Land matters and rural development: 2011

1 General

In this note on land, the most important measures and court decisions pertaining to restitution, land redistribution, land reform, housing, land use planning, deeds, sectional titles, agriculture and rural development are discussed.[1]

Emphasis on the promotion of Black farmers, especially in the commercial sense, has led the Land Bank to state that, in light of the importance of food production and a successful land reform programme, it is essential that Black farmers be scrutinised before land is transferred to them (Duvenhage 'Keur swart boere eers, vra Landbank' *Sake Rapport* (2011-07-24) 1). In the same context the Minister of Rural Development and Land Reform (MRDLR) has announced that the departure of commercial farmers to other African countries is not a threat to food security in South Africa (Anon 'Departing farmers not a threat: Minister' *BusinessDay* (2011-05-03) 3). It is crucial that production and commercial enterprise continue after land has been transferred under the land reform programme, and the importance of this was reiterated by Minister Nkwinti when he announced earlier this year that all land claims had to be finalised within the next three years (Rademeyer 'Oordrag "misluk as plase onbewerk bly"' *Burger* (2011-05-09) 2). The publication of the *Green Paper on Land Reform* (*GG* 34607, 2011-09-16, GN 639) was met with a variety of comments and criticism (see eg Stewart 'Groenskrif op Grondhervorming: 'n Saak van swart en wit' *Burger* (2011-11-02) 13).

2 Land restitution

In a presentation to the Portfolio Committee on Rural Development and Land Reform in April 2011 (www.pmg.org.za/.../110413cases.ppt), the Department indicated that, currently, there are 316 pending restitution cases (11 in the Eastern Cape, 20 in the Free State and Northern Cape, 44 in Gauteng and North West, 114 in KwaZulu-Natal, 52 in Limpopo, 8 in the Western Cape and 67 in Mpumalanga). Disputes

[1] In this note the most important literature, legislation and court decisions are discussed for the period 2010-11-15 to 2011-11-30.

concern the validity of claims (85%), the amount or sum payable (10%), and the type or form of restitution which should be made available (5%). Of the 457 settled claims of 2010, 177 were finalised within the available budget. Of the 714 processed claims, 127 were rural in nature and 330 urban. The capital expenditure for the 2010-2011 financial year of the Commission on Restitution of Land Rights (CRLR) was R3.34 billion. A total of R2.56 billion was spent on land acquisition and transfer costs, and R707m on financial compensation, and across the country, a total of 26 097 people benefitted from the activities of the CRLR. (See in this regard the CRLR's *Annual Report 2010-2011* www.pmg.org.za/files/.../111012maphoto_0.pdf).

In May 2011, a National Restitution Workshop (www.ruraldevelopment.gov.za/.../RestitutionWorkshop-08052011.pdf) was held to discuss the impact of the restitution programme. Approximately 1 296 delegates attended the workshop. Successes that were identified include, amongst others, the restoration of human dignity; the opportunity to compete in the mainstream economy; the curtailment of land takeovers and the creation of better job opportunities and socio-economic renewal. Shortcomings include the restriction resulting from cut-off dates; manipulation of property prices; poor intergovernmental relations; claims being finalised without the furnishing of title deeds; delays in the transfer of state land; disputes between traditional authorities, fraud, corruption and incompetency in the Department; prescriptive attitudes of service providers and strategic partners and slow processing times in the Land Claims Court (LCC). The proposed action steps to rectify these shortcomings include, among others, the revision of cut-off dates; social facilitation and mobilisation; business development; enhanced communication between role players; training and employment of rural youth in development projects; the prompt appropriation of grants and subsidies; the acceleration of the Recapitalisation and Development Programme and increased participation in the allocation of prospecting and mining rights at the Department of Mineral Resources.

2.1 Notices

Fewer notices were issued during 2011 than in the previous years, which supports government's claim that the claims are being finalised (Gauteng and North West Provinces (Ventersdorp 1; Bojanala 1); Eastern Cape (Grahamstown 5); Western Cape (Cape Town (Grassy Park; Claremont; Goodwood; Parow; Brackenfell; Belville; Elsies Rivier; Kensington 2); Worcester 1; Ceres 1; Clanwilliam 1); Mpumalanga (Gert Sibande 1); Eastern Cape (Cala/Chris Hani 2; Queenstown 1; Mount Fletcher 1); Limpopo (Vhembe 7; Tzaneen 1; Capricorn 2); Free State and Northern Cape (Thaba N'Chu 1; Masilonyana Local Municipality 1; Delportshoop 1; Doornhoek 1) and Kwa-Zulu Natal (Mtunzini 1; no district 2). Several amendment notices, mostly in Kwa-Zulu Natal and Limpopo were issued (Mpumalanga 5; Limpopo 11; Western Cape 1; Kwa-Zulu Natal 12; Free State and Northern Cape 2). Eleven withdrawal notices were published, two in terms of

court orders (GN 611 in *GG* 34585 of 2011-09-09; GN 812 in *GG* 34763 of 2011-11-18).

2.2 Case law

The judgments linked with restitution that are discussed here generally deal with (a) how a particular claim ought to be finalised or resolved (including settlement agreements), (b) the conduct and role of counsel; (c) post-settlement infighting and communities, and (d) the work of the Commission. It is disconcerting that costs orders were made against the Commission in the large majority of judgments handed down.

In *Baphalane Ba Ramokoko Community v The Minister of Agriculture and Land Affairs* (LCC 09/2007, 24 November 2010) various issues were raised, most notably the striking out of particular portions on the basis that they were scandalous and/or irrelevant and of the costs orders connected therewith. The plaintiff instituted a restitution claim in relation to many farms, one of which was the farm Pylkop belonging to the Mphela family, the 76th defendant in this matter. Since 1921 the Mphela family owned a portion of Haakdoornbult until they were coerced into selling the farm in 1951 as it fell within one of the 'Black spots' under the previous political dispensation. With the proceeds of that sale, the family purchased Pylkop. Much later, after instituting a restitution claim in the LCC in relation to Haakdoornbult, the family was finally successful in their claim when the Constitutional Court (CC) found in their favour (*Mphela v Haakdoornbult Boerdery CC* 2008 4 SA 488 (CC) – see further discussion hereinafter). In that judgment the restoration revolved around Haakdoornbult with the CC stating that the Mphela family 'would retain ownership of Pylkop'. It is important to keep in mind, however, that Pylkop was not awarded to the family and was not part of the restoration as it already was the property of the Mphela family. The plaintiffs were now claiming, among other things, the farm Pylkop in a restitution claim. They argued that, when the *Haakdoornbult* case was finalised, the courts did not have the full picture and were unaware that the farm Pylkop was the subject of another restitution claim. The plaintiffs also lodged an application in the CC to rescind the *Haakdoornbult* decision on that ground. Although the courts did not have the full picture, the plaintiff's counsel averred that the counsel now involved in this matter, indeed had all the facts at their disposal. Apparently they were also involved in the *Haakdoornbult* case and they were fully aware of the fact that Pylkop would be claimed in another restitution claim. The plaintiffs' counsel further stated that said counsel elected not to bring the problem to the court's attention, despite their ethical duty to do so (para 10). Further allegations of reckless behaviour by counsel, breach of ethical duties, intentionally misleading the courts, trampling the plaintiffs' constitutional rights and subverting the administration of justice, were also made (para 30). Counsel was also identified by name. After receiving a

complaint by the senior advocate involved in both the present and the Haakdoornbult matter that the papers contained defamatory matter, the reply was withdrawn (para 14). However, a further reply was later accompanied by a letter of the plaintiff's attorney stating that they instead stick to every word, phrase, sentence and remark in their earlier reply. In the meantime a hearing date for the general restitution claim had been finalised. Before the hearing began different interlocutory applications were lodged, *inter alia*, the application by the 76th defendant to strike out the defamatory portions contained in the plaintiff's official reply and an application by the plaintiff for condonation of late filing of their reply. There was also an application by the plaintiff to postpone the main restitution application *sine die* (para 16).

The LCC court per Gildenhuys J first attended to the application to strike out and award costs (para 18). As the LCC Rules did not deal with the striking out of irrelevant or scandalous matters, the Uniform Rules of the High Court applied. In order to grant such an application, the court has to be satisfied that the applicant bringing the application would be prejudiced in the conduct of his claim or defence if the striking out application was not granted. Gildenhuys J briefly sketched the background to the Pylkop claim and emphasised that the farm was not compensatory land in the *Haakdoornbult* case (para 26). As neither the state nor the claimants in that case laid any claim to Pylkop, no competing claim existed. Accordingly, no duty existed on the counsel involved to inform the court as none of the parties were interested in Pylkop and no order was made that involved Pylkop. Had conflicting claims existed in relation to Pylkop, the abusive remarks still need not have been included in the reply. Gildenhuys J found these remarks to be 'scandalous and vexatious and irrelevant within the meaning of rule 23(2) of the Uniform Rules' (para 31). Had it been left intact, it would have had a negative impact on the manner in which the defendants' case would be handled. The order was thus granted that these portions be struck out. As there was no justification to include such offensive remarks, the costs order was also successful on the basis of costs *de bonis propriis* (para 41).

The *Baphalane Ba Ramokoko Community v Mphela Family* (CCT 75/10; [2011] ZACC 15) concerned the application to rescind the CC's earlier judgment and order in *Mphela v Haakdoornbult Boerdery CC* (2008 4 SA 488 (CC)). In the 2008 *Haakdoornbult* judgment the CC upheld the claim of the Mphela family to the Haakdoornbult farm. The present applicants, the Baphalane Ba Ramokoko Community (the community) lodged a land claim in 1998 in relation to land located in the North West and Gauteng provinces. Pylkop formed part of the land so claimed. The claim was opposed by the relevant landowners and after litigation, the Commission was ordered to refer the claim to the LCC. The same counsel that represented the Haakdoornbult owners was also involved in opposing the community's claim. Before the claim could be adjudicated on, the Mphela family lodged an application for intervention on the basis that they only

recently heard of the Pylkop claim and that they had a substantial interest in the issue (para 15 – see the discussion above).

The question as to whether the CC should rescind its earlier judgment was linked to the question of whether the *Haakdoornbult* judgment and order impinged on the community's claim to Pylkop. The CC states: 'The answer is clearly No …. The *Haakdoornbult* judgment concerned Haakdoornbult alone. The Court gave no order in respect of Pylkop, and it granted no restitutionary determination in respect of Pylkop. The *Haakdoornbult* judgment left the Community's claim to Pylkop unaffected' (para 28) and further: '(t)he Pylkop issue that the Supreme Court of Appeal order remitted concerned the Family's entitlement to Pylkop, and not the Community's. The Community's entitlement to claim Pylkop remains untouched, for the Land Claims Court to determine' (para 29).

The *Haakdoornbult* judgment did not contain any judicial ruling binding the parties in the Pylkop litigation, because the parties, the cause of action, the relief sought and the issues in dispute were different (para 32). Regarding the alleged misconduct of the counsel, the court emphasised that the LCC had already ruled that there was no misconduct. Despite that ruling, these allegations were repeated in written argument. Because the integrity of counsel had been impugned, the court found that a costs order was warranted in these unusual circumstances (para 42).

The judgment is important for mainly three reasons: (a) it underlines that different cases and claims have to be separated and not confused; (b) it illustrates the scale and the tragedy of dispossession that occurred under the previous dispensation; and (c) it emphasises that irreproachable integrity is required from all parties and counsel involved. Separating the different issues is important: the *Haakdoornbult* judgment confirmed the family's claim in relation to Haakdoornbult alone. The fact that the same family previously purchased a farm that is now subject to another, unrelated claim, is irrelevant. That claim is a different matter. Although not linked with each other, the two claims (Haakdoornbult and Pylkop respectively) illustrate clearly the tragic history of dispossession for these persons and communities. It is ironic that a family, who managed to purchase a farm from proceeds resulting from a forced sale, now faces a land claim in relation to the purchased farm by another community who (probably) went through exactly the same experience. Although the community's claim still has to be adjudicated, it is not unthinkable that a similar chain of events could unfold before the courts regarding the farm Pylkop.

Henning Anton Louw v The Richtersveld Agricultural Holdings Co (Pty) Ltd (1189/2010, 29 October 2010, NCHC) dealt in detail with community strife and the difficulties involved in managing community relationships. The history of the Richtersveld Community and their struggle to have their rights acknowledged is well-known and will not be repeated here. Since the acceptance of the claim, a comprehensive deed of settlement was entered into in April 2007 and was made

an order of the LCC in October of that year. The settlement as per court order also made provision for development plans and entailed a detailed exposition of powers, responsibilities and accountability of persons in charge. Despite these meticulous provisions being in place to regulate the funds comprising R190m and a lump sum development grant of R50m, the communal property association (CPA) and the various companies and their subsidiaries, have been embroiled in disputes and legal processes since 2007. The present matter was one of five pending or finalised in the Northern Cape High Court.

