Klerk M & Lipton M (Eds.), Indicator Press, 1996
In 1994, protective and collective bargaining rights were extended to farm workers in South Africa and trade union activity in rural areas increased. For example, in 1995, COSATU launched a farm workers’ union. 121 Trade unions have also improved their ability to recruit new members on farms, by signing the Vision for Labour Relations in Agriculture agreement in May 2001. The agreement was signed by the Agricultural Union of South Africa, the National African Farmers’ Union, the South African Agricultural, Plantations and Allied Workers’ Union and the Food and Allied Workers’ Union. According to the Minister of Labour, the “basic elements of the vision aim at transforming labour relations in the sector and relate to human rights, sound labour practices, skills development, compliance with health and safety standards, productivity and the effective management of HIV/AIDS on farms”. 122 The agreement also placed strong emphasis on literacy and child labour. The predominantly white union, Agri SA, has committed itself to acting against members guilty of human rights abuses and to ban such individuals from farming bodies. 123 Agri SA also undertook to train its members in labour relations in “a bid to ensure that labour relations normalise”. 124

Legislation, regulating working conditions and stipulating minimum wages, was only extended to farm workers in late 2002. 125 In addition, amendments were made to the Labour Relations Act and the Basic Conditions of Employment Act. Prior to that, in an attempt to avoid possible labour shedding, the Department of Labour had suggested a system of incentives rather than penalties. The idea was that farmers who complied with the proposed minimum wage rates (between R400 and R750 per month) would be eligible for state subsidies. 126 The danger with this kind of approach is that it could reinforce paternal relations and farm worker dependency, as was the case in Zimbabwe. Commercial farmers in Zimbabwe received significant tax relief in return for welfare provision for farm workers. The result was that employers retained an unhealthy level of control over the lives of the employees. 127

It is often argued (and ample evidence exists in support) that minimum wage and conditions of employment legislation increase farmers’ costs and, therefore, lead to labour shedding and mechanisation. Hamman 128 cites Chile and Zimbabwe as examples. In Zimbabwe, 100 000 agricultural jobs were lost between 1974 and 1984 largely due to the introduction of labour legislation and minimum wages. In Brazil, the Rural Labour Statute of 1963, which required employers to make severance payments to workers, partly explains the decline in permanent employment in north-eastern Brazil in the

121 Hamman J, “The impact of labour policy on rural livelihoods on Western Cape Wine and Fruit Farms”, Land, Labour and Livelihoods, Volume One, Lipton M, De Klerk M & Lipton M (Eds.), Indicator Press, 1996
122 Mbeki T, “Strong support from all side for meaningful land reform”, Land Info, Volume 8, no.1, 2001
123 NLC, Press release, April 22, 2001
126 Mail & Guardian, September 14 – 20, 2001
When minimum wage legislation was proposed for South Africa’s farm workers in September 2001, Agri SA argued that if the cost of labour increased substantially, “the only way to balance the books would be to lay-off workers”.

Localised studies and survey evidence indicates that (as was the case in Zimbabwe) agricultural employment in South Africa’s commercial farming sector is “declining at an alarming rate” – between 1988 and 1998, 140,000 regular jobs were lost, indicating a decline of approximately 20%. Furthermore, there is a trend away from permanent employment towards seasonal/casual/temporary/contract labour (as was the case in Brazil). The question that needs to be answered, is whether this decline in permanent employment in South Africa’s commercial farming sector is the result of the extension of labour legislation to rural areas? Or the result of land reform legislation, and/or the result of South Africa’s entry into the highly competitive global market and accompanying deregulation policies. Or, a combination of the above – i.e. a combination of economic and non-economic factors?

Firstly, I consider the impact of deregulation and South Africa’s exposure to global competition. In general, participation in global markets require innovation (i.e. mechanisation and modernisation) in order to remain competitive. As is often the case, mechanisation and modernisation result in labour shedding – and South Africa is probably not an exception. Speaking of the South African wine and fruit industries, for example, Du Toit argues that the sector’s exposure to global competition (and consequent innovation) has led to a “massive shift” away from permanent employment, towards, casual/seasonal or contract labour. Du Toit argues that this sector was exposed to the global market at a time where there was “increasing over-production” in world markets and, it was also a time during which “retailer power in key United States and

