

# DIE OKKUPEERDER

NEWSLETTER OF THE SECURITY OF FARMWORKERS PROJECT

ISSUE NO. 1, MARCH 2011

## A NEW YEAR, A NEW LOOK

With this first issue of 2011, *Die Okkupeerder* appears in an attractive new format. *Die Okkupeerder* (Afrikaans for “the occupier”) reports on the work of the Security of Farmworkers Project of Lawyers for Human Rights.

Over the next 12 months we expect to bring you more regular reports about our work as conflicts over land tenure and the rights of farmworkers intensify. We also welcome your feedback. Please send any comments or suggestions to [sheldon@lhr.org.za](mailto:sheldon@lhr.org.za).

Anti-eviction strike in Stellenbosch



## PLANTING THE SEEDS OF JUSTICE

For over three centuries, living and working conditions on South African farms have been determined by the voices of money, power and property. Although much has changed in the rural landscape since 1994, access to justice remains a distant prospect for millions of people living and working in the countryside.

Lawyers for Human Rights (LHR) launched the Security of Farmworkers Project (SFP) in 2002 to protect the rights of farmworkers in the Western

and Northern Cape who are fighting for dignity, fair labour practices, access to housing and security of tenure. The work of the SFP over the last nine years has largely focused on providing legal representation to farmworkers facing eviction. The highlights of some of our most recent cases are set out in the Litigation Update section of this newsletter.

2010 saw the publication of draft legislation and the unveiling of a number of significant >>

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## SFP CHALLENGES UNLAWFUL EVICTIONS

*Afrikaner v Spies and Others*



During the second half of 2010, the SFP brought three urgent applications in the High Court to interdict the unlawful eviction of farm dwellers and restore their occupation on the farms.

In the case of *Afrikaner v Spies and Others*, we acted for 15 families living on a rural smallholding in Atlantis, near Cape Town. These families were compelled, under threats that their shelters would be demolished, to dismantle their homes and vacate the land they had lived on for decades.

The eviction resulted in many of the families living without shelter, including the elderly, women and children. On 14 May 2010 the SFP brought an urgent application in the Western Cape High Court for orders overturning the eviction of our clients, directing the land owner to permit the families to reconstruct their homes without any further threats or harassment. The High Court issued an interim interdict in favour of our clients on 14 May 2010 and made this order final on 27 May 2010. The owner of the land subsequently brought an application in the local Magistrate's Court, seeking the eviction of our clients from the property. We filed opposing affidavits on behalf of our clients and are awaiting judgment.

In the case of *Mario Burger and Another v Bernus Van Der Westhuizen*, Mr Burger and

his family were subject to constant verbal abuse, threats and intimidation by their former employer on Aurora Farm, Wellington. This culminated in verbal and written threats by the farmer to demolish Mr Burger's home if he failed to vacate the farm by Sunday 30 May 2010. On 28 May 2010, the SFP brought an urgent application in the Western Cape High Court for an interdict to prevent the threatened demolition and further unlawful conduct by the farmer. Shortly before the matter was heard by Judge Erasmus on Sunday 30 May 2010, the respondent provided a written undertaking that he would immediately desist from his threat to demolish the home and unlawfully evict Mr Burger and his family.

The case of *Phike v Khara Hais Municipality* is one of the most blatant

examples of unlawful eviction that we have encountered in recent years. The SFP offices in Upington and Stellenbosch represented about 16 families living in New Heaven informal settlement in Upington. Their homes were unlawfully demolished by a contingent of officials from the Khara Hais Municipality on 21 August 2010. These families – all poor and headed by women, the elderly and young children – had their houses torn down by municipal officials using iron bars, wrenches, crowbars. All of this took place without any warning to the occupants and without a court order authorising the demolition of the shacks or the eviction of the families.

