

DIE Okkupeerder

NEWSLETTER OF LAWYERS FOR HUMAN RIGHTS SECURITY OF FARM WORKERS PROJECT

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Introduction

By **KAMAL MAKAN**, *Editor*
Project Co-Ordinator
Security of Farm Workers Project

In the past few months the *Security of Farm Workers Project* has seen a surge in the number of reported cases of evictions and infringements in terms of the *Extension of Security of Tenure Act 62 of 1997 (ESTA)*. An illustration of this is the **45% increase in new cases** that the Project has opened for the period January – June 2008, in contrast with the same period for the year 2007. Between January – September 2008 we opened a **total of 117 new cases**, translating to **823 people** being affected by unlawful evictions and infringements of their tenure rights. This edition of *Die Okkupeerder* illustrates the type and nature of abuses encountered by farm workers and our attempts to enforce their rights.

We report on a capacity and development training programme that we have conducted with paralegals of the West Coast. This we view as imperative to counteract against such abuses and infringements. Our intention is that paralegals are capacitated and educated in enforcing, promoting and protecting these statutory and constitutional rights.



3-day capacity & development training

By **KAMAL MAKAN**

The *Security of Farm Workers Project (SFP)* of *Lawyers for Human Rights (LHR)* collaborated with *Social Change Assistance Trust (SCAT)* to develop and facilitate a 3-day training workshop. This was based on an initial needs assessment conducted with paralegals on 22 May 2008. The results of this showed us the need to capacitate and develop the paralegals' understanding and knowledge of relevant legislations, such as the *Extension of Security of Tenure Act 62 of 1997 (ESTA)*, the *Labour Relations Act 66 of 1995 (LRA)* and the *Basic Conditions of Employment Act (BCEA)* with a dissemination on *Land Reform Subsidies*.

This training workshop was conducted early in September 2008, at the Fountain Hotel, Cape Town with 20 paralegals, predominantly from the West Coast region of the Western Cape. The programme extensively focussed on the rights and responsibilities of the occupier, rights and duties of the owner, fundamental rights – such as right to family life, access to water, security of tenure – and access to basic services, such as electricity.

Illustrated through case studies, we described the requirements relating to termination of rights of residence, long term occupier status, peremptory prerequisites that need to be followed in an eviction in terms of ESTA, substantive rights and

The views expressed in the Newsletter are those of the staff of the Security of Farm Workers Project at the Stellenbosch and Upington offices of Lawyers for Human Rights. One of the activities of the Security of Farm Workers Project is to provide legal assistance to farm workers who are threatened with eviction. Our views and interpretation of the law is thus influenced by the daily work that we do. Our views need not necessarily be correct nor do they represent the views that are held by other staff of Lawyers for Human Rights. Therefore, we will not be held responsible should anyone rely on any of the views expressed herein.

LAWYERS FOR HUMAN RIGHTS SECURITY OF FARM WORKERS PROJECT

Bridge Street
Plankenburg Industria
STELLENBOSCH, 7600

P.O. Box 719
STELLENBOSCH, 7599

Tel: + 27 (0)21 887 1003
Fax: + 27 (0)21 883 3302

Room 101/102
River City Centre
Cnr Scott & Hill Streets
UPINGTON, 7600

Tel: + 27 (0)54 331 2200
or 331 2209
Fax: + 27 (0)54 331 2220

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New Year**

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re-open on 5 January 2009**

considerations that need to be kept in mind in the context of 'justice and equitability' and fairness of evictions.

On the final day we commenced with our presentation of the LRA and BCEA. The relevant provisions and applications of both these Acts were discussed. A further component of this day was allocated towards Department of Land Affairs – subsidies with dissemination related to *Land Redistribution for Agricultural Development (LRAD)* and other available grants, with the criteria applicable to the respective grants.

The overall training was conducted with an interactive approach – provisions of the Statute were applied to cases raised by participants, giving an opportunity for dialogue and discussion of the application of the law. This created an environment for understanding the legislation and how best to apply the law. After each facilitation we presented the participants with a case study so we could determine their understanding of the provisions explained during the course of the training programme.