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130 Mail & Guardian, September 14 – 20, 2001
134 The shift towards temporary/seasonal/contract labour agreements comes with a host of other problems, which will be discussed in the concluding (recommendations) section.
135 For a more comprehensive account of these policies, refer to chapter three
136 Du Toit A, “Globalising ethics: A case study of the social technologies of private regulation in the South African wine industry”, PLAAS, UWC, Occasional Paper Series, no. 17, 2001. It should be noted, however, that Du Toit’s study is limited to one of the most commercially successful sectors in South African agriculture – i.e. one of the sectors most integrated into the global market. This raises questions as to the relevance of the wine and fruit industries’ experiences to more marginal farming areas in, for example, the Free State. Although I have no real evidence to support the argument, it is possible that deregulation and global competition is more relevant to farming in the Western Cape, whereas, land reform or labour legislation is more relevant to labour shedding policies in more marginal farming areas.
European Union markets started to consolidate”. It was imperative that the fruit and wine sector lower their prices, which in turn reduced the sector’s profits. In order to cut costs (and thereby increase profits) farmers have either reduced wages (or not increased them) or have retrenched permanent workers to employ part-time workers at lower wages. A later study by Du Toit and Ally\(^{137}\) supports the argument that the number of full-time workers is decreasing. During their fieldwork in the Western Cape, the authors found that 71% of respondent farmers had reduced the size of their permanent labour force since the early 1990s. However, Du Toit and Ally’s study of 77 fruit, wine and vegetable farms in the capitalised Western Cape cannot be considered a representative sample of the wider South African agricultural sector.

Secondly, I consider the impact of land reform programmes and policies on agricultural employment practices in South Africa. In 1996, according to O’Conchuir, for example, the most common reason given by South Africa’s commercial farmers for the eviction of workers was a fear of new labour legislation.\(^{138}\) Similarly, Simbi and Aliber\(^{139}\) argue that labour shedding in South Africa is the result of “non-economic” considerations among farmers that include “above all: 1) fear of losing control of one’s land to resident farm workers due to new (and possible future legislation, and 2.) a sense that, because of democracy and a commitment by the state to human rights, farm workers are more difficult to manage than they were prior to 1994”’. The authors found in their fieldwork\(^{140}\) that “across the board, the factor that is perceived to be responsible for the largest decrease in permanent employment, is ESTA”. In particular, the provision in ESTA regarding alternative accommodation discussed earlier.\(^{141}\)

Thirdly, I consider the impact of the extension of labour legislation to rural areas. As noted above, Agri South Africa has argued that increasing labour costs, as a result of the extension of the Basic Conditions of Employment Act to rural areas, has resulted in a significant increase in production costs\(^{142}\) and that labour shedding was the economic response to off-set this. Simbi and Aliber (2000)\(^{143}\) argue, however, that there is no evidence to support the assertion that there has been a significant increase in production

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\(^{137}\) Du Toit A & Ally F, “The externalisation and casualisation of farm labour in Western Cape horticulture”, PLAAS and the Centre for Rural Legal Studies, Research Report no. 16, Cape Town, December 2003

\(^{138}\) O’Conchuir R, "Welcome to life by the side of the road in rural South Africa", Land Update, No.53, November 1996


\(^{140}\) Fieldwork that is not statistically representative

\(^{141}\) Simbi and Aliber also list reported specific strategies that farmers use; farmers do not replace permanent workers; farmers rotate resident workers to prevent them from qualifying for protection under ESTA; farmers seek to settle permanent workers in nearby towns; or farmers increasingly replace permanent workers with temporary/seasonal workers.

\(^{142}\) Minimum wages, overtime pay, regulated working hours, increased legal costs (drawing up contracts, settling disputes etc), were all factors that resulted from the extension of labour legislation to rural areas, and which Agri SA and others argue have resulted in higher wages for workers and increased production costs for farmers – i.e. labour shedding was subsequently employed to off-set profit decreases.

\(^{143}\) Although this paragraph largely follows the arguments made by Simbi and Aliber (2000), it should be noted that (as the authors indicate) the two surveys on which the article is based, are not statistically representative.
costs as a result of higher wages. They cite Statistics South Africa’s October Household Survey conducted in 1998 and 1999, which suggested (based on farm workers’ own reports) that the average farm worker wage was R440 per month. In comparison, they cite a report by the Department of Agriculture and Statistics South Africa (2000), which suggests (based on commercial farmers’ responses) that the average agricultural wage in South Africa in 1996 was R608 per month. Simbi and Aliber argue that (given the discrepancies in responses noted above) there was probably only a small and gradual increase in average farm worker wages and, that such increases are probably a reflection of “the changing composition of the workforce” – i.e. unskilled workers are being retrenched more rapidly than higher-paid skilled workers. The study by Du Toit and Ally (2003) also found that the introduction of a minimum wage in the area (Western Cape) was not even mentioned as a factor for labour shedding (with one exception in the agricultural manufacturing sector in Paarl).