The applicants are members of the Richtersveld community and act purportedly on behalf of some 11 000 other members. The respondents represent various companies (or subsidiaries) and/or directors of said companies. Various forms of relief were sought, *inter alia*, a declaration that some directors' appointments were unlawful, that the 5th to 8th respondents should be removed as directors and that the Richtersveld Agricultural Holding Co (RAHCO) be placed under judicial management. (The latter was later revoked by agreement.) Essentially, the governance and structures of the various holding companies were questioned, which led to accusations of mismanagement and resultant infighting (para 13-21). The parties differed in their approach to the legal interpretation of the governance structure. Put plainly, the applicants lay greater emphasis on the CPA (governed by the Communal Properties Associations Act 28 of 1996 (CPA Act)) and the Trusts, whereas Selfdevco (the second respondent, a holding company of RAHCO through which development projects would be run) stated that corporate governance, as embodied in company law, should prevail. Put differently, the applicants urged that the court look beyond the various companies as separate legal entities and rather give effect to *inter alia* the CPA Act (para 22). A lot of thought went into the establishment of a CPA, two trusts (the Community Trust and the Richtersveld Investment Trust) as well as various companies and investment holding companies. It was thus crucial that the inter-connectedness of these institutions and structures was understood, because governance or the lack thereof was the main issue of dispute between the parties. It was emphasised that the use of companies was specific as it was deemed the best way to protect community members if something went wrong. Despite this emphasis, however, the court was specifically urged to look beyond the technical legal *personae* (para 24). In this context the court per Majiedt AJP analysed the appointment of the 5th to 8th respondents as directors by the Selfdevco Board in 2009 (para 27-29). Questions were raised as to the correct procedure of nomination and the appointment of said directors.

The applicants did not complain that the elaborate structure set out in the deed of settlement and corrected by the LCC was unworkable or that it had been ill-conceived. Their complaint was that one of the numerous entities in the structure had an improperly constituted board. However, they had neither the legal standing to challenge that fact, nor had they made out a case for interference in the

company's internal affairs. The Companies Act provided relief for appropriate instances, for example, the investigation of the company's affairs. The applicants furthermore had the power, with like-minded aggrieved beneficiaries, to use their vote to correct any wrongs which existed (para 37). The court voiced its disappointment at the community being 'at war with itself' (para 48): 'It is not for the Courts to settle these internecine disputes – it can only adjudicate the legal issues before it. Still, one can only implore the parties to settle their differences in the interest of the entire community' (para 48). The application was dismissed on the basis that the applicants lacked *locus standi*. Unfortunately disputes and infighting seem to be rather common among land restitution communities. It is a pity that the long struggle for getting claims accepted is marred by discontent and that, again, a lot of energy and money are spent on such legal battles.

Makhukhuza Community Claimants: Concerning land described by the Makhukhuza Community as comprising 19 farms situated in the Thukela District, Bergville, Kwa-Zulu Natal (LCC 04/2009, 2010-11-18) concerns the contesting of a community claim in light of a settlement agreement reached by the claimants and the state under section 42A of the Restitution of Land Rights Act 22 of 1994 (Restitution Act). Since the claim was lodged in 1998 the owners of land affected thereby contested the validity of the claim on the basis that it was incorrectly categorised as a community claim. The claim was gazetted in 2002 and remained unsettled until 2009 when it was referred to the LCC. The referral report clearly indicated that it was a community claim on the basis that the right to land was derived from shared rules determining access to land held in common as a group under traditional leadership (para 4). The referral report indicated various dates of dispossession, for example, from the 1960s until the 1990s, and the years 1967 and 1970. The referral report indicated that the acceptance criteria were derived from the investigation report (also referred to as the acceptance report). However, the research done on the claim as set out in the acceptance report clearly indicated that the people living on the land in question enjoyed individual land rights and could (at least) be described as labour tenants (para 8). The description in the report of the rights lost indicated that they were individual rights. Accordingly, the finding in the referral report that the applicants derived their rights from shared rules of access to land, was not at all echoed by the acceptance report (para 10). Instead, the latter report confirmed that at the time of dispossession, the land claimed was owned by white farmers on which labour tenants resided. The referral report was furthermore drafted after the well-known *Goedgelegen* judgment was handed down by Moseneke DCJ in 2007 in which community claims were specifically set out (*DLA v Goedgelegen Tropical Fruit Farms (Pty) Ltd* 2007 6 SA 199 (CC)). Ironically, the plaintiff's response to the referral report echoed the investigation report, namely that at the time of dispossession the persons who were removed were labour tenants (para 14).

The court found that the work of the Commission had been 'shoddy' and that it had not adequately acquitted itself in the performance of its functions as prescribed in the Act (para 26). It was correct that the Commission accepted the claim under section 11(1) as there were clearly merits and the receipt of the claim was a formal act. However, following that, the later investigation and the validation of the claim were done in a superficial and cursory manner (para 29). With reference to the *Kusile* case, (*Midlands North Research Group v Kusile Land Claims Committee* 2010 5 SA 57 (LCC) – discussed in Du Plessis, Pienaar and Olivier (2011) 26 *SA Public Law* 291) Meer J awarded a costs order against the Commission, and this decision is another in a string of judgments confirming costs orders against the Commission in particular. These costs orders involved large amounts of money that could have been used much more effectively to finalise restitution claims.

In the *Nkunzana Property Trust v The Minister of Rural Development and Land Reform, the Chief Land Claims Commissioner and the Regional Land Claims Commissioner KZN* case (LCC 45/2010, 2011-02-16) the applicant lodged an application to the LCC to order the respondents to transfer certain properties to the applicant within a period of 90 days. This application has a long history. The Nkunzana Community lodged a land claim under section 2 of the Restitution Act. The claim affected a large portion of land containing numerous properties (paras 3-9). The land claim was validated and approved by the first respondent in July 2007. The award of land to the value of R182 459 000 was made to benefit 472 households and a handing over ceremony took place in July 2008. One year later the applicant received a letter confirming that the claim had been settled by the award of said properties and that the Commission was in the process of appointing a conveyancer to undertake transfer of the relevant properties. To that effect a CPA was formed. Since that letter (received in 2009) nothing further has occurred, except that the land had in the meantime been transferred to the state under section 42A of the Act (para 11).

The land had not been transferred to the applicant, as was the intention, because a conflicting claim existed (para 14). Apparently a claim had been lodged by the Usuthu Tribal Authority. Exactly when and how that happened is unclear from reading the judgment. However, it would seem as if a claim form was in existence indicating that the Usuthu Tribal Authority had lodged a claim on behalf of King Swelithini in relation to the same properties claimed by the applicants. However, the person who made the affidavit, although recognising his signature, could not remember all the circumstances under which the claim was lodged. The court per Mpshe AJ enquired as to the progress made with regard to the conflicting claim. The response was rather confusing. The court found that there was no evidence before it that confirmed that the Usuthu Tribal Authrority had indeed lodged a claim as alleged (para 17). It was clear from the respondents' responses that no progress had been made regarding the transfer of properties

to the applicants. Finding that there was no opposing or conflicting claim and in light of the fact that the respondents had not made any progress regarding the transfer of properties, the court ordered that the properties be transferred and made a costs order against the respondents. This case continues the trend in which parties have to approach the court in order to realise their constitutional rights against government institutions and organs of state.

Emfuleni Resorts v Mazizini Community ([2011] ZASCA 139) deals with an appeal against an order handed down in the LCC, as well as an application for a postponement of said appeal and rescission application. The LCC handed down an order under section 35(1) of the Restitution Act in terms of which land comprising the Fish River Sun Hotel Complex was awarded to the Mazizini Community. The appellants applied for and were granted leave to appeal on the basis that the order granted was inappropriate. Instead, they contended for a compensatory award. In the meantime the Prudhoe Community, who were not involved in any of the proceedings previously, lodged an application to the SCA on the basis that the Mazizini land claim be remitted to the LCC for adjudication as it was a competing claim to their own claim in respect of the same land. Before argument occurred, an application for the postponement of the appeal and the rescission application was made by the third respondent, the regional land claims commissioner of the Eastern Cape. The reason offered for the postponement was that the Commission needed time to determine the validity of the claim lodged by the Prudhoe Community (para 4).

Apparently the Prudhoe Community lodged a claim for the land in question on 10 December 1998, more or less the same time the Mazizini Community lodged their similar claim. The Commission proceeded to investigate and pursue the claim of the Mazizini Community, but somehow did nothing about the Prudhoe Community claim. Although the Commission had a change of staff since the lodging of the claims, none of the previous or current staff members could shed some light on why the Prudhoe Community claim was not dealt with (para 5). During the present proceedings, the Commission, instead of explaining the long delay, attempted to impugn the validity of the Prudhoe claim by stating that it had not been validly lodged because an incomplete claim form had been submitted (para 6). Yet no one could explain why the claimants were not assisted in submitting their claim. Having failed to assist the claimants, as was their duty, Mthiyana JA (Harms AP, Snyders, Bosieo JJA and Petse AJA concurring) found that it was not now possible to argue that the claim so lodged, was not valid (para 7).

The application for postponement was opposed by the appellants and the Prudhoe Community. They argued that it was not for the SCA to debate the validity of the claim lodged. All that was required at that stage was to show that the claimants had 'put up an arguable case' (para 8). Although the SCA could not adjudicate the validity of the Prudhoe claim, the court was satisfied that the Community at least had a potential claim in respect of the land that the LCC had granted a restoration order (para 13). On the facts of the case the SCA was

satisfied that neither the judge in the LCC nor the parties involved in the matter were appraised of the Prudhoe Community's competing claim or potential claim. The order granted by the LCC was thus set aside and the whole matter was remitted to the LCC. Had the Commission performed its statutory duties properly the appeal would have proceeded and the matter would not have been remitted to the LCC. In this context a costs order was made against the Commission.

Section 35(1)(a) of the Restitution Act specifically precludes a court from making a finding or handing down an order in relation to a parcel of land if there is more than one claim relating to the same land. Apart from the fact that such an order may be prejudicial towards the other claimants, it is problematic that a court can decide on an issue without having all the information before it. Accordingly, if one claim has already been processed up to a point, for example, evidence has already been heard and arguments made during the hearing, the whole process is halted until the other conflicting claim has progressed as well. Any final order relating to a particular parcel of land can only be made after all the facts, evidence and arguments have been placed before the court. However, this approach can only work if the court knows about the conflicting claim and the court will only know about the claim if it has been processed and referred to it by the Commission. Accordingly, the task of the Commission in this regard is integral to the timeous and successful completion of claims. This case has again underlined the importance of the work done by the Commission. A costs order against the Commission in circumstances like these, though warranted, does not solve the underlying problem sufficiently.

3 Land reform

3.1 Green Paper on Land Reform

The *Green Paper on Land Reform* (*Green Paper)* defines the vision for land reform as follows (para 3):

> 3.1 A re-configured single, coherent *four-tier system of land tenure*, which ensures that all South Africans, particularly rural blacks, have a *reasonable access to land with secure rights*, in order to fulfil their basic needs for housing and productive livelihoods.
>
> 3.2 *Clearly defined property rights*, sustained by a fair, equitable and accountable land administration system within an effective judicial and 'governance' system.
>
> 3.3 *Secure forms of long-term land tenure for resident non-citizens engaged in appropriate investments* which enhance food sovereignty and livelihood security, and improved agro-industrial development.
>
> 3.4 *Effective land use planning and regulatory systems* which promote optimal land utilization in all areas and sectors; and, effectively administered rural and urban lands, and sustainable rural production systems.

The three principles underlying land reform focus on the deracialisation of the rural economy, the allocation and use of land on a democratic and equitable basis (taking into account race, gender and class considerations), as well as 'a sustained production discipline for food security' (para 4.1). The *Green Paper* summarises the current challenges and weaknesses with reference to the existence of a distorted land market, fragmentation as regards the support system for beneficiaries, challenges relating to the selection of redistribution beneficiaries, issues relating to land administration and governance, the 2014 target of having distributed 30% of South Africa's agricultural land, the declining contribution of agriculture as regards the gross domestic product (GDP), increasing rural unemployment and serious challenges relating to restitution and restitution support.

An integrated two-pronged approach is to be followed: the improvement on the manner in which land reform has been (and is) implemented (without substantial disruption of the current levels of food security and agricultural production) and, simultaneously, the avoidance or minimisation of land reform projects (both redistribution and restitution that do not result in 'sustainable livelihoods, employment, and incomes' (para 6.1)).

