

## Land Matters and Rural Development: 2017 (2)

**Juanita M Pienaar**

University of Stellenbosch  
jmp@sun.ac.za

**Willemien du Plessis**

North-West University  
<http://orcid.org/0000-0002-0907-5063>  
willemien.duplessis@nwu.ac.za

**Ebrezia Johnson**

University of Stellenbosch  
ebrezia@sun.ac.za

**Nic Olivier**

North-West University  
oliviern@mweb.co.za

### General

The Gauteng High Court declared section 2(1) of the Upgrading of Land Tenure Rights Act 112 of 1991 unconstitutional, predating the unconstitutionality from 1994.<sup>1</sup> The Court found that the upgrading excluded women from the upgrading process. However, Jacobs argues, such a declaration may have unintended consequences because this judgment, although laudable for its intent to protect a women against eviction, may result in tenure insecurity for thousands of people who had gained tenure security since 1991.<sup>2</sup> She states that

it throws into question the already upgraded land titles, previously issued in terms of the above-mentioned proclamation, of vast urban areas within what were the segregated townships of the apartheid era. This would have immediate effects on property sales, eviction proceedings and banking finance, to name just a few. Many of the already upgraded properties have been sold and resold and the historical circumstances of each property will vary.

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<sup>1</sup> *Rahube v Rahube* (101250/2015) [2017] ZAGPPHC 651 (26 September 2017).

<sup>2</sup> Nathaniah Jacobs, 'Rectifying Women's Land Title Rights' *Mail & Guardian* (6 October 2017) <<https://mg.co.za/article/2017-10-06-00-rectifying-womens-land-title-rights>> accessed 2 December 2017.

This case illustrates but one of the many difficulties that land reform faces in South Africa and the inadequacy of the courts to deal with tenure issues.<sup>3</sup> Legislation, policy considerations or court decisions with a seemingly correct outcome to rectify the injustices of the past may have unintended consequences for others, causing more hardship, or may have policy and financial implications.<sup>4</sup> New and old legislation as well as policy must always be scrutinised for its possible outcomes, however laudable they may seem at first glance, as is also indicated in this note.

In this note the most important measures and court decisions pertaining to land restitution, land redistribution, land reform, unlawful occupation, housing, land-use planning, deeds, surveying, rural development and agriculture are discussed.<sup>5</sup>

## Land Restitution

The Human Rights Commission, the Foundation of Human Rights and three universities established a National Land Forum in 2017 to develop a ten-point plan to expedite land restitution.<sup>6</sup> The plan deals, among other things, with a human-rights approach to land reform to reduce red tape, to make the Land Claims Court (LCC) more efficient and to establish a Land and Economy Convention to address land-reform issues. The forum addressed many of the issues which have been raised over the years by various non-governmental organisations (NGOs) and academics, actually since the first Green Paper on Land Reform was published and which have never been sufficiently addressed. The critique and comments of the forum must also be seen against the budget constraints of the Department of Rural Development Land Reform (DRDLR) and its predecessors. In this regard it can be said that the Commission on the Restitution of Land Rights (CRLR) has already adopted a new approach to balance ‘the rights of land claimants against urban land use and development imperatives’ in the light of spatial transformation.<sup>7</sup> The DRDLR continues to introduce novel practices to assist land-reform beneficiaries: for example, by requesting proposals to help communities not only with their agricultural practices but also to access agricultural markets.<sup>8</sup>

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<sup>3</sup> Also see *Mnisi v Chauke & Others: Chauke v Provincial Secretary, Transvaal* 1994 (4) SA 715 (T); Willemien du Plessis, ‘*Mnisi v Chauke and Others; Chauke v Provincial Secretary, Transvaal and Others* 1994 4 SA 715 (T)’ (1995) *De Jure* 453–457.

<sup>4</sup> Du Plessis (n 3). Also see Anon, ‘Legislation: Land Right Laws Still Discriminate against Rural Women’ *Legalbrief Today* (9 October 2017).

<sup>5</sup> This note includes a selection of literature, legislation and court decisions published in the period 31 March 2017 to 30 November 2017.

<sup>6</sup> Quinton Johnson, ‘A 10-point Plan to Accelerate Orderly Land Reform in South Africa’ *The Conversation* (25 July 2017) <<http://bit.ly/2zDUZUj>> accessed 26 July 2017.

<sup>7</sup> Anon, ‘Policy: Land Restitution a Tool for Spatial Transformation?’ *Legalbrief Today* (16 October 2017).

<sup>8</sup> GG 41164 (6 October 2017) GN 801.