On 27 August 2010, the SFP brought an urgent application in the Northern Cape High Court on behalf of Mrs Phike and the other families involved. Judge Majiedt granted an order directing the municipality to return the materials belonging to the families, to reconstruct the shacks that had been demolished or provide them with alternative shelter by Tuesday 31 August 2010. The judge also interdicted the municipality from demolishing any more shacks at the informal settlement without a court order. The municipality duly complied with the order and reconstructed all the homes of our clients. The interim order granted against the municipality was made final on 25 October 2010. The court ordered the municipality to pay the costs of the application on a punitive scale due to its unlawful conduct.

### PLANTING THE SEEDS OF JUSTICE

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policies which will have a major effect on land tenure law and farmworker rights. Perhaps the most significant of these developments was the publication of the Draft Land Tenure Security Bill by the Department of Rural Development and Land Reform in December last year. An overview of the draft bill and its implications is set out on page 8 of this issue.

In this edition, we also focus on some of the key legal and policy interventions by government in the last year that attempt to address employment and housing rights on farms. The rights of farmworkers to live on farms are in almost all cases entirely dependent on their continued employment by the owner of the farm. This makes farmworkers especially vulnerable to eviction and loss of their homes.

# FARM DWELLERS FIGHT FOR RIGHT TO SHELTER

In the case of *Pieterse and Others v Stellenbosch Local Municipality and Another*, the SFP acts on behalf of Mr Gert Pieterse and the Women on Farms Project in an important test case regarding the obligations of local authorities to provide temporary emergency shelter to evicted farmworkers in the Cape Winelands District Municipality. This municipality has one of the highest rates of court ordered evictions of farmworkers anywhere in the country. According to a research report commissioned by the municipality in 2009, eviction orders originating in the area between 2005 and 2010 constituted 48 percent

of the cases sent to the Land Claims Court. The execution of the eviction order rendered Mr Pieterse and his family homeless. The family, including two young children, was forced to sleep on the side of roads for two days. They found temporary accommodation at a municipal homeless shelter, but were told to leave after one week.

The SFP brought an urgent two-part application in the Western Cape High Court on 9 November 2010. In the first part of the application, we sought an order directing the Cape Winelands District Municipality and the Stellenbosch

Mr Pieterse and his family in a homeless shelter until such time as the application is finalised. The main application in which the declaratory orders against the municipalities are sought will be heard by the Western Cape High Court on 11 May 2011. The SFP has briefed Advocate Paul Kennedy SC and Advocate Heidi Barnes of the Johannesburg Bar to argue the main application.

The case of *John Tholo v Reside Properties* highlights local governments' obligation to play an active role in eviction proceedings and to have proactive plans in place to provide emergency accommodation after evictions. We act on behalf of Mr Tholo in an eviction application under way in the Stellenbosch Magistrate's Court. On 24 May 2010 we filed a counter-application in the Magistrate's Court for orders directing the Stellenbosch local municipality to report to the court on the steps it has taken to provide emergency accommodation to >>

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## SFP FIGHTS HOMELESSNESS

One of the SFP's key objectives is to prevent the granting of eviction orders that result in people becoming homeless. In terms of the Extension of Security of Tenure Act (ESTA), the availability of suitable alternative accommodation is a factor that a court must consider in eviction matters. However, our experience has been that eviction orders granted against farm dwellers, particularly in rural Magistrates' Courts, routinely result in homelessness. We have seen a number of cases in the Cape Winelands area where families who have lived and worked on farms for generations have been forcibly evicted and left without shelter.

The SFP aims to prevent homelessness by ensuring that local municipalities perform their statutory and constitutional duties, and that sufficient information regarding alternative accommodation is placed before the court. If eviction orders are granted against occupiers without alternative accommodation, then the orders are appealed to higher courts.



**Pieterse and Others v Stellenbosch Local Municipality and Another**

of the cases sent to the Land Claims Court for automatic review. Despite this, neither the Cape Winelands District Municipality nor the Stellenbosch Municipality has a comprehensive plan in place to provide temporary shelter or emergency accommodation to farmworkers who face imminent eviction from local farms.