The four major initiatives to give content to the above approach are:

(1) The recapitalisation and development programme (which focuses on the bringing about of 100% production level on all post-1994 land reform farms and privately bought smallholders' farms – based on a partnership model with commercial agriculture, with risk-sharing being an important element);
(2) A single land tenure system with four tiers;
(3) Institutional reform; and
(4) legislation (with specific reference to the Land Tenure Security Bill, 2010).

As regards the single four tier tenure system (in relation to state, public, communal and private land), the *Green Paper* (without providing any detailed information) distinguishes as follows (para 6.4):

(a) state and public land: leasehold;
(b) privately owned land: freehold, with limited extent;
(c) land owned by foreigners: freehold, but precarious tenure, with obligations and conditions to comply with; and,
(d) communally owned land: communal tenure, with institutionalised use rights.

The *Green Paper* also indicates that a separate policy document will be developed in respect of communal land taking into consideration the complexities involved and the constitutional invalidation of the Communal Land Rights Act 11 of 2004 (see *Tongoane v National Minister for Agriculture and Land Affairs* (2010 6 SA 214 (CC); 2010 8 BCLR 741 (CC)).

At the institutional level, the *Green Paper* envisages the establishment of a Land Management Commission (LMC) that would, although not independent, be autonomous of the DRDLR and the Minister. Its main functions are set out as advisory, co-ordination, regulatory, auditing and as 'reference point'. The second new institution to be established, is the Land Valuer General (LVG), which will be responsible for a range of financial and market issues relating to land (amongst others, the determination of 'fair and consistent land values for rating and taxing purposes' (para 6.6.2)) and of financial compensation for land expropriation (with specific reference to the Expropriation Act 63 of 1975 and the Constitution).

The Land Rights Management Board (LRMB) is the third new institution proposed by the *Green Paper*. This is a stakeholder representative body with additional experts appointed by the Minister, and its functions include, amongst others, 'the communication of legal reforms, the strengthening of institutional capacity, the provision of assistance as regards the development of appropriate systems for the recording and registration of land rights and support for internal dispute resolution mechanisms' (para 6.7.2). At project level, land right management committees (LRMCs) will be established and supervised by the LRMB, consisting of local representatives of farm workers, commercial farmers, municipalities, government departments and the SA Police Service.

As regards the relationship with the 2009 Comprehensive Rural Development Programme (CRDP), the emphasis will be on the pillars of agrarian transformation, land reform and infrastructural investments (social, economic, cultural) in respect of rural beneficiaries.

The *Green Paper* concludes with the statement that 'there are no silver bullets to solving post-colonial land questions' and that '(t)here is a strong view that the real problem in land reform in general; and, the protection of the rights and security of tenure of farm-dwellers, in particular may be that of a total-system failure (TSF) rather than that of a single piece of legislation' (para 10.2-3). The successful implementation of the land reform programme depends on both a national political undertaking and properly functional IGR structures and systems.

A number of issues not dealt with in detail in the *Green Paper* were referred to in the *Draft Green Paper on Land Reform* (www.pmg.org.za/.../110825Green Paper-LandReform.pdf). These include the role of traditional leaders in respect to local government, the facilitation of service provision to communities in communal areas (para 10), the envisaged imposition of limitations on the extent of private land held in freehold title, the introduction of 'precarious title with regulatory limitations, obligations and conditions in respect of foreign-owned land' and in respect of communal land the introduction of 'mixed uses with institutionalised use rights' (para 10). It is envisaged that regulatory limitations will be imposed on freehold land titles held by South African citizens in respect of the following (para 14): 'prime and unique agricultural land, sustainable utilisation of land, subdivision of rural/ agricultural land; non-resident' absent-landlord' properties, land quantity restrictions, special consent and approval regimes on selected controlled land, right of first refusal, etc'.

Karaan (University of Stellenbosch) criticised the *Green Paper* for not doing enough to settle black commercial farmers and for excluding black farmers from acquiring ownership of state land (Van der Walt 'Swart boere kry nie genoeg hulp: Groenskrif gekap oor private eienaarskap' *Beeld* (2011-09-02) 7). AgriSA's response was that the *Green Paper* lacked an implementable plan for successful land reform. It also indicated that, on average, it currently takes 74 months to transfer land under the land reform programme compared to the private transfer of private land which takes approximately 6 weeks (Duvenhage 'Groenskrif oor hervorming van grond stel AgriSA teleur' *Sake24* (2011-08-29) 2). In addition, it indicated that 60 of the largest farmers are responsible for the 60-70% of South Africa's food production (Van der Walt 'Grondplafonne bly vir Agri SA 'n probleem' *Naweek-Beeld* (2011-08-27) 4). The DAFF Deputy Minister indicated that 80% of food consumed in South Africa is produced by approximately 15% of South Africa's commercial farmers (Radebe 'Mooted limits on landownership raise food shortage fears' *BusinessDay* (2011-09-01) 4). The number of commercial farmers has decreased from 60 000 in 1996 to less than 40 000 in 2011. According to him, this has resulted in every current commercial farmer having to, on average, produce enough to feed 1 100 people. The time to comment on the *Green Paper* was extended to 31 December 2011 (Gen Not 841 in *GG* 34785 of 2011-11-25).

In 2009 it was announced that a land audit of state land had been initiated; apparently this has not been completed (Van der Walt 'Plaas moratorium op grondhervorming – DA' *Beeld* (2011-08-18) 7).

3.2 Extension of Security of Tenure Act 62 of 1997 (ESTA)

3.2.1 Draft Tenure Security Policy

The DRDLR Draft Tenure Security Policy was published in January 2011 (www.politicsweb.co.za/.../page71656?oid=216187&sn=Detail). The policy objectives are to protect the relative rights of farm workers, farm dwellers and farm owners; enhance security of tenure of farm dwellers; create conditions conducive to peaceful and harmonious relationships on farms and in farming communities and sustain production discipline on land in the interest of food security. It is proposed that evicted people, or people prone to be evicted, be afforded the opportunity to opt for resettlement in agri-villages. The village community, financier and respective municipalities will be involved in the drafting of rules for the establishment and operation of villages. Individuals will have security of tenure, be able to build up equity, and have access to government services and better basic infrastructure. Land in resettlement areas will be used to resettle persons on a long-term basis and may be held under a temporary permit system. In this regard, rules will be instituted to afford the transfer of land in freehold title to those who make better use of allotted land. Land may also be taken away from non-performers. There will be increased levels of support and organisation.

Current land acquisition methods result in serious challenges and it is suggested that more forcible intervention by the state is necessary (using its power of expropriation). There is clear non-compliance with the provisions of the ESTA (also by the courts), and, as a result, a more robust institutional environment is proposed. A Land Rights Management Board will ensure that stakeholders are involved in proactively dealing with evictions and its causes. Legislation will have to define conditions and circumstances for lawful evictions and general limitations on evictions.

3.2.2 Draft Land Tenure Security Bill

The publication of the Draft Policy, discussed above, coincided with the publication of the Draft Land Tenure Security Bill on 24 December 2010 (*GG* 33894, 2010-12-24, GN 1118; *GG* 34050, 2011-02-25, GN 109). Only the most important provisions of the Bill will be highlighted.

The Preamble to the Bill is similar to the Preambles of the ESTA and the Labour Reform (Labour Tenants) Act 3 of 1996 (Labour Tenant Act), except that there is a clear and very specific focus on farms and farmland. Essentially, the main thrust of the Bill is to provide a single legislative measure to deal with all relevant matters linked with farmland: the owners, the workers and the occupiers/residents. Accordingly, the ESTA and the Labour Tenant Act will be repealed in whole and replaced by the Land Tenure Security Bill. The aim of the Bill is fourfold (cl 2):

> (a) to promote and protect the relative rights of persons working on farms, residing on farms and farm owners;
> (b) to enhance the security of tenure of persons residing on farms;
> (c) to create conditions conducive to peaceful and harmonious relationships on farms and in farming communities; and
> (d) to sustain production discipline on land in the interest of food security.

The Bill applies to all agricultural land, land used for agricultural purposes or farms, but excludes land occupied by traditional communities and land under the ambit of the Prevention of Illegal Eviction and Unlawful Occupation of Land Act 19 of 1998 (PIE) and the Interim Protection of Informal Land Rights Act 31 of 1996. Although it is clear that the Bill applies to farmland or land used for agricultural purposes, determining the exact scope is rather problematic. The CC judgment in *Wary Holdings (Pty) Ltd v Stalwo (Pty) Ltd* (2008 11 BCLR 1123 (CC); 2009 1 SA 337 (CC)) has underscored how difficult it can be to establish whether land is 'agricultural land', depending on where the land is located and which legislative measures apply. Therefore, although the scope of the Bill is not as broad as that of the current ESTA, because some categories of persons are now excluded, it is from the outset unclear what the *exact* scope of the Bill is.

In chapter 3 five broad categories of persons to which the Bill will apply, are set out: (a) persons residing on farms (cl 7); (b) persons working on farms (cl 8);

(c) persons associated with persons residing or working on farms (cl 9); (d) farm owners and authorised agents (cl 10); and (e) persons who have consent or deemed to have consent (cl 11). Clause 7(1) is similar to the definition of 'occupiers' in ESTA, except that family members residing with the relevant person (occupier), are also included in the definition. Thus, any person who has or had consent to reside, including their family members, falls under the Act. Clause 7(2) embodies the former definition of 'labour tenants' and also includes persons who have lodged labour tenancy claims before 31 March 2001 (cl 7(3)). Clause 8 relates to persons working on farms and contains generally very broad definitions, for example, clause 8(a) includes persons 'who in any manner assist in carrying on or conducting the business of farming excluding the owner of the farm.' Domestic workers and security guards are specifically included in clause 8(b). This new category may include persons who do not necessarily reside on the farm, but who may be transported to and from the farm, for example, contract workers. A further new category is contained in clause 9 where persons associated with persons residing or working on farms, are listed. These include spouses, partners, children, including nephews and nieces, under the age of 18 (and over the age of 18 if they are still attending school), parents, brothers and sisters (cl 9(b) and (c)). Making provision for extended families is not a new development as both ESTA and the labour tenant legislation already provide for the occupation of family members in accordance with the specific cultural orientation. What this formulation now does is to spell out clearly all the relevant parties so that there is no misunderstanding as to who falls within the ambit of the Bill. The specific reference to spouses and partners, including customary union marriages, is especially welcomed as earlier case law has resulted in these persons (as well as the dependants) not being served with eviction notices as they do not (formally) qualify as 'occupiers' for purposes of ESTA (eg occupiers in the narrow and occupiers in the broad sense as provided for in *Landbounavorsingsraad v Klaasen* 2005 3 SA 410 (LCC)). Farm owners, either in the form of a natural person or a juristic undertaking, as well as agents, managers or persons controlling on behalf of owners, also fall within the ambit of the Bill (cl 10). The last category, provided for in clause 11, relates to persons who have consent or are deemed to have consent. This category includes persons whose consent was lawfully withdrawn, but continued to stay on the farm for a continuous period of at least one year (cl 11(1)). For purposes of this Bill, consent need not comply with all the legal requirements or requisites. Persons who have openly resided on land for at least six months are deemed to have had consent, except if the contrary is proved (cl 11(3)). Consent also binds successors in title (cl 11(4)).

Chapter 4 deals with the relative rights and duties of the parties involved. The point of departure is that all parties have constitutional rights which may not be violated. Thereafter the following structure is followed: the rights and duties of farm owners are first set out in clause 13 and 14 respectively, followed by the rights and duties of persons residing on farms (cl 15 and 16 respectively) and the

rights and duties of persons working on farms (cl 17 and 18 respectively). The rights of owners include the right to property (cl 13(1)(a)) and all rights in terms of labour legislation. These rights may be subject to reasonable conditions. The duties are furthermore listed and include, *inter alia*, the provision that no persons residing on farms or working on farms may be prevented from accessing educational, health or any other public facility. Labour and employment legislation may furthermore not be breached. The list of rights of persons residing on farms is rather lengthy and includes 18 individual rights. Some of these rights are very general – eg the right to bury family members on the farm without setting out the parameters thereof (cl 15(1)(g)).