We observed that this holistic approach to the issues stimulated the participants to make contingency plans in such situations. This was illustrated in the case studies where paralegals identified areas of extension of their services – such as access to HIV/AIDS counseling for farm workers, awareness of social grants and applications for these, with an identification of the obligations of the relevant government departments and local authorities. To outline just some of the critical issues raised:

- Limited access to legal services and/or immediate intervention by legal service providers in the rural areas. In this respect, there had been consistent requests that a full time attorney should be dedicated to serving the needs of the advice offices only.
- Lack of assistance from the *South African Police Services (SAPS)* and their lack of understanding of certain legislative provisions.
- Call for further training on ESTA, with more extensive case illustrations, in order to illustrate the application of the law.
- Dire need for general training in office administration, client and file management and training on consultations and interviews.

It needs to be stressed that the role of paralegals in rural communities is without doubt a dire necessity to allow the vulnerable poor access to legal services, and to assert and enforce their constitutionally and statutorily protected rights. We were proud to hear of examples of cases where paralegals had successfully intervened in preventing unfair treatment of farm workers.

But, despite these success stories, it is absolutely clear how crucial is the need for support of legal service providers to advice offices in the rural areas. We acknowledge organisations such as SCAT and others who have provided dedicated support in developing the capacity of paralegals in realising the fundamental rights as contained within the South African Constitution.



Maboyi Ntshuntsbe is 74 years of age and has lived on a farm for about 30 years. He now has to face up to living with no water as a result of unlawful water disconnections.

Farmworker cases

By ANNELIE DU PLESSIS

ANNA CUPIDO vs LOUW (HEXBERG FARM, WELLINGTON)

Restoration of electricity

Mrs and Mr Cupido were employed by Mr Louw of Hexberg Farm as farm workers for about 10 years before Anna Cupido voluntarily resigned on 31 December 2007 and her husband died on 22 October 2007. They had both been residing on the farm from the beginning of their employment. Mrs Cupido looks after five dependants, including her disabled son and her 85 year old mother.

On 21 August 2008, *Lawyers for Human Rights* received instructions from Mrs Cupido that her power was cut. Two days before this Mr Louw had disconnected the electricity supply – a service they had enjoyed for about 10 years. No notice or prior indication of this disconnection was received.

Lawyers for Human Rights contacted the farm owner and lengthy telephonic negotiations followed. On 11 September 2008 a letter was sent to Mr Louw, indicating court action if the electricity supply was not reconnected upon receipt of the letter. After further discussions with Mr Louw and his labour consultant on 17 September 2008, the electricity supply in Anna's house was restored on Friday, 19 September 2008.

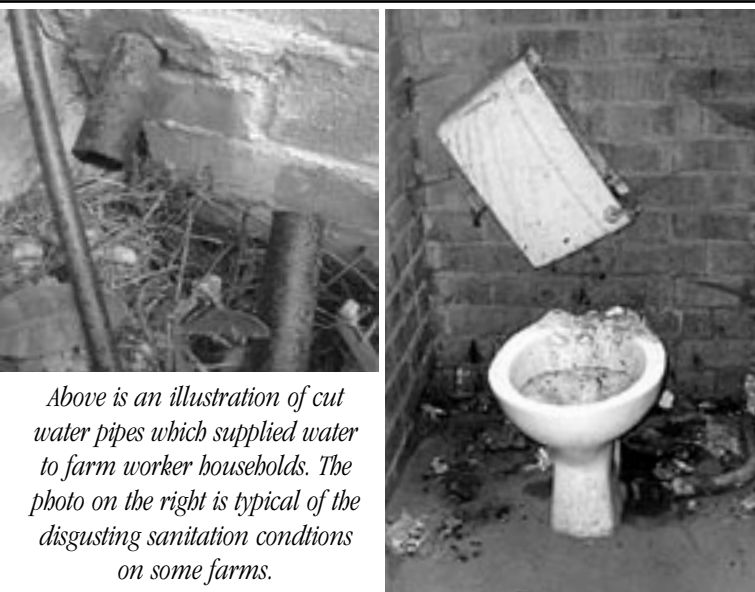
MR & MRS CANTERBURY vs DUNCAN FRANZ (SUNHILL ESTATE, STELLENBOSCH)

Restoration of water

Mr Canterbury was employed for about 10 years by Duncan Franz of Sunhill Estate as a farm worker and resided on the farm from the start of his employment. According to Mr Canterbury he was unfairly dismissed on 21 February 2008.