On 20 October 2010, Mr Gert Pieterse and his family were evicted from Bloemendal Farm in Stellenbosch after working and living on the farm for 21 years. The eviction order was carried out after Mr Pieterse had been dismissed and a subsequent application for his eviction granted by the Stellenbosch Magistrate's

Municipality to provide Mr Pieterse and his family with basic temporary shelter, pending the final determination of the application. In the second part of the application, we sought orders declaring the failure of the Cape Winelands and Stellenbosch municipalities to provide alternative shelter to be unconstitutional.

The SFP also sought a structural interdict directing the respondents to comply with their constitutional and statutory duties by delivering a report to the court detailing a plan to provide suitable relief for evicted people in intolerable circumstances. On 11 November 2010, an order was granted directing the respondents to accommodate

## ELECTRICITY, WATER, SANITATION: BASIC RIGHTS



agreement was concluded with the farm owner resulting in the reconnection of the occupiers' water supply. The farmer appears to have abandoned the eviction application and we are currently assisting the occupiers with applications to the Department of Rural Development and Land Reform for land acquisition grants.

The case of *Digteby Occupiers v Stellenbosch Municipality* deals with the obligations of a local municipality to provide basic municipal services such as water and sanitation facilities in a fair and equitable manner. The SFP represents Mr Arnold Moses and a number of families in Digteby, Stellenbosch. This community is mostly made up of retired farmworkers, pensioners, and households headed by women. We are advising the community on their rights regarding a municipal housing project underway on a

portion of land adjacent to their homes. Our clients' concerns relate to the impact of the housing project on their existing homes and whether provision could be made for them to have access to water and sanitation facilities as a consequence of the construction process. None of the Digteby homes have water-borne sewerage facilities and the whole community has to share a single tap. They have been living in these conditions for over 15 years.

Following the legal intervention of the SFP, a formal agreement was reached with the municipality that it would take the necessary steps to ensure that our clients' houses are provided with connections to the bulk water and sewerage infrastructure being constructed for the housing project. We are following up on the implementation of the agreement.

During 2010, the SFP provided legal representation to farm dwellers in a number of cases involving access to electricity, adequate water and sanitation. These services are essential for a dignified human existence and are a key test case litigation focus of the SFP.

In the case of *Occupiers of the Farm Spioenkop v Grobler*, we represented 35 rural households facing a High Court eviction application with no suitable alternative accommodation. A number of the households on the farm are headed by single and unemployed women, many of whom receive disability or social relief grants, and other families are headed by people over 60 years old.

On 18 June 2008 the occupiers' water supply was disconnected by the manager of the saw mill on the farm. All other basic services, such as refuse removal and electricity, were also disconnected. The SFP filed an application on behalf of the farm dwellers in the Land Claims Court for orders directing the land owner to immediately restore the water and electricity. The application was heard during November 2010 and a settlement

### FARM DWELLERS FIGHT FOR RIGHT TO SHELTER

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Mr Tholo and his family in the event of their eviction. An order to this effect was granted by the Magistrate on 1 June 2010. The municipality then filed a brief report stating that it has limited resources available and is unable to provide any emergency accommodation to persons facing eviction. Further reports were filed, but the municipality has not provided further information on its housing policy for emergency accommodation. We have argued the merits and are awaiting judgment. This matter is likely to be appealed to the Land Claims Court irrespective of the outcome.

An important issue that the SFP hopes to address in a pending appeal involves eviction orders which lead to homelessness and the obligation of local municipalities to be joined as respondents in such cases. An appeal to the Land Claims Court has been noted in the matter of *Univeg (Pty) Ltd v Hennie*

*Diedericks*. Mr Diedericks and his family have been living on Heldervue Farm near Piketberg for 13 years. Mr Diedericks was dismissed from employment in June 2009 and an application for his eviction was granted by the Piketberg Magistrate's Court on 26 August 2010. The eviction order was confirmed by the Land Claims Court on 14 October 2010, but this was not brought to Mr Diedericks' attention until a week before the eviction order was to be executed. On 3 December 2010, we filed an appeal to the Land Claims Court contending that the eviction order should not have been granted if its execution would lead to Mr Pieteron and his family being rendered homeless. We also argue that the eviction order should be set aside because the local municipality was not joined as a respondent and there was insufficient evidence of the availability of suitable alternative accommodation.