The Draft Policy emphasised the need to regulate evictions from farms more effectively. Clauses 19 to 25 deal with the different aspects of evictions. Constructive eviction has now been included in the scope of 'eviction.' This means that the loss of a home is not the only way in which eviction may be effected: closure of schools, denial or prevention of access to water and electricity, refusal to allow a burial on a farm, the unilateral reduction of rights, forcing different families to live together and interference with cultural practices are some further examples of constructive eviction and are listed in clause 19. It is trite that persons falling within the ambit of the Bill may only be evicted in terms of an order of court, issued under the Bill (cl 21). There are furthermore 'general limitations on evictions' in clause 23. Lawful evictions are still provided for, as set out in clause 21, but only under certain conditions and in specified circumstances. Persons who reside on farms as part of their employment contract are dealt with as follows: the employment contract has to be formally terminated (cl 20(1)), a formal process of eviction has to be followed and the right of residence has to be terminated (on any lawful ground – cl 20(2)). The following persons may generally not be evicted, except if they had caused a breach of any of the duties listed in clause 16: (a) persons who have been residing on the farm (or another farm belonging to the owner) for more than 10 years *and* is older than 60 years; or (b) an employee or former employee and as a result of ill health, injury or disability is unable to provide labour (cl 20(6)). The family members of persons contemplated in clause 20(6) above may remain on the land for 12 months after the death of such person (cl 20(7)).

An eviction may only be allowed when the legal and procedural safeguards have been complied with (cl 20(10)). The safeguards generally include that there must have been an opportunity to consult with everyone affected; where groups of persons are involved, government officials have to be present during the eviction; persons carrying out the eviction have to be properly identified and the general requisites of notices, legal remedies and legal aid have to be complied with. A new insertion provides that 'an eviction may not result in persons affected being rendered homeless or vulnerable to violation of other human rights' (cl 20(11)). This is an extremely important addition, although the exact scope of the provision and its impact is as yet unclear. Over the many years that ESTA has

been in operation, it has become clear that farm workers and occupiers are especially vulnerable and that evictions have in fact rendered numerous individuals and families homeless. It is imperative that the plight of homelessness is addressed. Clause 20(11) provides a much needed safety net. However, a provision like this can only be effective and fair to all parties involved if the proposed resettlement and development measures, discussed below, are in fact effective, sensible and viable.

The relevant eviction proceedings are set out in clause 22. An owner has to give three months' notice of the eviction application to the affected person, the municipal manager of the relevant municipality and the Land Rights Management Board. In prescribed instances the three months' period can be ignored in urgent applications (cl 22(2)). In accordance with clause 23 a court may order an eviction if the person residing on the farm has not vacated the land within the period of thirty days notified by the owner and the owner has, after the expiry of the thirty days, given further notice to the person residing on the farm; the municipality; the Board and the Director-General of the intention to obtain an order for eviction. This notice has to set out the particulars and the grounds for the eviction application. It is unclear what the difference between the clause 22(1) and clause 23(1)(b) notices will be.

The probation report that 'must be requested' and submitted within a reasonable time has to contain information identical to that prescribed in the ESTA legislation (cl 23(2)). It is possible that the same difficulties that are currently being experienced in relation to requesting and submitting a probation report under ESTA will again be experienced as the formulation of the relevant provisions are similar.

Chapters 6 and 7 are integral to the viability of clause 20(11) that provides that no eviction order may render a person homeless. Chapter 6 deals with agri-villages and land development measures and Chapter 7 deals with the management of resettlement units and agri-villages. Essentially clause 26 makes it possible for the Minister to employ the provisions of the Provision of Land and Assistance Act to institute land development measures, including the establishment of agri-villages, industrial parks and other initiatives to create economic and social support for persons falling within the ambit of the Bill. The Board is also involved in the process, although its functions and specific role in this regard are unclear.

Prior to the establishment of such developments, the owner may enter into agreements with persons residing on farms in terms of which persons may be relocated to suitable alternative land (cl 26(4)). This agreement will be subject to the approval of the Minister (cl 26(5)). It is not clear whether this agreement is linked to the resettlement as such. In other words: is there an agreement between the landowner and the resident for an interim period relating to suitable alternative land for the duration of planning and constructing the settlement area that will provide more permanent tenure for the resident?

Under clause 28(1) the Board is obliged to take all appropriate measures to ensure that adequate alternative accommodation, resettlement or access to productive land, is available 'where those affected or likely to be affected by eviction are unable to provide for themselves'. Furthermore, where lawful evictions occurred, the Board has to ensure the right of all persons, groups and communities to suitable resettlement which includes the right to alternative land or accommodation which is safe, secure, accessible, affordable and habitable. Many questions remain regarding the role and function of the Board and the legal position seems uncertain.

Although the LCC is the court with jurisdiction under the Bill (cl 42(1)), a party may institute proceedings in the magistrate's court within whose area the land in question is located (cl 42(2)). In clause 43(2) the jurisdiction of the magistrate's court is set out in relation to: (a) proceedings for relocation or restoration of rights, and (b) criminal proceedings in terms of this Bill. The magistrate's court is furthermore competent to grant interdicts under the Bill and to issue declaratory orders as to the rights of a party under the Bill. The power to issue an eviction order is not specifically mentioned. However, it is deemed to form part of the powers of magistrate's courts in light of clause 42(2) above and clause 43(4) that provide that any order by a magistrate's court in terms of the Bill, shall be subject to automatic review by the LCC, except if an appeal had been noted against the decision of the magistrate. Any other order shall be suspended pending the review of the LCC (cl 43(6)). On the commencement of the Bill all pending matters in the high courts will have to be referred to the LCC. The president of the LCC has to make rules governing the procedure in the LCC and the procedures relating to automatic reviews. Appeals from the LCC shall be heard by the Supreme Court of Appeal (SCA). It appears as if the automatic review process is hereby expanded as all orders made by magistrates' courts are now submitted to automatic review and not only eviction orders as was the case previously. Any party may request the Board to appoint persons with expertise to facilitate meetings in an attempt to mediate and settle disputes under the Bill (cl 44).

The publication of the Bill and Draft Policy has been long-expected. Although there is some synergy between the Policy and the Bill, some *lacunae* exist. For example, the Policy refers to accessible and efficient systems to record and register rights but the Bill has no reference to that at all. Some concepts and phrases employed in the Policy are absent from the Bill. For example, the Policy mentions a 'register of interests on farms', but there is no reference to that in the Bill. The Policy provides for resettlement and the vesting of rights 'either … on a temporary permit system or freehold title.' The Bill has no provisions setting out how the permit system will work, when the permits would be issued and by whom and does not clarify the duration and working thereof. Accordingly, the actual vesting of rights and transfer of ownership are hardly addressed in the Bill.

There are numerous ambiguous, vague and unclear provisions. The clauses dealing with the kinds of notices and the time periods involved are especially

confusing. Throughout the Bill various agreements are also mentioned although the exact relevance of these agreements, when they ought to be entered into and the extent thereof are unclear. The chapters dealing with resettlement and agri-villages are likewise vague and ambiguous. The Policy envisages that the Land Rights Management Board will act pro-actively in addressing evictions and the underlying causes thereof. It is not exactly clear how the Board is going to do that and the Bill does not assist in clarifying the matter.

Three of the four main objectives of the Bill are embodied to some extent in provisions found in the Bill. The fourth objective, namely 'to sustain production discipline on land in the interest of food security' does not seem to resonate in the Bill.

3.2.3 Case law

Bouwer v Linnerts (LCC 255/2009, 2010-12-2) is an appeal against the decision of the magistrate's court in Laingsburg not to grant an eviction order on the basis that it was not just and equitable to do so. The first respondent was suspected of being involved in a fire on the farm in question. After a polygraph test was done and it was concluded that the first respondent was indeed involved in the fire, he was dismissed. However, in response to a letter written by the first respondent's attorney, stating that a polygraph test alone was insufficient for dismissal, Mr Linnerts was re-employed. About a month after his re-instatement, the appellant realised that Mr Linnerts never reported for duty, and after some time was notified of disciplinary action against him. Two complaints were lodged, (a) that he absconded from work, and (b) that he behaved in such an unruly manner and threatened persons that the police had to be called. He was found guilty on both complaints. On the complaint of absconding he was immediately dismissed and on the other complaint he received a first written warning. Thereafter eviction proceedings were instituted against him. The respondent's defence was that the gates were locked and, therefore, he could not gain access to his workplace and, apart from that, the appellant failed to inform him that he had been re-employed. The eviction application was unsuccessful on the basis that the granting of the order would not be just and equitable.

The issues to be decided before the LCC here acting as a court of appeal were (a) was the reasonableness (or not) of the dismissal of the first respondent relevant when considering the question of whether the respondent's right of residence had been lawfully terminated; and (b) whether the appellant made out a convincing case under section 10(1)(c) of ESTA that would result in the granting of an eviction order (para 20).

The first question was whether the residential right had been terminated lawfully. In this regard the court found that if the residential right had been terminated under section 8(1) of ESTA, the reasonableness grounds listed in section 8(2) were irrelevant in relation to the termination of the right as such (para

22). However, this did not mean that reasonableness did not come into play. Before a court considered granting an eviction order, the requirements of sections 10 or 11, depending on the circumstances, must have been met and in most cases, these considerations included reasonableness (para 25). The court was satisfied that the landowner (appellant) was correct in terminating the right of residence under section 8(2). However, in order to be successful with an eviction application, the appellant had to make out a case under section 10(1)(c) that the relationship between the parties had broken down to such an extent that it could not be remedied. In the documents the appellant did not indicate how and why the relationship had broken down. Instead, the appellant re-employed the respondent after his initial dismissal. Counsel for the appellant suggested, however, that the court look at all of the evidence and then decided whether there had been a breakdown of the relationship. In this regard the court per Gildenhuys J stated that it was not for the court to go on a fishing expedition, but that it was the appellant's duty to set out the grounds clearly and make out their case (para 31). The court was not convinced that the relationship had broken down to such an extent that it could not be remedied (para 38). The appeal could therefore not succeed under section 19(1)(c). However, this did not mean that the respondent would have to remain on the property *ad infinitum* and that he could never be evicted. A new eviction application could be instituted under section 10(2) or 10(3) and if the appellant wanted to continue under section 19(1)(c) then he would have to substantiate the application and motivate it better. The appeal was unsuccessful and no costs order was made.

Elankor SES (Pty) Ltd v Mzwandile Ngcosholo (LCC 31R/2006 2010-12-8) is an excellent example of how complicated and difficult it is in practice to balance the rights of landowners on the one hand and occupiers, or those in need of housing and accommodation, on the other. This case started when an eviction application was lodged under ESTA which was remitted to the magistrate after the automatic review process occurred under section 19(3) of ESTA with a note that the magistrate had to apply his mind to the availability of suitable alternative accommodation specifically (for background see paras 3-8). Instead of only considering suitable alternative accommodation, the magistrate heard the application *de novo*, made a finding that no suitable accommodation was available and dismissed the application. The dismissal was taken on review by the applicant on the basis that the magistrate was *functus officio*. On review the court found that the LCC's note relating to remittal of the case to the magistrate was ambiguous and that the order had to be clarified in a variation application in the LCC. The order was thereafter varied to specifically state that the magistrate's order was not set aside, but that the matter was remitted to the lower court to consider suitable alternative accommodation. Again the magistrate had the opportunity to consider the availability of such accommodation. The matter was then again forwarded to the LCC to complete the review process. This is the present decision that was handed down by Ncube AJ.

Juta v Hattingh (LCC145/2010 2011-03-30) deals with the right to family life. The application for eviction of the first, second and third respondents was dismissed in the magistrate's court on the basis that the respondents could remain in occupation by virtue of their mother's (the occupier's) right to family life in accordance with section 6(2)(d) of ESTA. The landowner appealed against that finding.

Meer J was satisfied that all of the procedural requirements of the eviction had been complied with and that the only matter to be decided was whether the respondent could remain in the house because of Mrs Hattingh's right to family life (para 9). In this regard it was pointed out that section 6(2)(d) stated that the right to family life had to be balanced with the rights of the owner or person in charge and that the right to family life was linked with the particular occupier's culture (paras 10-11). The question the court had to decide was what the content of this right was and whether it would enable the adult children of Mrs Hattingh to remain in the house with her. Although reference was made to international conventions to which South Africa was a party, as well as to the Certification Case, (para 12) the absence of a definition of what a right to family life entailed was found to be problematic (para 12). The respondents' legal representatives furthermore refrained from placing information before the court as to what the right to family life entailed. In particular, no evidence was placed before the court as to the culture of the respondents and whether it was linked to parents and children living together in one house (para 13). There was furthermore no evidence placed before the court that the medical circumstances of Mrs Hattingh necessitated her children's presence (para 13). In light of the balancing impact, it could not have been the intention of the legislature to allow adult family members within an extended family set-up to continue occupation indefinitely (para 15). If the parties argued a wider interpretation of section 6(2)(d), then evidence in support of a wider interpretation was needed and ought to have been placed before the court (para 16). Accordingly, the respondents were not protected from eviction. Mrs Hattingh as well as Ricardo, whose eviction was not sought, would be able to continue occupation of the house. The appeal was thus successful and the respondents were ordered to vacate the house.