On 24 September 2008 *Lawyers for Human Rights (LHR)* received instructions from Mrs Canterbury that the water supply in their home had been disconnected.

On 26 September 2008 LHR contacted the farm owner and urgent negotiations followed. An urgent letter for the restoration of the water supply was addressed to Mr Fransz. LHR advised Mr and Mrs Canterbury to lay criminal charges against the owner. An inspector of the *South African Police Services (SAPS)*, Stellenbosch, was also called out to the farm. After further discussions with the owner, on 29 September 2008 the water supply was reconnected in the Canterbury's home.



Above is an illustration of cut water pipes which supplied water to farm worker households. The photo on the right is typical of the disgusting sanitation conditions on some farms.

**CECIL & MARGARET CANTERBURY vs DUNCAN FRANSZ (SUNHILL ESTATE, STELLENBOSCH)
CASE NUMBER: 3225/2008**

Restoration of access and possession

The Canterburys lived on the farm for about 10 years. On their arrival on the farm, Mr Canterbury had been provided with a remote for opening and closing the main gate.

Duncan Fransz upgraded the security on the farm. The previous gate and remote system were disconnected and substituted with a new upgraded system. No notice or prior indication of this disconnection was received by Mr and Mrs Canterbury. The effect of these changes was that no access through the gate was possible by the couple, indirectly also depriving them of possession of their home.

Lawyers for Human Rights urgently contacted the farm owner but access was not restored. Mrs Canterbury found a temporary opening in the fence and gained access to her home on foot by using this. Mr Canterbury on the other hand could not gain access with his vehicle and was forced to stay with family in Delft. On 4 November 2008 the opening in the fence was closed by Duncan Fransz, which resulted in Mrs Canterbury being locked in. She could not leave the premises at all. Urgent letters of demand were sent to Duncan Fransz, indicating court action was to follow if access and possession were not restored upon receipt of the letters.

On 13 November 2008 an urgent application was issued for the restoration of the Applicants' rights (possession, security of tenure, freedom of movement, human dignity and access), as well as an urgent interdict restraining the Respondent from further prejudicing the Canterburys in their security of tenure and residential rights on the farm. The sheriff served the papers on 14 November 2008. The Respondent then indicated that access would be restored if the Canterburys mended the fence and paid a deposit for a new remote in the amount of R300. This offer was refused and the matter proceeded to court.

On the day of the hearing, 20 November 2008, the Respondent indicated that he was willing to provide the Canterburys with a remote at no cost. It was also insisted that Respondent pay the costs of the application in court. The matter was settled, with costs, and access and possession restored to the Canterburys.

GERT HENDRICKS vs RIX (KLEINKOOP-MANSKLOOF FARM, KRAAIFONTEIN)

Unlawful electrical disconnection deterred

Mr Hendricks was employed by Mr Rix of Kleinkoopmanskloof Farm as a general farm labourer for about 31 years. He claimed he was unfairly dismissed on 20 March 2008 for being medically unfit. Mr Hendricks basically grew up on the farm. He shares his residence with his two grown sons and his life partner, Miss Rudolph.

On 2 September 2008, *Lawyers for Human Rights (LHR)* received instructions from Gert Hendricks that the owner was threatening to disconnect the electricity supply in their home on Friday, 5 September 2008.

LHR contacted the farm owner and on 4 September 2008 an urgent letter was addressed to Mr Rix explaining about Mr Hendricks' long term occupancy rights, indicating also that court action was to follow if the electricity supply was disconnected. Our intervention has reportedly resulted in the continued supply of electricity to the Hendricks household.

KOBUS & JOLINDA PHILANDER vs STEFANO COSTA (WITFONTEIN, PAARL)

Restoration of peaceful and undisturbed possession of right to residence

Kobus and Jolinda Philander were referred to the offices of *Lawyers for Human Rights* by the Paarl Advice Offices after receiving an eviction application on 8 April 2008. During the eviction application proceedings in court, the owner, Stefano Costa, deprived Kobus & Jolinda Philander of their possession of their home on the farm.

