

Circular No. 2

January 2011

## **NEW LAW PROTECTING FARM WORKERS AND FARM OCCUPIERS**

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On 24 December 2010, the Minister of Rural Development & Land Reform ("Minister") published the draft Land Tenure Security Bill ("the Bill") and invited comment on the Bill within 60 days.

The Bill aims to regulate the rights of persons who reside on farms, who work on farms, persons who are associated with them and farm owners, including persons who are in effective control of farms.

The Bill will, when enacted, repeal the Labour Tenants Act of 1996 and the Extension of Security of Tenure Act ("ESTA") of 1997.

The State has indicated that the purpose of the Bill is to change and restructure the power relationships in farming communities and deal with the shortcomings of the Labour Tenants Act and ESTA which are identified as being:

- ESTA unfairly strengthened the hand of labour and prejudiced farm owners during protracted labour disputes which resulted in farmers refusing to provide accommodation for workers on their farms;
- ESTA has not been effective in stemming the tide of evictions from farms;
- there has been a lack of effective implementation;
- farmers have been able to circumvent the legislation or exploit loopholes.

The Bill also seeks to provide solutions to tenure disputes by combining on-site solutions and off-site solutions through State subsidised or State financed acquisitions of alternative land through, for example, agri-villages.

## **BACKGROUND**

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Section 26(6) of the Constitution entitles persons whose land tenure was made legally insecure as a result of

past racially discriminatory laws and practices, to either legally secure tenure or comparable redress. So as to provide security of tenure, the State has, since 1994, embarked upon a land reform process. This has involved, essentially, three components, namely land restitution, land redistribution and tenure reform.

The land restitution process involves the restoration of rights in land which have been removed through the implementation of policies of separatism and apartheid. It has been implemented through the Land Restitution Act of 1994 with limited success.

The redistribution programme has involved, in the main, acquisition by the State of land and the transfer of that land to communities supported by State grants.

Land tenure reform has involved two legs. The first has applied to former white farm areas and semi-urban areas. ESTA as well as the Labour Tenants Act were introduced to deal with the spate of evictions that were then taking place on commercial farms. The second leg of land tenure reform applied to the former homeland and tribal trust areas. In 1995, the Interim Protection of Informal Land Rights Act was introduced as an interim mechanism pending a total reform of tenure rights on communal land. This found expression in the Communal Land Rights Act which, although passed by Parliament, has not yet been brought into effect.

## **PERSONS COVERED BY THE BILL**

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As mentioned above, the Bill regulates and protects persons residing on farms, persons working on farms (including domestic workers and security guards) and persons associated with persons residing or working on farms. The latter category includes spouses, children, nephews, nieces (including children, nieces and nephews over the age of 18 years who still attend school), parents, brothers and sisters. The Bill also regulates the rights and duties of farm owners (which includes a person in charge of a farming business).

## **RIGHTS AND DUTIES OF FARM OWNERS, PERSONS RESIDING ON FARMS AND FARM WORKERS**

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'Farm owners' rights include a right to property, the rights of employers in terms of the Labour Relations Act of 1995 and other labour laws, a right to family life and a right to dignity. These rights are subject to any reasonable condition imposed by the Bill or any other law.

Persons residing on farms are given extensive rights but these are subject to any reasonable condition imposed by the owner of the land in order to safeguard life or property on the land.

The right to reside, includes the right to own livestock, graze land for livestock, the right to plant crops, build houses and homesteads, to visit and be visited, to bury members of the family on the farm, to undertake commercial farming and have access to skills, education, family life and dignity.

A person working on a farm is entitled to work in compliance with the Labour Relations Act, to education for himself and his family and the right to family life and to dignity.

## **EVICTIONS**

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A person may be evicted from a farm only if the procedural processes set out in the Bill have been followed which include obtaining an order of a court.

The concept of eviction is extended to include not only the withdrawal of the right of occupation but also such things as closure of schools, interference with the performance of cultural practices, denial or prevention of access to water and electricity, a unilateral reduction of rights in terms of the Bill, forcing different families to live together and forced relocation.

## **WHEN MAY AN EVICTION ORDER BE GRANTED?**

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A person who resides on land as part of the conditions of his employment may be evicted upon lawful termination of the employment contract or if he resigns from employment or is dismissed in accordance with the provisions of the Labour Relations Act. Any dispute as to termination of employment is to be dealt with in terms of the Labour Relations Act.

Once the employment relationship has been terminated in accordance with the Labour Relations Act, the special procedures set out in the Bill must then be followed.

Where a right of residence is not dependent on an employment relationship, then the right of residence may be terminated on any lawful ground, provided the termination is just and fair.

As with ESTA, the Bill protects a person who has resided on a farm for more than 10 years and is older than 60 years or if the employment relationship is terminated as a result of ill health, injury or disability. In such circumstances, the right of residence can only be terminated if the person,:

- (a) intentionally or unlawfully harms any person occupying the land;
- (b) intentionally or unlawfully causes material damage to the property of the owner; or
- (c) assists persons who do not reside on the land to unlawfully establish new dwellings on that land.

## **EVICITION ORDERS**

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The farm owner must give three months' notice of his intention to make application to court for an eviction order. In special circumstances, an urgent application can be made. The order may only be granted if the farmer can prove that there has been adequate consultation and information supplied on the proposed eviction and the alternative purpose for which the land or accommodation is to be used. An eviction order may not result in persons affected being rendered homeless or vulnerable to the violation of other human rights.

The court, in considering an eviction application, may request a report within a reasonable period on, *inter alia*, the availability of suitable alternative accommodation, the hardships which will be caused by the eviction and how the eviction may affect the constitutional rights of any affected person.

If it was an express term of the consent granted to a person residing on a farm that the consent would terminate upon a fixed or determinable date (for example, at the end of the farm worker's employment contract), then the court may, on termination of such consent by effluxion of time, grant an order for eviction, if it is just and equitable to do so.

Even if the period of authorised residence has not terminated, the court may, if it is of the opinion that it is just and equitable, grant the eviction order. In deciding whether it is just and equitable to grant an order for eviction, the court must have regard to the reason for the proposed eviction and the fairness of the terms of any agreement between the parties.

## **EFFECT OF AN ORDER FOR EVICTION**

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Once a court grants an eviction order, the order may not be executed until a period of two months has elapsed. Where an eviction order is granted, the court may direct the farm owner (including others) to submit a plan indicating details relating to the provision of suitable alternative land for the affected person.

## **ALTERNATIVE LAND DEVELOPMENT MEASURES**

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The Bill provides for the Minister to institute land development measures, including the establishment of agri-villages, industrial parks and other initiatives aimed at creating economic and social support for farm workers and those who reside on farms. Provision is made for the expropriation of land including a temporary right to use land for resettlement purposes where it is not desirable to permanently expropriate land.

## **FURTHER ADVICE**

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We will be monitoring the progress of the Bill and will notify you of further developments. We would suggest that existing contracts between farm owners and farm workers and farm occupiers be reviewed prior to the Bill coming into force.

**Should you require further advice on the above topic or the revision of any agreements, please contact Michael Jackson on 031 – 536 8512 or email: [mjackson@coxyeats.co.za](mailto:mjackson@coxyeats.co.za),**