4. Conclusion

It is evident from the demographic-discussion that the agricultural sector is providing a decreasing number of permanent jobs, without any significant improvement in the lives of farm workers and labour tenants who remain impoverished, disempowered, uneducated and subjected to violence. Conditions are particularly harsh in economically marginal areas like parts of the Free State, and better in the more capitalised regions of the Natal Midlands and Western Cape. An estimated four to six million people remain dependent, directly or indirectly, on white farmers for their housing, schooling and income. High unemployment rates, the absence of alternative economic opportunities and an ineffective policing and legal system in rural areas contributes to the dejected situation in which many farm workers and labour tenants find themselves.

The international material covered suggests that a land to the tiller reform programme is not an appropriate strategy in South Africa, despite the many benefits of land to the tiller reform programmes when compared to redistribution (i.e. resettlement) programmes. The most likely examples of ‘land to the tiller’ reform in South Africa are equity schemes. If well implemented and effectively monitored, equity schemes have the potential to significantly increase income for farm workers, but will not do much to change the inequitable racial distribution of land ownership.

The international material also suggests that a more appropriate strategy in South Africa would be to extend labour legislation to rural areas. However, without the required capacity to implement legislation and monitor compliance, such legislation could result in further labour shedding or a move away from permanent, and toward temporary labour. In 1993, 1996 and 2002, labour legislation affecting the basic working and living conditions (including the minimum wage provided for in the Basic Conditions of

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144 Also see section one on demographics in this chapter for supporting evidence.
146 Du Toit A & Ally F, “The externalisation and casualisation of farm labour in Western Cape horticulture”, PLAAS and the Centre for Rural Legal Studies, Research Report no. 16, Cape Town, December 2003
Employment Act of South Africa as amended) was extended to rural areas. The introduction of labour legislation in South Africa’s rural areas resulted in labour shedding, as well as, a move away from permanent labour towards seasonal/ temporary labour. Labour shedding in South Africa is, however, not only influenced by the extension of labour legislation. Factors such as the South African agricultural sector’s entry into the competitive global market, coupled with deregulation policies, as well as, non-economic factors, for example, fears around the impact of land reform legislation among current farmers/ landowners further contribute to labour shedding in South Africa.

It has been shown that, at least in policy documents, the African National Congress has been committed to improving the living and working conditions of labour tenants and farm workers since the early-mid 1900s. This commitment was carried through to the negotiation and policy formulation process of the 1990s. Another very influential group in the development of tenure reform policy for farm workers and labour tenants were rural and land-orientated Non-Governmental Organisations. The involvement of Non-Governmental Organisations and their continued emphasis on the perceived increase in evictions in the period immediately before and after the 1994 elections, contributed to the development of a reactionary tenure policy.

The two reactionary Acts introduced in an attempt to address evictions and tenure security are the Land Reform (Labour Tenants) Act of 1996 and the Extension of Security of Tenure Act. The Land Reform (Labour Tenants) Act has the broad aim of protecting existing tenure rights by introducing a court-based procedure for evictions and also aims to redistribute land to tenants by means of grants. As the discussion showed, the Act has had limited successes – i.e. 20 000 labour tenants had been registered under the LTA and there were 674 registered labour tenant projects involving 3 701 households of which 12% were female, in 2000. But there were also many problems with the Act. Many groups of people were excluded from the Act, for example, first generation labour tenants, labour tenants evicted before June 1995 and labour tenants who had moved opportunistically in the past. Further problems include the cut-off date, the lack of capacity in the DLA, the lack of publicity around the act, and the possibility that the Act may limit the opportunities of others to become labour tenants in future.

The ESTA was promulgated to prevent arbitrary evictions. This controversial piece of legislation appears to be largely ineffective and, a variety of interest groups, including potential beneficiaries, are asking that the Act be scrapped. Even the Deputy Minister of Agriculture feels that the Act is “not working” and that it has had no tangible benefits for farm workers and labour tenants. Furthermore, the Act is cited as one of the main reasons for increased evictions, demolition of existing housing structures on farms, the refusal to allow burials on farms, increased and excessive labour shedding, and increased violence and other negative pre-emptive actions by ‘fearful’ white farmers. The three major reasons for the failure of the ESTA were around implementation (including the lack of capacity in the Department of Land Affairs), enforcement (including the ability of farmers to circumvent the legislation or exploit loopholes) and the failure to publicise the Act.
4.1 Recommendations

Effectively implemented labour legislation could significantly improve the economic and social position of thousands of farm workers and labour tenants in South Africa (as was the case in, for example, Taiwan and South Korea). It is, therefore, imperative to build the capacity of the Department of Land Affairs to enable the department to monitor implementation and compliance with labour (or any other related) laws. There should also be fast and effective prosecution (whether through fines, or confiscation of land) of those employers who do not comply. It is therefore further recommended that other government departments (e.g. Agriculture) also become involved in monitoring, whilst the police force and legal services currently available in rural areas should be developed - i.e. not only expanded, but also receive adequate training.