Kobus Philander was unfairly dismissed on 25 February 2007. He had been employed and resided on the farm for about 12 years, along with his wife and 12 year old grandson, Alexander. Mrs Philander is permanently disabled and receives social disability grants every month.

On 3 August 2008 at about 19h00, Stefano Costa entered Mr and Mrs Philander's home without permission and moved the furniture around to make room for further occupants. Upon being confronted by Mr Philander, Stefano Costa informed him that three casual labourers were to stay with them in the house. Then Costa brought three unknown men and left them with the Philanders. Alexander, their grandson, was forced to share a room with these three men.

On 4 August 2008 an urgent letter was sent by *Lawyers for Human Rights* and served by the sheriff to Stefano Costa, demanding that immediate peaceful and undisturbed possession of their home be returned to Mr & Mrs Philander. The couple also approached the *South African Police Services (SAPS)* and the court for complaints in terms of Section 384 of the *Criminal Procedure Act*, which allows for the detainment and/or arrest of a person found guilty of breaching the peace by damaging property, using threats or causing physical harm to another.

On 12 August 2008 the owner was served with the letter of demand and complaints in terms of the *Criminal Procedure Act*, and on 14 August 2008, peaceful undisturbed possession of their home was restored to Mr & Mrs Philander.

My experiences as an intern at LHR Security of Farm Workers Project Stellenbosch

By MIENKA RETIEF

A skewed and inequitable ownership of land was one of the defining features of the apartheid regime. As a result previously disadvantaged people prejudiced by their racial classification (the majority of the population) owned only 13% of the agricultural land in South Africa.

Land reform therefore became one of the new South African government's top priorities. In essence s25(6) of the Constitution, Act 108 of 1996, prescribes that "a person or community whose tenure of land is insecure" due to past racial laws is entitled to secure tenure, through an Act

of Parliament. It is on this premise that the *Extension of Security of Tenure Act 62 of 1997 (ESTA)* was promulgated. In addition, s26(1) and 26(3) of the Constitution, recognises that everyone has the right to adequate housing and that no person may be evicted without a court order after considering all relevant circumstances. Instead of seeing a realisation of these fundamental rights, *Lawyers for Human Rights, the Security of Farm Workers Project*, has seen a 45% increase in evictions and infringements of ESTA in the first six months of this year (2008), in contrast to the first six months of 2007.

What does this mean for a farm worker?

Firstly, it is the obvious – the lack of a home and security of tenure. South Africa's housing backlog currently stands at 2.4m households awaiting homes. The municipalities surrounding Stellenbosch have a housing backlog running into several thousand households awaiting homes, with farm workers facing evictions and not having any possibility to be beneficiaries of tenure reform projects under the designation of the *Department of Land Affairs (DLA)*.

A farm worker who is being evicted from his/her home faces the possibility of being homeless. Almost all of the clients represented by *Lawyers for Human Rights*, have no suitable alternative accommodation and so the farm worker and his/her family will decide to continue residing on the farm subsequent to the termination of their rights of residence, since their only alternative will be to join the burgeoning informal settlements.

Based upon my experiences and observations of case referrals to the Project attorneys and as an observer in consultations, landowners are intimidating, threatening and forcing farm workers to vacate farms, by unlawfully disconnecting their water and electricity, and at times resorting to committing illegal evictions without court orders. These actions are being carried out despite the protections afforded in terms of ESTA and the South African Constitution.

It is in this sphere and context that these legislative and constitutional protections are paradoxical. Notwithstanding the protection of the law, amongst other atrocities making farm workers' lives unbearable, *Lawyers for Human Rights* has seen cases of farm workers' homes being demolished, concerted attempts to evict long term occupiers who have permanent tenure, no ablution facilities in farm worker dwellings is rampant throughout, families experiencing winter without any electrical heating due to unlawful disconnections of the electricity supply, people being locked out of their dwellings and households living without water as a result of unlawful water disconnections.

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*The Security of Farm Workers
Project offers telephonic advice
services to all service providers
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