The appeal is likely to be heard in the first half of 2011.

## FARMWORKERS DEMAND FAIR WORKING CONDITIONS



In 2010, the SFP brought two important cases in the Western Cape Labour Court dealing with the rights of farmworkers to fair labour practices.

The case of *Christian Samuels v Sryan Properties* dealt with the refusal of an employer to comply with a settlement agreement made with Mr Samuels, a severely disabled farm dweller, in February

**After these deductions, employees were left with as little as R100 a week to support themselves and their families**

2009, following his unfair dismissal. Despite numerous requests by the SFP, the employer failed to fulfil the settlement agreement. On 7 April 2010, the SFP filed an application in the Labour Court for an order directing the employer to comply with the settlement agreement within five days, with a punitive costs order. The employer subsequently complied with the settlement agreement and paid all the money due to

Mr Samuels. On 4 June 2010, the Labour Court ordered the employer to pay the costs of the application filed by the SFP on a punitive scale.

In *Leonard Titus v Petit Provence*, a local farmer deducted unlawful and excessive amounts for rental accommodation from the weekly wages of his farmworkers. After these deductions, employees were left with as little as R100 a week to support themselves and their families. On 19 March 2010, the SFP brought an urgent application in the Labour Court for an order interdicting the farm from deducting unlawful amounts from the wages of Mr Titus and other employees, directing it to repay any deductions, with interest from the date of the unlawful deduction to the date of final payment in full.

Shortly after the application was launched, the employer agreed to repay all amounts which had been illegally deducted and to refrain from any such conduct in future. On 25 March 2010, the Labour Court granted a final interdict against the employer to this effect. We have received no further reports of unlawful wage deductions from the workers on this farm.

## EDUCATION AND TRAINING

The SFP regularly conducts training workshops for farm dwellers, paralegals, unions and non-governmental organisations on eviction law and procedures, land tenure rights, fair labour practices and farm dweller sectoral determination compliance.

The SFP Upington office held three training workshops during 2010, in Groblershoop (26 February), Augrabies (16 April) and Keimoes (20 May). Each workshop was attended by about 60 participants. The participants included farm dwellers, shop stewards and union representatives, community development workers and representatives of non-governmental organisations working on land and tenure rights issues.

The Upington office also participated in the Upington Agricultural Expo held on 1 June 2010, which allowed us to publicise and promote the work of the SFP with local farmers and land owners, as well as in the broader agriculture industry.



## PROVIDENT FUND HELPS FARMWORKERS

On 20 August 2010, the Minister of Labour published Government Notice No. 737, which directed the Employment Conditions Commission to investigate the conditions of employment in the farmworker sector in South Africa. This investigation aims to assess the feasibility of establishing a provident fund in the farmworker sector in South Africa.

The Employment Conditions Commission advises the Minister of Labour on a wide range of issues relating to the Basic Conditions of Employment Act of 1997 (BCEA), including the making of sectoral determinations. The current Sectoral Determination 13, which applies to farmworkers, does not contain any provision obliging employers to establish or contribute towards a provident fund for farmworkers. Many farmworkers who have lived and worked on a farm for decades find themselves vulnerable and destitute in their old age, with no savings or financial support for their retirement. The current state old-age grant is often insufficient to meet the costs of medical bills, food and general living costs.

The SFP welcomes this significant initiative by the Department of Labour to investigate the feasibility a provident fund for farmworkers, and we would support a sectoral determination making it compulsory for employers to contribute to such a fund. Financial security for retired

farmworkers is essential. Such a fund could also be used to provide benefits for farmworkers who are unable to work due to illness or occupational injury. The SFP will follow up with the Department of Labour during 2011 on the progress of the investigation.



## POLICY BRIEF

One of the first indications of the need for major legislative and policy intervention on farmworker land tenure issues occurred during the 52nd national conference of the African National Congress (ANC) in December 2007. During this conference, delegates resolved to make



Phike v Khara Hais Municipality

farmworkers and farm dwellers a priority, protecting their interests by reviewing and strengthening relevant legislation.