Sharecropping, which is a feature of commercial farming sectors in many countries, was almost totally ignored by South African land reform policy developers. Sharecropping, as an option to access land, warrants more discussion. Although sharecropping may not do much to change the racial distribution of land ownership, it can address problems around land access, unemployment, and lack of resources (of both sharecroppers and landowners). Sharecropping may also promote more efficient land use (and increase production), as people rent out land that they cannot use. Once again (and this relates to the first recommendation), however, sharecropping would have to be regulated and this requires a level of capacity that neither the Department of Land Affairs and Department of Agriculture, nor the police and legal services in rural areas currently have. The same argument could be made for labour tenancy.

More consideration should be given, and more resources directed, to the development of Equity Schemes. Equity Schemes can effectively address (rather than alleviate) poverty, and can overcome problems such as lack of resources to farm (as in the majority of redistribution cases), because these schemes provide new entrants with immediate and ongoing returns (i.e. beneficiaries do not have to work for years in order to establish an enterprise that generates profits), with minimal capital expenditure (i.e. beneficiaries gain access to a farming operation that is already producing, or a farm manager with years of experience).

As suggested above, if the Labour Tenants Act or the Extension of Security of Tenure Act, is to achieve any degree of success, the Department of Land Affairs needs to build the required capacity to implement and enforce these Acts and, this should include a publicity drive. However, I recommend that both these Acts be scrapped (or significantly amended, or combined). New legislation should be developed. The new legislation should continue to protect farm workers and labour tenants against unfair evictions, but land redistribution to labour tenants should be dealt with within the Redistribution Programme. The new legislation should address the move away from permanent labour towards temporary or part-time labour (e.g. in the Western Cape), because temporary/casual/seasonal workers are not covered by the LTA or ESTA. Also, the increasing use

147 See discussion in section three of this chapter, but also see the discussion on policy development in chapter five.
of contracting agencies (and the range of new ways to exploit farm workers148) must be regulated. As discussed in chapter three, most seasonal workers are women and, accordingly, the new legislation should address the emerging gender dimension, which is not addressed by the LTA or ESTA. The law that needs to be developed should protect people against unfair evictions and promote tenure security, but it should not discourage the development of modern and conditionally appropriate tenure relationships (i.e., new forms of labour tenancy and sharecropping). The new legislation should be developed with more input from differing groups and should be more acceptable to all. Subsequent implementation requires a good publicity campaign, and this should include explaining the Act to farm workers and labour tenants, but also to farmers so that they do not take negative pre-emptive action, like for example, evictions, or demolition of existing housing.

As suggested in the previous discussions, policing and legal services in rural areas need to be improved.

Finally, evictions, paternalism and violence will continue 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 by appropriate legislation. Approximately 83% of farm workers still live on the farms on which they work,149 despite the fact that farm workers have expressed a clear need for access to residential land that is disengaged from their conditions of employment. Furthermore, power relations will not change until farm workers and labour tenants have knowledge of their rights, as well as easy access to legal institutions. A national farm workers’ rights education programme is therefore recommended. Such a programme must also address the very different needs and concerns of temporary workers, and workers not living on farms.

Trade unions can still play a greater role in rural areas, particularly in lobbying for minimum wage legislation and in the mobilisation and organisation of farm workers and labour tenants. It was an unprecedented, nation-wide, farm workers’ strike in October 1997, physical aggression against some commercial farmers, and the growth of rural political organisations that generated greater social mobilisation, amongst civil society in Zimbabwe, for the plight of farm workers. In Zimbabwe, greater farm worker mobilisation led to more comprehensive land reform policies,150 and increased lobbying for farm workers’ rights.151 However, the move away from permanent to temporary

149 Beeld, September 14, 2001
150 Policies developed in the late 1990s emphasised the importance of farm workers and the development of policies that include farm workers among the beneficiaries.
labour in some South African localities, requires different organisational strategies. As Du Toit points out, it will be difficult for trade unions to mobilise temporary workers whose jobs are probably even more insecure, than those of permanent workers. Permanent workers, however, are also not likely to engage in organised protest activity, because they can loose everything – life, house, job, education and even their families – if they do.¹⁵²

¹⁵² Du Toit A & Ally F, “The externalisation and casualisation of farm labour in Western Cape horticulture”, PLAAS and the Centre for Rural Legal Studies, Research Report no. 16, Cape Town, December 2003