The right to family life in the context of ESTA has not been analysed in depth yet. The first case that alluded to this particular right was *Conradie v Hanekom* (1999 4 SA 491 (LCC)). In that case the wife was allowed to have her husband with her in the same house, even though the husband had been found guilty of misconduct, on the basis that she had a right to family life. However, the actual right and what it entailed, was never analysed or unpacked. In the present case it seems as if two factors in particular had led to the end result: (a) absence of sufficient information or evidence before the court setting out the content of the right and linking the right to the culture of the particular respondents which led to (b), the court not embarking on an in-depth analysis. Although the Act specifically links the right to family life to the cultural background of the particular occupier, it is

questionable whether the right to family life is indeed only determined by culture. In the Western Cape, for example, it is traditional and acceptable that various generations occupy one dwelling, not only on the basis of culture, but also due to socio-economic or health considerations. The question remains whether the end result would have been different if legal counsel had placed these particular circumstances before the court. Perhaps it is time that society and the legislature take note of existing housing and occupation patterns, also in relation to farms.

On the other hand, the rights of both landowners and occupiers may be limited, depending on the particular circumstances. The Act specifically requires that the rights of landowners and occupiers have to be balanced. If the right to family life is weighed up against the rights of the landowner, the court has to indicate how these rights are considered, which factors are taken into account, why and how. For example, if the right to family life was upheld, it would have been effective only for the duration of Mrs Hattingh's lifespan. Her children, albeit adult children, would not occupy the house indefinitely, but would need to vacate the property in any event – at the latest 12 months after her death. Unfortunately no specific weighing up of rights occurred in the present instance.

However, an application for leave to appeal was lodged and approved in *Hattingh v Juta (*LCC 145/2010, 2011-06-11). During the application for leave to appeal counsel for the applicants emphasised that (a) the family had all lived together in the same house for a considerable time, and that (b) Mrs Hattingh suffered from ill-health. In order for an application for leave to appeal to be granted, (a) there has to be a reasonable prospect of the appeal succeeding, and (b) the case has to be of substantial importance to the appellant (or respondent) (para 6). In this regard the court per Gildenhuys J (with Kahanovitz AJ concurring) agreed that the applicant had a reasonable prospect of success as another court could be prepared to infer from the circumstances that her family's culture allowed her grown-up children to stay with her (para 7). Furthermore, the right to family life is an important right. The consideration by the SCA of the ambit of the right to family life under section 6(2)(d) of ESTA might well be called for (para 8). The application for leave to appeal was therefore granted.

Manus Snyman, PE von Molkte and J von Molkte v Sehemo (LCC 57R/2010, 2011-02-24) is an automatic review under section 19(3) of ESTA regarding an eviction order granted by a magistrate's court in the district of Delareyville. The first plaintiff was the previous owner and the other plaintiffs the current owners. The five respondents were all section 10 occupiers under ESTA, which means that they had been in occupation of the property since before February 1997. They were employed by the first defendant until 2003 when they were dismissed after they participated in a strike. An eviction application was lodged against the respondents in July 2008. The defendants took exception on the basis that the first plaintiff did not have the necessary *locus standi* to claim eviction as he was not the owner of the property. The exception was dismissed by the magistrate.

At the trial the magistrate was satisfied that all of the procedural requirements had been met and that the defendants had committed a fundamental breach of their relationship with the landowner (see further para 8). On that basis the eviction order was granted. Although the case was finalised in March, the court record, for purposes of automatic review proceedings, only reached the LCC in October. (The LCC per Lewis AJ urged court managers to prioritise the sending of court records to the LCC.)

Although the LCC was satisfied that the procedural requirements had been complied with, the court was not convinced that the breach in the relationship was so fundamental that it could not be remedied, as required under section 10(1)(c). On review the court pointed out that the fact that the occupiers took action against the landowner to enforce their rights (to water and wood respectively) could not be taken as an indication that the relationship was fundamentally breached (para 21). If that was indeed the case, then occupiers in a position similar to the defendants would effectively be barred from accessing their rights under ESTA. Furthermore, although the damage caused to the farm house was also taken into account as a factor that breached their relationship, it was never clear that the damage was indeed caused by the defendants (para 22). In short, the evidence relied on by the magistrate did not satisfy the test that the court should have examined precisely what constituted the fundamental breach (para 24). The only real evidence before the court of wrongful conduct was that the defendants had gone on strike. However, that alone could not constitute grounds for eviction under section 10 of ESTA. Furthermore, the second and third plaintiffs (the new landowners) refrained from forming any relationship with the occupiers. Apparently the first plaintiff indicated that he would provide possession of the land without the presence of the occupiers (para 26). Therefore the new owners considered the occupiers a problem that the former owner had to take care of and never entered into any kind of relationship with the occupiers. As no relationship existed, it could not be fundamentally breached (para 26). It was possible that an eviction order could be granted under section 10(2) or (3) of ESTA. However, the plaintiffs never made out a case for such relief. Accordingly, in light of all the considerations mentioned, the eviction order that was granted by the magistrate's court, was not confirmed. The order handed down by the magistrate in relation to costs was also set aside.

El Rio Farming (Pty) Ltd Reg Nr 2001/020372/07 v Phillipus Jacobs (LCC36R/11) concerns an automatic review under section 19(3) of ESTA of an eviction order granted by the magistrate, Ceres. The applicant is the person in charge of the farm on which the respondent had lived and worked since 2005. When he was dismissed from employment the respondent refused to vacate the house. An eviction order was finally granted on 22 June 2011. During the automatic review proceedings the court per Kahanowitz AJ set the eviction order aside and remitted the matter to the magistrate's court in Ceres with the

instruction that a probation report, as required by section 9(3) of ESTA, be secured and taken into account before a final order was made.

The magistrate granted an eviction order on the basis that the court could proceed and need not wait for the probation report that was requested on 9 December 2010. The magistrate reached that conclusion with reference to a previous LCC judgment, *Berti Trust IT 12084/1998 v Jane Hlatswayo* (LCC83/2010) on the basis that the court need not wait unreasonably long for the submission of the report. However, it was clear from the LCC judgment that each case had to be approached on its own merits and that the facts of the particular case had to be considered before a decision can be reached that a report was not necessary (para 9). From the documents forwarded to the LCC for the automatic review process it was clear that the respondent was not the only one that would be affected by the eviction, but that his minor child, of which he was granted co-custody with his ex-wife after their divorce, would also be affected. Notwithstanding the contents of the documents, the applicant's reply indicated that no children would be involved, thereby leading the magistrate to find that only one person – the respondent – would be affected by the eviction order. Consequently the order was handed down without the probation report that would have reported on the position of the child involved. Under section 9(3) of ESTA as well as section 28 of the Constitution, the rights and interests of children have to be considered in particular. That had not occurred in this instance. On this basis the eviction order was set aside and the matter remitted to the magistrate.

Herman Diedericks v Univeg Operations South Africa (Pty) Ltd T/A Heldervue Estates (LCC18/2011, 2011-08-23) is an appeal against an eviction order handed down by the magistrate, Piketberg on the basis that the granting thereof was not just and equitable in the circumstances. It was common cause that the appellant was an occupier under ESTA and that the appellant as well as his family were evicted after his dismissal from employment. At the time the appeal was heard, the appellant and his family had been in occupation of the house for 14 years. The appeal was approached by judges Kahanovitz and Gildenhuys by first setting out section 26 of the Constitution that provides for access to housing and that an eviction order may only be granted once all relevant circumstances had been considered (paras 5-7). In relation to ESTA, specific factors are listed in the Act that have to be considered before an eviction order may be granted (para 7). Regarding evictions under PIE, interesting developments in this context had occurred by way of case law. Similar developments, especially in relation to the joinder of local authorities, the submission of reports by municipalities and meaningful engagement, had not occurred in relation to ESTA. However, the court in the present appeal underlined that all of the developments relating to PIE had taken place within the ambit of overarching section 26 of the Constitution in general. Accordingly, these developments were also applicable to the context of ESTA (para 8). This specific

finding, though previously argued for strongly by academics, had not been made in relation to ESTA. The judgment thereafter provides an overview of these developments as contained in CC judgments (paras 9.1-9.5).

Regarding ESTA, reference is made to one LCC judgment, *Lebombo Cape Properties (Pty) Ltd v Awie Abdo* (LCC 129/10 unreported) in which engagement between the local authority and the occupiers who stood to be evicted, was ordered (para 9.6). In light of the above exposition, this led to the conclusion that in all of the judgments, whether evictions were dealt with under PIE or whether they were carried out under the National Building Regulations and Building Standards Act, or most recently ESTA, and irrespective of whether the cases dealt with public or private land, some kind of engagement had been required (paras 10-11).

The role of the local authority was scrutinised (para 18). The Preamble to ESTA enjoins all role players, occupiers, landowner and local government bodies, to promote the achievement of long-term security. Although a notice of intention to evict occupiers has to be served on the local authority for 'information purposes', nothing prescribes what they should do with the information. It is possible that the local authority may have information that may be placed before the court in order for the court to get a complete picture before judgment was handed down. In the present matter, information about possible alternative accommodation was missing. Engagement could well lead to additional information before the court regarding housing plans and possible land available and the time frames involved. In this regard the court reached the following conclusion: 'Here the absence of engagement means that there is insufficient information to determine a date that is just and equitable. I will thus remit this to the Magistrate Court to enable that engagement to take place' (para 19).

This judgment is welcomed. Meaningful engagement is possibly the only really effective method to ensure that all relevant information is before the court when considering an eviction order. However, the engagement has to be effective. Unfortunately the latest judgment in the *Joe Slovo* case, discussed below, has shown that orders handed down delineating meaningful engagement may still result in the *status quo* continuing unchanged. Ideally there should be monitoring mechanisms in place as well to ensure that the engagement occurs so that the end result is what the court envisaged.

3.3 Labour tenants

Andre Joosten v Dlamini (LCC 122/2006, 2010-11-30) is interesting because the judgment was handed down in the absence of the applicant. The case has a long history. The respondent was evicted years before under ESTA which eviction application was set aside by the LCC during the automatic review proceedings. Thereafter the eviction application was re-lodged, claiming that all the procedural

requirements had been met. The respondent entered a counter claim that he was a labour tenant and not an occupier under ESTA. The matter was consequently transferred to the LCC under section 13 of the Labour Tenant Act. After various pre-trial conferences a date for the hearing of the eviction application in the LCC was finally set (see paras 2-5 for the background). This date was later postponed by the applicant *sine die*. Further pre-trials were held and a new trial date was set for 2010. However, the applicant's attorney wrote a letter stating that the date did not suit the applicant as it was harvest time and he had to oversee the harvesting process. A further postponement was requested. The respondent's attorney replied that his client had been waiting a long time to have the issue finalised and that, if the applicant intended pursuing an adjournment, he would have to bring a formal application (para 14). In the meantime the rights of the respondent had slowly become more eroded and after access to water was restored, he was charged large amounts for the water consumed, averred his attorney. It was essential that the matter be finalised as soon as possible. The applicant thereafter indicated that he wished to withdraw the application. This can be done either by consent of all the parties involved or with leave of the court. The respondent's reply indicated that the withdrawal of the application would have a negative effect on the counter claim and that the matter ought to proceed. At a following pre-trial conference the applicant confirmed that the application will be withdrawn and that, if it proceeded, it would proceed in the absence of the applicant (para 17). On 16 November, 10 days prior to the date of hearing, the applicant's attorney filed a notice of withdrawal and tendered paying the respondent's wasted costs (para 19). As the respondent did not consent to it, the filing of the notice in contravention of the Rules was invalid and ineffective.

Ncube AJ considered the evidence before the court as to whether the respondent was indeed a labour tenant (paras 21-28). Although the respondent provided labour, had cropping and grazing rights and resided on the land in question, his father – although residing and having cropping or grazing rights – did not provide labour in exchange for these rights. The respondent's grandfather, however, met all the requirements of labour tenancy. Since section 1 of the Labour Tenant Act required that the parent or grandparent must have had these rights, the requirement had been met. In light of the fact that the applicant was not present, there was no evidence led that contravened the respondent's version (para 28). The court was satisfied that the respondent was indeed a labour tenant. A costs order was also requested. Although these orders were generally not awarded in the LCC, the court emphasised that each case had to be dealt with on its own merits. In this instance the history of lodging applications and requesting postponements, as well as the later withdrawal of the application, created the impression that the legal process was used to harass the respondent (para 31). Under these circumstances a costs order was deemed to be justified.