When South Africa's new administration took office in 2009, the government published its Medium Term Strategic Framework (MTSF) in July of that year. Priority 3 of the MTSF provided for the development and implementation of a comprehensive strategy of rural development aimed at improving the quality of life of rural households and enhancing food security through a broader base of agricultural production.

The Comprehensive Rural Development Programme (CRDP) was launched by the Department of Rural Development and Land Reform in August 2009. The CRDP

aims to create vibrant, equitable and sustainable rural communities through a three-pronged strategy, based on coordinated and integrated broad-based agrarian transformation, strategically increased rural development, and an improved land reform programme. Two major policy interventions were published in 2010, arising from the government's stated commitment in the MTSF and CRDP to the improvement of the quality of life of rural households.

**The CRDP aims to create vibrant, equitable and sustainable rural communities**

# SUBSIDY PROGRAMME ADDRESSES HOUSING NEEDS

The Farm Resident Subsidy Programme was initially published by the Department of Human Settlements in late 2009 and began to be formally implemented by municipalities and the provincial housing departments in 2010. The programme has been approved by the Minister of Human Settlements in terms of section 3 of the Housing Act 107 (1997).

The policy provides capital subsidies for the development of engineering services on farms and adequate houses for farmworkers and dwellers. The aim of the programme is to address the wide variety of housing needs of people working and living on farms and to provide a flexible package of housing models to suit the local context.

In areas where workers have to live close to their place of employment and commuting is not viable, preference should be given to options which provide security of tenure. These options would include subdivision and transfer of land ownership to workers, share-block schemes and long-term lease agreements. In cases where subdivision of land and transfer of ownership to farmworkers is not feasible, other rental housing options can be explored through the institutional subsidy programme or project-based rental housing development.

There are four circumstances in which the programme will apply.

**1. Development initiated by the farm owner,** who is willing to provide housing opportunities on their land for the farm employees. In such a case, a project-based development may be approved that provides local basic water, storm water management, sanitation services and construction of new houses or upgrading of existing houses with long-term rental tenure for the occupants.

**2. Subdivision and transfer of the land to the farm residents.** Each subdivision is required to include land for agricultural purposes. The development may be implemented by the farmer as developer, the provincial department, an appointed private

sector developer or a legal entity formed by the farmworkers themselves.

**3. Developments by beneficiaries** who received individual farm land through the state land reform programme.

**4. Developments through institutional housing subsidies.** The subsidy programme is an innovative attempt to deal with the housing crisis on farms and the appalling conditions in which many farmworkers live. A major shortcoming of the programme, however, is that it was developed and published without any significant input from farmworkers, civil society or grassroots organisations working on farmworker issues.

The programme's development process requires the consent of the land owner and will consequently exclude many farmworkers who have lost their employment on farms and are facing eviction proceedings. The exclusion of seasonal workers from the programme is also a serious shortcoming.

The procedures to be followed in initiating developments for farm housing subsidies have not been made clear and much of the implementation details have been left to the discretion of provincial housing departments and municipalities.

Unless this new programme is sufficiently resourced, accessible to farmworkers and capable of being practically implemented, it runs the risk of being yet another failed policy document – impractical and far removed from reality.



## SFP STAFF NEWS

The SFP made several new appointments during 2010. In March of last year, Sheldon Magardie was appointed SFP Project Coordinator. Sheldon has expertise in human rights and constitutional litigation and practised in these areas at LHR and the Legal Resources Centre for a number of years.

Before rejoining LHR in 2010, he was a director of the firm Cheadle Thompson & Haysom, specialising in public sector and labour law.

We also welcome Anthony Wyngaard, who was appointed as an attorney in the SFP Uptington office in December 2010. Anthony was admitted as an attorney in 2004 and practised at Abrahams Kiewitz Attorneys for the last six years.

We are confident that Anthony will bring renewed focus to the important work of the Northern Cape team.

Cindy Williams and Nanki Nqkabuko have also joined the SFP as candidate attorneys.

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## DRAFT BILL SEEKS MORE RIGHTS FOR FARMWORKERS

Shortly before the end of 2010, the Department of Rural Development and Land Reform published the long-awaited Draft Land Tenure Security Bill for public comment. The new bill represents the most significant legislative intervention in land tenure matters on South African farms since the Land Reform (Labour Tenants) Act in 1996 and the Extension of Security of Tenure Act (ESTA) the following year. The draft bill repeals both ESTA and the Labour Tenants Act.

### SIGNIFICANT LEGISLATION

According to chapter 3, the bill applies to farm dwellers and workers, and farm owners and their authorised agents. Chapter 5 of the bill is of particular significance. It describes the scope of evictions, conditions and circumstances under which evictions may be lawful, prohibition of arbitrary eviction, eviction proceedings and general limitations on evictions. A key provision in this regard is section 20(11) which states that “An eviction may not result in persons affected being rendered homeless or vulnerable to the violation of other human rights.”

Chapter 6 deals with the provision of land and development support to persons covered by the bill, including the creation of agri-villages. It also makes provision for the resettlement of the evicted, authorises acquisition of land on a temporary or permanent basis for the purpose of resettlement and makes provision for assistance to vulnerable farm dwellers whose tenure rights are threatened. Chapter 7 provides for the establishment of committees for resettled communities or agri-villages, duties and responsibilities of such committees, as well as community rules that would guide the operation of these committees.

Chapter 8 of the bill establishes the land rights management board, describes the functions, powers and appointment of the board, its composition and membership and other related matters.

The bill provides for the continued protection of rights of farmworkers and farm dwellers, as well as a support framework for their sustainable livelihood. The bill contains mechanisms for state assistance in the settlement of evicted persons on alternative land. The bill also establishes a land rights management board to give effect to its provisions.

Unsurprisingly, the publication of the draft bill has been met with resistance. AgriSA, which speaks for large commercial farmers, has stated that the new bill will make farmers very wary of hiring new employees. Such employees could then claim security of tenure, making it difficult to evict them.

The draft bill is not without problems. The extensive powers and wide responsibilities allocated to the new land rights management board are positive developments in principle, but whether such a body will operate effectively in the highly contested and complex terrain of tenure reform remains to be seen. A number of non-governmental organisations have criticised the agri-village model, arguing that it could lead to the creation of exploited labour pools for commercial agriculture, and that the bill lacks clarity on local government’s responsibility to provide basic services to agri-villages. In addition, replacing ESTA on-farm subsidy provisions with the agri-village model has been accused of failing to provide security of tenure for farmworkers who have lived and worked on farms all their lives.

Various provisions of the bill have been carelessly drafted and will lead to serious interpretive disputes if not amended. The implications of the draft bill, particularly the powers of the land rights management board and the potential conflict these provisions could create with provincial and local government land planning legislation, will require careful scrutiny and regulatory impact analysis.

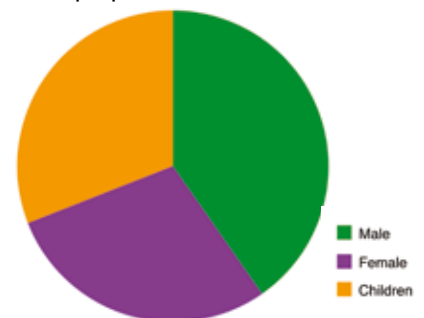
Some of the provisions of the draft bill, such as those authorising the eviction of former employees, mirror those of the ESTA and will not fully address the situation of



unemployed farmworkers facing eviction without suitable alternative accommodation.

These workers are particularly vulnerable because of the link between their employment and housing rights on farms. Despite these issues, the SFP welcomes the higher threshold set by the draft bill for legal evictions from farms, especially the statutory prohibition on evictions leading to homelessness. These provisions are a major improvement on ESTA, which has failed its legislative purpose and has largely served as a mechanism to regulate evictions. The SFP will be submitting comprehensive submissions on the bill and will closely follow its progress in the legislative process.

**SFP Stellenbosch clients 2010**  
(268 people)



**SFP Upington clients 2010**  
(172 people)