3.4 Rural Development and Land Reform General Amendment Act

In May 2011 the Rural Development and Land Reform General Amendment Act 4 of 2011 was published (*GG* 34300, 2011-05-16). The Act amended various statutes under the administration of the Minister of Rural Development and Land Reform. The amendments are consequential with reference to the new name of the Department and the Minister.

3.5 Provision of Land and Assistance Act 126 of 1993

Land was designated in various areas in terms of Act 126 of 1993 for the purposes of agriculture and settlement (food security) in *GG* 34307, 2011-05-27, GN 445 (Umgungundlovu District Municipality), and for sustainable human settlement and agriculture affecting various farms in *GG* 34638, 2011-09-27, GN 804-812 (KwaZulu-Natal); in *GG* 34612, 2011-09-23, GN 755-774; in *GG* 34756, 2011-11-14, GN 945-949; and in *GG* 34719, 2011-11-04, GN 912-921.

3.6 Land Titles Adjustment Act 111 of 1993

Land was designated in terms of Act 111 of 1993 in the Bojanala District (in *GG* 34793, 2011-11-25, GN 982).

3.7 Interim Protection of Informal Land Rights Act 31 of 1996

The application of the Act was for the fifteenth time extended, this time to 31 December 2012 (in GG 34836, 2011-12-08, GN 1030).

3.8 Communal Property Associations (CPAs)

Approximately 1 500 CPAs, provisional associations and similar entities have been registered since 1996. There was widespread non-compliance with the CPA Act and regulations, non-compliance by the Department in supporting CPAs, as well as non-compliance by other partners (eg uncooperative farmers and overlapping roles with traditional institutions). Of the 887 CPAs visited, only 59 had financial statements, only 241 convened annual general meetings, and only 173 had minutes of those meetings. Four CPAs were under administration and 224 experienced changes in composition. 34 CPAs had not had their land transferred to them, 39 sold their properties, 57 did not have registration numbers, and 13 could not be traced. (See CPA Annual Report 2009/2010 of 31 August 2011 – www.pmg.org.za/.../110831communal.ppt.)

The Department foresees that technical amendments to the CPA Act will be made in order to improve its application and implementation. It was also mentioned that it might be necessary to investigate whether current institutions are sufficient as a vehicle for holding land.

3.9 Black Administration Act and Black Authorities Act

The putting into operation of the Repeal of the Black Administration Act and Amendment of Certain Laws Amendment Act 20 of 2010 was extended to 30 December 2012 (s 1(3)). The Black Authorities Act 68 of 1951 was repealed on 31 December 2010 or on the date on which the last of Limpopo or KwaZulu-Natal repeals the provisions assigned to them (s 1).

4 Unlawful occupation

The background to the case of *Sandra Mthimkulu v Mahomed* (A5042/2010, 2010-12-03, SGHC) is very interesting and the judgment raises important procedural and material issues. In the course of 2009 an illegal eviction of occupiers resident in a multi-storey building in 191 Jeppe Street, Johannesburg occurred. In October 2009 the South Gauteng High Court per Ntsebeza AJ granted an order declaring that the eviction had been unlawful, that property had to be restored to the occupiers and that Mahomed and other respondents were interdicted from taking any steps aimed at evicting said occupiers. On 12 October an eviction was indeed carried out by Mahomed with the support of a security firm and certain police officials. A further order was granted per Kgomo J with the exact same scope, namely that the eviction had been unlawful, that possession of property had to be restored and that the respondents were interdicted from taking steps aimed at evicting the residents. Although these orders were not served on the respondents personally, they came to their notice (para 3.5). In June 2010 the respondents again started planning to remove the residents from the property. Mahomed and a safety and security firm and a number of police officers finally evicted the residents on 9 August 2010. Apparently the respondents intended to launch an eviction application under PIE a week after the appellants were evicted (para 3.9). On 26 August 2010 Maluleke J dismissed an application by the present appellants for an order declaring *inter alia* that the eviction had been unlawful, that property had to be restored and that the respondents were in contempt of court and accordingly fined. It is against that judgment that the present appeal is lodged.

The present appeal dealt with the applicability of counter-spoliation; whether the appellants were in peaceful and undisturbed possession; whether the appellants consented to leave the property or were evicted and whether the respondents were in contempt of court (para 4). The issue of counter-spoliation was raised for the first time in the judgment handed down by Maluleka J. It was neither argued before the court, nor were the parties offered the opportunity to deal with it. In this regard the appeal court per Claassen J (with Blieben J and Ngalwana J concurring) found that it was improper for a court to deal with a point of law or fact in a judgment without it being raised by either of the parties (para

7). The second issue to be dealt with, was whether the residents were in peaceful possession of their property when they were dispossessed thereof. On the facts it was clear that the occupiers had indeed been in peaceful possession of the flats for a period of at least six weeks before 9 of August 2010 (para 12). Were the occupiers evicted or did they vacate the property of their own free will? The respondents averred that the residents vacated the property voluntarily and therefore no eviction took place. However, the facts clearly indicated otherwise: people threw bottles and bricks at the respondents, the residents called the police because an illegal eviction was taking place, at least thirteen appellants sustained injuries from assaults during the eviction, at least 40 of the residents slept outside the property on the night of the eviction, and from photographic evidence it was clear that chaos reigned outside the property on the day of the eviction with belongings strewn all over the pavements and in the street (para 14). Accordingly, the court was satisfied that the residents did not vacate the property voluntarily, but were evicted therefrom (para 15).

Paras 16-19 deal with the question of whether the respondents were in contempt of court. The court *a quo* found that it was unable to draw the inference that the respondents willfully and *mala fide* disobeyed the court order on the basis that the court order had not been served on the respondents personally. However, from the facts and the papers submitted by the respondents themselves, it was quite clear that they indeed had knowledge of the order that was handed down. In their answering affidavit the respondents dealt with the order and never disputed that the order had indeed been brought to their attention (para 19). On that basis the respondents bore an evidentiary burden to establish a reasonable doubt that they did not act wilfully or *mala fide*. The court found that they failed to discharge that burden of proof (para 19). In these circumstances the appeal court found that the court *a quo* should have granted the contempt of court order as prayed for. Accordingly, the appeal succeeded and the respondents were yet again ordered to restore possession *ante omnia* and were interdicted and restrained from taking any steps or performing any conduct with the intention or effect of evicting the appellants. An order to pay a fine of R100 000 was suspended on condition that the respondents shall not within the next 20 years evict the appellants from the property without a court order.

*Eagle Valley Properties 250CC v Unidentified Occupiers of Erf 952, Johannesburg situated at 124 Kerk Street Johannesburg, In re Unidentified Occupants of Erf 952, Johannesburg situated at 124 Kerk Street Johannesburg v City of Johannesburg (*20101/4599, SGHC) dealt with an eviction application and an opposition thereof on the basis that the City had constitutional duties and responsibilities in relation to the occupants and therefore had to be joined. The owners of commercial property that was being unlawfully occupied lodged an eviction application under section 4 of PIE. The occupants conceded that they were indeed unlawful occupiers under the Act and that the City was obliged to

provide adequate temporary accommodation for them. The occupiers also brought an application to join the City as a party. Joinder was opposed on the following grounds: (a) that no purpose would be served by the joinder; (b) that a detailed report had effectively already been submitted pursuant to the judgment handed down in the case of *Occupiers of 51 Olivia Road* (2008 3 SA 208 (CC)) and that the contents thereof were well known; and (c) that all three spheres of government (not only the City) ought to have been included in the joinder application (paras 8-10). Spilg J thereafter considered each of these considerations.

Concerning the question of whether the joinder would serve any purpose, Spilg J drew a distinction between the substantive relief sought by the occupants, namely that the City had a constitutional and statutory obligation to provide temporary shelter on the one hand and the fact finding order, calling for a report which was based on application of section 4(7) of PIE, on the other (paras 11 and 12). In other words: the one issue related to the inherent duties and responsibilities of local government in the provision of housing and shelter whereas the other related to a survey *o*f what the factual position was. The City's response that a joinder would be useless, only related to the second part of their role, namely providing the factual report. With regard to the three spheres of government argument, the Court first drew a distinction between the present case and the *Blue Moonlight (2)* case ([2010] JOL 25031 (GSJ)) where the Court found that provincial government need not be joined. In the *Blue Moonlight (2)* case there was inordinate delay before joinder was sought, whereas the present proceedings were still at a relatively early stage (para 20). In light of section 7(2) of the Constitution (that provides that the state must promote and fulfil the rights in the Bill of Rights), the Preamble of the Constitution and section 39 (dealing with the interpretational framework), the Court underlined that the point of departure in establishing duties and responsibilities was the attainment of human dignity and equality (para 27). Within the context of housing, section 26 of the Constitution was not limited to redressing the consequences of past racially discriminatory laws or practices. In this regard the Court emphasised that section 7 of PIE made no distinction between whether the status of occupants arose as a consequence of past racial or other inequalities, or the consequence of socio-economic conditions (para 29, reiterated in paras 33 and 35). Instead, the provisions of PIE were based on dignity (para 29). Accordingly, the Court found that all spheres of government and other organs of state, including courts through their judgments, were obliged to give content to these rights (para 30). Following that, the courts were constitutionally obliged, particularly under section 8(1)-(3), to investigate when breaches of these duties and responsibilities occurred:

> The effect is that the realization of socio-economic rights for all our people is an obligation imposed on each organ of state. In the context of housing there is only one constitutionally acceptable outcome – the realization of adequate housing on a progressive basis (para 34).

The judgement has huge implications for housing litigation in general and for the various levels of government dealing with housing issues, in particular. The conclusions reached that PIE and section 26 are not only focussed on persons who have inadequate housing due to the apartheid legacy, but also include persons who struggle due to more recent or current socio-economic and financial considerations, follow logically. This means that the factors and considerations that have to be taken into account when these kinds of cases are heard, will continue to be relevant for many years still – as long as housing remains a crisis in South Africa. Although the need and reasons for joinder of all levels of government are clear and sensible, the viability and practicality thereof remains to be seen. (See in this regard also the discussion of *City of Johannesburg Metropolitan Municipality v Blue Moonlight* ([2011] ZASCA 47) below where the SCA found it not necessary to join the provincial government in the facts.)

Residents of Joe Slovo Community, Western Cape v Thubelisa Homes ([2011] ZACC 8) constitutes the latest instalment in the *Joe Slovo* saga. This case is well known and was covered extensively in the popular media and academic publications. After a long, drawn out battle in various courts leading up to the CC, an ejectment order, coupled with a detailed supervisory order, was finally handed down in the CC on 10 June 2009 on the basis that the 20 000 persons were indeed unlawful occupiers at the time the eviction application was lodged. The operation of that order was suspended in the course of 2010. The present application dealt with whether an ejectment order, coupled with a supervisory order concerning the execution of that order, could be or should be rescinded or discharged in light of changed circumstances.

Essentially the main application, that was dealt with in the course of 2009, related to the relocation (or not) of about 20 000 occupiers on state-owned land. In order for a major redevelopment (upgrading) to take place, the relocation of the community was necessary. In order for them to be relocated or ejected under PIE, as the eviction application was lodged under section 6 of the Act, the occupiers had to have been unlawful. Although five different judgments were handed down, all of them confirmed that the occupiers were indeed unlawful at the time the eviction application was lodged. It is important to note, however, that right from the outset relocation, as opposed to *in situ* upgrading, was relevant. After considering all the relevant issues and considerations, the Court found the granting of the eviction order just and equitable. As stated above, the specific order was very detailed and had numerous conditions dealing with *inter alia* the erection of temporary residential units (TRUs), meaningful engagement with relevant role players and a set time table. Instrumental to the execution of the order was a detailed process for the systematic transfer of all the people occupying the settlement to certain temporary accommodation. In order for the whole process to be successful, it was imperative that all role players cooperated and stuck to the timetable. Amendments to the timetable were possible, but only

after engaging and reaching agreements to that effect. It was also essential that the process should start no later than two months after the order was handed down for the timetable to work. The first detailed report back session was to be in December 2009, thus about 6 months after the order was handed down.

Without providing all the details (paras 5-15), it was clear that the implementation of the court order was hampered right from the outset. Immediately after the order was handed down, applications for extensions were lodged as the parties were unable to reach agreement on the process and timing of eviction (para 5). The use of TRUs was questioned. In fact, immediately after the order was handed down, the parties apparently had second thoughts about whether the relocation order was appropriate and effective (para 6). Reports that were filed at a later stage made no mention of negotiations aimed at new relocation timetables. Instead, these reports questioned relocation and proposed new expert studies. A miscommunication was evident: the Court sought feedback on negotiations amending relocation timetables whereas the reports furnished information about whether relocation ought to take place at all! More and more the reports supported *in situ* upgrading instead (para 11). It seems as if the respondents operated outside the court order and completely ignored the scope and objectives thereof.

This judgment raises serious questions about the effective use of structural interdicts, in principle, and the capacity of government in supervising and executing eviction orders and the role and function of a court as a 'super planner' or 'super facilitator'. Although the Court emphasised that a court order could be amended, varied or discharged when circumstances have changed, the court does not indicate how the circumstances have changed since the order was granted. The Court also claims that 'something more than a change in circumstances pointing to a different justice and equity is required,' (para 24) but does not indicate how that has happened in this instance. The exact same information, factors and considerations were before the Court when it handed down the particular order in June 2009. What has happened, however, was that the persons and institutions or authorities who were responsible for implementing the order, operated outside it. Right from the outset the Court and the implementers were at cross purposes: instead of reporting on when and how the relocation was to take place, the reports questioned if it should take place at all. In other words: from the start the order had 'for all intents and purposes [been] left in abeyance.' Non-compliance of the order resulted in the Court having to react in an attempt to remedy the situation. Exactly because the order was not complied with, it needed to be discharged. This is disconcerting. When the hearing initially started *in situ* upgrading was already one of the options on the table. For particular reasons the Court found that a relocation order was better and therefore ordered it so. There is no indication in the judgment what circumstances or facts changed that now made the *in situ* upgrading preferable,

apart from the fact that the relocation was never negotiated actively in accordance with the guidelines and timetable set out by the Court. This means that, two years since the eviction application was dealt with in the Court, nothing has changed: the occupiers, developers and the whole area in general are in exactly the same position they were when the order was handed down. What does this judgment signal for the future of structural interdicts and the oversight of the implementation of these kinds of orders?

City of Johannesburg Metropolitan Municipality v Blue Moonlight ([2011] ZASCA 47) is another well known case. The latest judgment is an appeal against the judgment handed down by Spilg J in the South Gauteng High Court on 4 February 2010. In short, the order handed down entailed the following: (a) that the occupiers of buildings situated at Saratoga Avenue, Berea were evicted; (b) that the City of Johannesburg had to pay Blue Moonlight Properties (the owners of the buildings), an amount equivalent to the fair and reasonable monthly rental of the premises from 1 July 2009 to 31 March 2010; and (c) that the City's housing policy was unconstitutional. The Court furthermore issued a structural interdict in terms of which the City had to remedy the effect of its housing policy and to report to the Court on what steps it had taken to do so as well as ordering the payment of a monthly stipend of sorts.

The property was commercial property that was being used for residential purpose by poor, destitute persons. It was purchased by the current owner (first respondent) in 2004 after which notices to vacate the building were posted in July 2005. In October 2005 the City served notice on the owners in terms of the Fire Brigade Services Act 99 of 1987 which was followed by a notice of the City's environmental health practitioner (paras 9-17). This was followed by a further notice to vacate and an application to court for substituted service. In opposing the eviction application the occupiers acknowledged that they were unlawful occupiers and on that basis contended that the City was obliged to take reasonable measures to ensure that their constitutional right to access to housing was realised. The City was thereafter joined in the proceedings. The City was convinced that their housing policy was in line with the national government in terms of legislative measures and that it was unable to make policy that did not conform to that policy and framework (para 21). The City was aggrieved that the provincial government was not joined and emphasised that it had no original power to initiate housing schemes or provide accommodation of its own (para 22). The 'constitutional damages' that the Court appeared to have granted against the City were also problematic (para 23). The owners, Blue Moonlight Properties, on the other hand, contended that its right to property could not be indefinitely thwarted by the occupants and that they should not be obliged to continue to provide housing for the occupants (para 24). Accordingly, the City lodged the appeal against the order in terms of which it was required to accommodate occupiers, against the associated monetary orders, against the declaration that

its policy was unconstitutional and against the non-joinder of the provincial government (para 41).

The judgment starts with confirming that courts are increasingly called upon to adjudicate on disputes involving the destitute and homeless. These issues are difficult and complex and involve different rights and aspirations. The role of the courts is important in forging coherent jurisprudence in this context. The judgment has gone a long way in doing exactly that: setting out the legislative framework, explaining the various roles and duties of the relevant role players and evaluating the City's own attempts in this regard. Although mindful of the separation of powers, this judgment has underlined the role of courts in providing guidance and direction to local government.

Minister of Safety and Security v Moodley (429/10, 2011-03-21, SCA) deals with an appeal against the dismissal of an eviction application. In an *a quo* judgment the Minister adopted the position that PIE did not apply to the member's occupancy (Moodley, the respondent in the present appeal) on the basis that (a) occupation of police quarters fell into a special category, freeing it from PIE, and (b) housing so provided was inextricably linked to employment and was of a temporary duration (see para 19 of the appeal judgment). The respondent averred that PIE was applicable to the situation and that, whilst accepting that the SA Police Service had a discretion to order eviction of its members from the complex, this discretion had to be exercised with due regard to the principles of natural justice and the provisions of the Promotion of Administrative Justice Act 3 of 2000 (PAJA).

Although the point of departure was that the application of PIE in these circumstances (official Police quarters) need not be determined finally (para 40), the Court elaborated on the employment of PIE in eviction applications. Starting from the *Ndlovu* judgment, the Court stated that in subsequent judgments the SCA was at pains to point out that 'PIE was intended to protect unlawful occupiers who were poor and vulnerable and observed that persons who were not intended to be beneficiaries were seeking to bring themselves within its ambit …. It suffices to state that it is now established that there are exceptions to the application of PIE' (para 44).

In this regard the Court voiced 'grave doubts' as to the application of PIE, but reiterated that it was not necessary to decide that question finally (para 45). The appeal was unsuccessful and the order of the court *a quo* was confirmed, but for different reasons: the eviction order could not be granted because the occupier was not an unlawful occupier. Special arrangements were made regarding Moodley's continued occupation and the opportunity to make the necessary representations in this regard (para 50).

It is not clear what to make of the statement (but not of the finding) of the SCA that PIE is (possibly) not applicable in these circumstances. It would seem as if the Court confuses the application or scope of PIE, as it evolved *via* case law developments, with the persons who may actually benefit from the Act. There are

certainly instances where an Act could be applicable to a large category of persons (eg all unlawful occupiers) but would not necessarily benefit all of the persons, depending on the relevant circumstances. Persons who fall within the ambit of ESTA, the labour tenancy legislation and the Interim Protection of Informal Land Rights Act 31 of 1996 are specifically excluded from the ambit of the Act. Since the *Ndlovu* judgment, it is clear that all unlawful occupiers fall within the ambit of the Act if they are unlawful at the stage when the proceedings are instituted. In other words: it does not matter whether they never had consent or whether they had consent but lost it ('holding over' cases) – if they are unlawful when the proceedings are lodged, PIE applies. Of course it is true that PIE was aimed at protecting the poor and vulnerable, but that does not mean that the affluent or non-vulnerable portions of the population are automatically excluded from the application of PIE. Instead, all unlawful occupiers of homes, dwellings and shelters (since 'holding over' cases are included in this category) fall within the ambit of the Act, but not all of them would automatically benefit or be protected by its provisions. On the contrary: the court has to consider all the relevant circumstances before it can find whether the granting or not of the eviction application would be just and equitable. During this process of consideration the particular circumstances of the relevant parties would be viewed: if the respondents are affluent and not in need of PIE's protection, it would certainly be just and equitable in those circumstances to grant the eviction order. Conversely, if the respondents are poor, destitute and stand to be homeless when evicted, the granting of the eviction order would hardly be just and equitable. Furthermore, how and at what stage are the persons that are not supposed to benefit from PIE to be excluded from the process? Should there be an investigation beforehand to determine whether the occupier is affluent and rich and thereafter decide on the correct channel or procedure to follow? Would the common law automatically apply to these excluded categories? How and when would courts then give regard to section 26(3) of the Constitution in terms of which eviction orders may only be granted by courts and only after all relevant circumstances have been considered? In the present instance the SCA found that the respondent was not unlawful and that PIE, in any event, would not be applicable. However, if the respondent had been unlawful in his occupation, what would then be the correct procedure to follow in these particular circumstances if PIE would not be the relevant legislative measure or correct channel to employ?

Until PIE is specifically amended to exclude particular categories of occupiers (apart from those already alluded to above), including persons occupying on a temporary basis and linked with employment (like the present situation), it is extremely difficult to determine on what basis the present tenants ought to be excluded. Surely, when evaluating the whole process and scrutinising the procedural and substantive requirements all courts would be able to determine whether a particular occupier stands to benefit from PIE or not or has

to be protected under PIE or not. The draft measures aimed at amending PIE to restrict its scope to exclude all kinds of tenants or persons who accessed occupation by way of agreements have not been finalised yet.

Yousuf Guman v Fawzia Ansari (2011/2648, 2011-09-23, SGHC) is an application for the eviction of the respondent and everyone occupying through her, under PIE. The property is the main asset in a deceased estate. The respondent had been in occupation of the house for the past 53 years in terms of the deceased's consent. The applicant, as the appointed executor of his late father's estate, attempted to conclude a lease agreement with the respondent, pending the final valuation of said property. When that did not succeed the applicant offered the property for purchase to the respondent. As both attempts were unsuccessful, the applicant lodged the eviction proceedings (paras 1-5). The respondent raised the following defences: (a) that the property was orally bequeathed to her by the deceased; (b) that her purchase offer of R75 000 has to be accepted by the applicant; and (c) that she had an improvement lien over the property of approximately R70 000. Neither the first nor the second defences were pursued further during argument.

Regarding the third defence, the respondent claimed that she, as a *bona fide* possessor, had incurred necessary expenses for the maintenance and improvement of the property and that the owner had been enriched on that basis (para 9). In order to determine whether the respondent would be able to retain possession of the property on the basis of an improvement lien the court per Mbha J set out the applicable law in relation to liens (paras 11-24). Essentially, if successfully raised, the owner may not recover possession of the property from a person who is lawfully in possession and who has an underlying valid enrichment claim, unless and until the defendant has been compensated (para 13). However, a lien does not entitle the possessor the use of the object: instead, he or she is entitled to hold the object for security only.

The main emphasis of the judgment was on the technicalities of liens as opposed to the broader 'relevant circumstances' that have to be considered before an eviction order can be granted, under both section 26(3) of the Constitution and section 4(6) and (7) of PIE. Although the court was satisfied that the requirements had been met, the judgment provides no indication as to which requirements were specifically considered here. Furthermore, keeping in mind that PIE is the mechanism to employ in instances of unlawful occupation, one implication of the judgment is that an improvement lien, raised as a defence under PIE, will never be upheld, purely because the occupier is in unlawful possession or occupation. Surely there has to be instances where an unlawful occupier ought to be able to rely on an improvement lien?

5 Housing

Draft regulations were published for comment in terms of the Housing Development Agency Act 23 of 2008 (in *GG* 34651, 2011-10-07, GN 711). The regulations deal with the meetings of the Board of the Housing Development Agency. An application for exemption from the provisions of regulations 7 to 14 of the Housing Development Schemes for Retired Persons Act 65 of 1988 was lodged by certain Life Right Development Centres (in *GG* 34488, 2011-07-29, GN 502).

The South African Council for Project and Construction Management Professions were published and proposed a Continuing Professional Development Policy for the construction professions (in *GG* 33802, 2010-11-26, BN 172).

A Rental Housing Amendment Bill (B21-2001) was submitted to parliament in November 2011 (see also Explanatory Summary in *GG* 34703, 2011-10-28, GN 765). The Bill amends the definition of 'Minister' to the Minister of Human Settlements. Chapter 4 of the Rental Housing Act 50 of 1999 dealing with rental housing tribunals will be applicable to all provinces (s 6 to be amended). Each province must establish a rental housing tribunal; previously the MEC may have established a tribunal (s 7 to be amended). Rental housing tribunals will in future be able to rescind their rulings (s 13 to be amended). Tribunals must refer cases pertaining to evictions to the relevant competent court (s 13(10A) to be inserted). References to 'local authority' are changed to 'local municipality' (s 1 to be amended).

6 Land use planning

The Draft Spatial Planning and Land Use Management Bill of 2011 was published for comment on 6 May 2011 (in *GG* 34270, 2011-05-06, GN 280). As the Bill provides for an all-encompassing planning and management approach to land use, the Bill in its entirety may have important implications for land reform in general. In this regard the absence of spatial planning and development measures in the former self-governing territories and independent nation states, and the fragmentation of measures in urban and rural areas are especially problematic (Preamble). The promulgation of the Bill is, amongst other considerations, linked with section 25(5) of the Constitution that provide for measures designed to foster conditions that enable citizens to gain access to land on an equitable basis. For example, provision is made for the 'incremental upgrading of informal areas' which entails the progressive introduction of administration, management, engineering services and land tenure rights to an area that was established outside existing planning legislation and could also include any settlement under traditional tenure (cl 1).

A code of ethics and professional conduct for the urban and regional planning profession was also published (in *GG* 34376, 2011-06-17, GN 347).

In *Maccsand and Minister of Mineral Resources v City of Cape Town* (2011 ZASCA 141)) the SCA confirmed that an applicant for a mining permit must also comply with planning legislation, in this instance, the Land Use Planning Ordinance 15 of 1984 (C).

7 Deeds

The Deeds Registries Amendment Act 12 of 2010 was published in the *Government Gazette* in December 2010 (*GG* 33829, 2010-12-02). The Act provides, among other things, for the appointment of alternate members to the deeds regulations board (s 9(3A)); to ensure that the full names and marital status of persons in deeds and documents that are lodged for registration are disclosed or recorded in the deeds registry (s 17(2)). It also provides for certificates of registered title over a fraction of undivided land (s 34).

8 Sectional titles

The Sectional Titles Amendment Act 11 of 2010 was published in December 2010. The purpose of the amendments includes the redefinition of the boundaries of certain sections of common property (s 25), to regulate the substitution of bonds registered in respect of different pieces of land; to provide for the issuing of certificates of real rights of extension; for exclusive use areas at the opening of a sectional title register (s 11(3)(d)) and for a fraction of an undivided share in a section. The Amendment Act provides that 'any window, door or other structure which divides a section from another section or from common property, shall be considered to form part of such floor, wall or ceiling' (s 5(a)). The regulations of the Sectional Titles Act 95 of 1986 were also accordingly amended (in *GG* 34639, 2011-09-28, GN R805). (See also the recently published Pienaar *Sectional Titles* (2011) and Du Plessis, Pienaar and Olivier 'Land matters and rural development: 2010' (2011) 26 *SA Public Law* 292 for a discussion of the Bill.)

The Sectional Titles Schemes Management Act 8 of 2011 will come into operation on a date as published in the *Government Gazette* (s 22; *GG* 34367, 2011-06-14). A body corporate is established on the date that any other person than the developer becomes an owner of a unit in the scheme (s 2(1)). The developer ceases to be a member of the body corporate when he or she loses his or her share in the common property (s 2(2)). The functions and powers of the body corporate are described in sections 3 to 5 of the Act. A scheme is to be regulated by rules that should provide for the regulation, management, administration, use, enjoyment of sections of the common property (s 10). The Act also establishes a Sectional Titles Schemes Management Advisory Council that must advise the Minister on any matter relating to sectional title schemes (s 18).

The Community Schemes Ombud Service Act 9 of 2011 was published in the *Government Gazette* of June 2011 (*GG* 34368, 2011-06-14). The Service must amongst others develop and provide a dispute resolution service, provide training for conciliators and adjudicators; control, regulate and monitor the quality of sectional title scheme governance documentation and provide electronic access to all documentation pertaining to the schemes (s 4). A call for nomination for members of the Service was also published (in *GG* 34688, 2011-10-14, GN 741).

9 Agriculture and rural development

9.1 Agriculture

Certain land was excluded from the Subdivision of Agricultural Land Act 70 of 1970 in the Thabazimbi, Rooiberg and Northam areas (in *GG* 34682, 2011-10-14, GN 866). The Subdivision Act was repealed in 1998 (Subdivision of Agricultural Land Repeal Act 64 of 1998), but the Repeal Act was never put into operation.

The DAFF's mission for the 2010/2011 financial year was to contribute to economic growth and development, job creation, rural development, sustainable use of natural resources and food security (Annual Report 2010/2011 (http://www.daff.gov.za/d.../2010_11/AR2011.pdf). According to the Director-General of the Department, the Department's main focus during the 2010/11 financial year was on restructuring in order to incorporate the forestry and fisheries functions that had been added with the appointment of the new term of government and the new administration on 10 May 2009. With regard to the Medium Term Strategic Framework (MTSF) priorities, DAFF contributed directly to three of the 12 outcomes, namely Outcome 4 (decent employment through inclusive economic growth); Outcome 7 (Vibrant, equitable and sustainable rural communities contributing towards food security for all), and Outcome 10 (protect and enhance our environmental assets and natural resources). At least 5 400 jobs were created during the 2010/11 financial year. The Department states that the remaining target of 45 000 smallholder farmers will be phased out over the period up to 2013/14.

With regard to Programme 4: Food Security and Agrarian Reform the Department successfully signed service level agreements on targeted and priority research projects with the Agricultural Research Council (ARC) for implementation during the 2011/12 financial year. The draft Zero Hunger Strategy and Implementation Plan were completed, as well as the draft Food Security Policy. A national vulnerability assessment scoping study was completed and a national workshop held, and its recommendations will be implemented in the 2011/2012 financial year. With regard to vulnerable workers on farms and in forestry and fisheries, a National Delivery Forum was established. In addition, a draft document on the establishment of agri-villages in support of vulnerable workers in forestry and fisheries were completed.

Approximately 1 388 projects were monitored, geo-referencing was completed and advisory services were provided (out of these, 691 projects were previously funded and 697 are currently funded). The Department over-performed in this area. Fifteen grain farmers in the North West and Free State provinces received assistance to the value of R50 000 in grants from the DAFF Partnership Model (Sustainable Farming Model) pilot project (which is implemented in conjunction with Grain SA, AgriSA, NWK Ltd and VKB Ltd). More effective coordination of training led to a total of 31 474 community members being trained in the financial year (the target was 10 000). Twenty state farms were targeted for support during the financial year, but the Department managed to provide support (through farm visits and M&E, renewed lease contracts, caretaker agreements and PTOs) to 52 farms.

As part of the Departments aim to provide comprehensive support towards rural development, 1 290 community members received training (target was 1 000). In addition, 1 281 extension officers were enrolled for qualification upgrading at universities and universities of technology, and a total of 3 398 received further training through short courses, etc. This exceeded the target of furthering the training of 1 000 extension officers.

9.2 Rural development and land affairs

The DRDLR's Annual Report 2009/2010 (www.ruraldevelopment.gov.za/.../April2009-March2010.pdf) indicated that some challenges were experienced with programme 3 relating to cadastral survey management. The highly specialised work environment brought about a skill shortage in the programme, but progress has been observed in comparison to the 2008/2009 financial year. In the land reform programme 93% of the programme's R2.7 billion budget was utilised. The past focus on the number of hectares transferred, shifted to the sustainability of land reform projects. This gave rise to the establishment of a recapitalisation and development programme. Some 240 000 hectares were transferred. Improved monitoring and evaluation became necessary in light of corruption cases in certain provinces, including Kwa-Zulu Natal and the Western Cape. The deed registration system had to be revised after allegations of property fraud. Properties that had been falsely registered in the Pretoria Deeds Office were rectified, a conveyancer arrested and the Registrar of Deeds suspended.

The Department's Comprehensive Rural Development Programme (CRDP) only managed to utilise R62.9 million of the allocated R252m. The explanation offered was that funding was only received in November 2009. The Department's new mandate in respect of rural development provided impetus for the development of the CRDP. During the 2009/2010 financial year, the CRDP was implemented in eight provinces and 23 wards. Since June 2009, advances were made in respect of housing, schools, clinics and the formation of various community organisations.

The implementation of the CRDP starts with a spatial analysis and the profiling of communities and households in every area. To ensure better co-ordination and reporting, the War on Poverty programme was relocated to the Department. The Department plays the role of catalyst, coordinator, initiator and facilitator within the CRDP. The focus in every CRDP site is on ensuring co-ordination between sector departments and tiers of government. A job creation model has also been implemented and several short-term job opportunities have been generated. It is the intention that, over the next three years, 320 000 employment opportunities will be created for a minimum period of two years. The infrastructure developed and the formation of enterprises should be able to sustain a percentage of these jobs over the long-term, which, in turn, would bring about sustainable economic development. Agrarian transformation focuses on the support of the individual household and to improve food security and the development of smallholder family farming initiatives.

In a presentation to the Select Committee on Land and Environmental Affairs (2011-04-12) (www.pmg.org.za/.../110412recapitalisation-edit_0.pdf), the Department outlined the Recapitalisation and Development Programme. The objectives of the programme include increasing production, advancing food security, assisting emerging farmers to transform into commercial farmers, creating jobs in the agricultural sector, and putting rural development monitors in place. The programme includes both completed and future projects, with specific reference to all land reform programmes, but projects will be selected based on potential measured by an assessment and comprehensive business plan.

According to the DRDR's Strategic Plan 2011-2014 (www.ruraldevelopment.gov.za/.../rdlr-strat-plan2011.pdf) the main aim of the DRDLR is to implement the CRDP. The following main themes have been identified in the Strategic Plan as: social mobilisation and organisation of communities; strategic investment in social, economic, information and communications technology and public amenity infrastructure; and co-ordinated and integrated broad-based agrarian transformation. With reference to land, the focus is on the review of ownership of land; state land will only be made available on the basis of leasehold, private land only on the basis of a limited freehold, and foreign landownership would remain on the basis of precarious tenure. (See also the discussion on the *Green Paper.*) The state will have the first right of refusal pertaining to the purchase of private land made available on the market. Attention will also be paid to strategic land reform intervention and restitution. With regard to communities, the priorities are roads, bridges, energy, water services, sanitation, libraries, early childhood centres, police stations, clinics, houses and the revival of small rural towns. Cultivation will benefit from investment in economic infrastructure, which would include the construction of boundary fences, and the provision of seeds, fertilizers and information services. Livestock will benefit from the construction of abattoirs, animal handling facilities, feeding-lots, mechanising stock water dams, dip tanks,

windmills, fencing and harvesters. Food security will further be boosted through concluding strategic partnerships to ensure effective mentoring, co-management and share equity.

The Department is currently working on two Green Papers: one on Rural Development and one on Land Reform and Agrarian Transformation. It is the intention to have the subsequent White Papers approved by Parliament by May 2012.

The e-cadastre system, developed by the Deeds Registrar and the Chief Surveyor-General, should be finalised within the current Medium-term Expenditure Framework period. The system will fast track deeds registration turnaround times and facilitate the rationalisation of the areas of jurisdiction for Pretoria, Limpopo, Vryburg, Cape Town, Mthatha, King William's Town and Kimberley.

The MRDLR is in favour of the co-ordination of Outcome 7 (vibrant, equitable and sustainable rural communities and food security), one of the government's 12 outcomes concerning responsible outcomes-based monitoring and evaluation. Outcome 7 will be achieved by five sub-objectives: sustainable agrarian transformation; increased access to a variety of affordable food sources; improved rural services to support sustainable livelihoods; better employment opportunities and economic livelihoods; and an institutional environment which fosters sustainable and inclusive growth.

Strategic priorities include the expansion of the CRDP to all rural municipalities; maximisation of productivity in land reform projects through effective implementation of the Recapitalisation and Development programme; speeding up the finalisation of land claims; improving corporate governance and service delivery; implementing proper change management and innovation strategies; and increasing efficiency of information management systems.

To achieve the strategic priorities, eight strategic goals have been identified, namely comprehensive corporate governance and service excellence; a reformed policy, legislative and institutional environment by 2014; effective land planning and administration that is partial to rural areas; institutional arrangements for competent co-operative governance and stakeholder participation; increased access to, and productive use of land; improved access to an affordable diversity of food; enhanced rural services to ensure sustainable livelihoods; and better access to sustainable employment and skills development opportunities.

9.3 Land Bank

The Land Bank's financial position has been stabilised, and it will continue to finance investments that not only improve the productivity of land, but also increase the production of food and fibre, and support economic activity in rural areas. The DRDLR and DAFF are in the process of aligning their programmes; this process aims to facilitate better collaboration within government and cooperation with the private sector, and to improve funding and technical support

to farmers. The goal is to boost the commercial viability of newly settled farmers and to increase food supply. Technology transfer to emerging farmers and their adaptability to changing farming conditions will improve when partnerships are entered into with commercial farmers. Government support is provided to establish or extend regional bulk water systems in rural district municipalities, and to upgrade wastewater treatment works. The 2011 Medium Term Budget Policy Statement made it clear that additions will support bulk infrastructure and solid waste management in rural municipalities, as the lack of these services forms a major constraint to the further rollout of basic services connections to households.

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