A Restitution of Land Rights Amendment Bill [B19-2017] was introduced in parliament. Section 2 of the Act is to be amended to ensure that claims can be instituted for a further period of five years after the commencement of the eventual Amendment Act.<sup>9</sup> A National Land Restitution Register is to be established.<sup>10</sup> The Commission will have to enter all new claims that were lodged since 1 July 2014 (the date of the opening of new land claims in terms of the previous Amendment Act that was declared unconstitutional).<sup>11</sup> In future, any notification of land claims will also have to be circulated in provincial and national media.<sup>12</sup> Section 16A will ensure that the Chief Land Claims Commissioner will certify in writing that all claims submitted before 31 December 1998 had been finalised or referred to the LCC. He or she must then notify the public via national and provincial media and the *Government Gazette (GG)* as to the date that the Commission will begin to process claims lodged from 1 July 2014 until 28 July 2016 as well as claims instituted in terms of this Amendment Bill. If it is in the interests of justice, the Commission may consider new claims instituted before this date if it will assist them in considering claims instituted before 31 December 1998. Section 22 has been amended to provide for the appointment of acting judges and section 22A makes provision for transitional arrangements in this regard.<sup>13</sup> It will be an offence to lodge fraudulent claims.<sup>14</sup> The Bill will not only rectify some of the challenges posed by the Constitutional Court (CC) but it will also help to expedite the finalisation of existing and future land claims.<sup>15</sup>

## Land Reform

### Interim Protection of Informal Land Rights Act 31 of 1996

The application of the Act has been extended for the twentieth time, to 31 December 2018.<sup>16</sup> It is an indication that, twenty years later, South Africa has still not found a solution to its land-tenure challenges. The *Rahube* case<sup>17</sup> referred to above in the Introduction is an excellent example of the challenges that are caused by a non-reformed tenure system.

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<sup>9</sup> Clause 1.

<sup>10</sup> Substitution of s 2(1A)—clause 2.

<sup>11</sup> *Land Access Movement of South Africa v Chairperson of the National Council of Provinces* 2016 (5) SA 635 (CC); 2016 (10) BCLR 1277 (CC).

<sup>12</sup> Amendment of s 11(1)(c)—clause 3.

<sup>13</sup> Section 22—clause 7.

<sup>14</sup> Clause 6.

<sup>15</sup> See also Memorandum to the Bill.

<sup>16</sup> GG 41270 (24 November 2017) GN 1303.

<sup>17</sup> *Rahube* case (n 1).

## **Draft Communal Land Tenure Bill, 2017**

The time to comment on the draft Communal Land Tenure Bill, 2017 has been extended for a further 120 days from the date of publication of the notice (August 2017).<sup>18</sup> ‘Communal land’ is defined as

land ... owned, occupied or used by members of a community subject to shared rules or norms and customs of that community and includes land owned by the state but used by communities as communal land.

A community no longer refers to a traditional community only but to any

group of persons whose rights to land are derived from shared rules determining access to land held in common by such group regardless of its ethnic, tribal, religious or racial identity and includes a traditional community.

A community member may be anyone who is born into that community, becomes a member of that community or lives permanently within that community regardless of gender, race, ‘ethnic, tribal or religious identity’. Land rights will include registered or unregistered rights as well as the right to use the land, but will exclude contractual rights that create temporary rights.<sup>19</sup> The aims of the Bill are, among other things, to ensure ‘legally secure tenure of communal land’, to ‘convert legally insecure tenure rights’, to transfer ownership to communities, and to provide access to State land.<sup>20</sup> The Act further aims to provide communities with a choice regarding what the administration of their land should be, to provide access to municipal services and to provide for dispute-resolution mechanisms. Clause 3 sets out principles for communal land regulation and clause 4 indicates the application of the Act.

Chapter 2 of the Bill allows the minister to make a determination of the location and extent of the land that is applicable to a particular request to convert communal land to ownership after he or she receives a report from a land rights enquirer.<sup>21</sup> In making the determination, the minister must take certain considerations into account.<sup>22</sup> In doing so, the minister may reserve certain land for public use.<sup>23</sup> The government must help the community to convert the existing right to ownership, either to the community or in subdivided portions to individual members of the community.<sup>24</sup> The rights must be

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<sup>18</sup> GG 41047 (18 August 2017) GN 611.

<sup>19</sup> Clause 1.

<sup>20</sup> Clause 2.

<sup>21</sup> Clause 5. A land rights enquiry is conducted in terms of clause 20. The land enquirer must, over and above land rights issues, also take the ‘land value, spatial planning and land use management, land development’ into account. The functions of the land enquirer are described in clause 22.

<sup>22</sup> Clause 7.

<sup>23</sup> Clause 6.

<sup>24</sup> Clause 9.

registered in the name of the community or in the name of the specific community member if land is subdivided.<sup>25</sup> By making use of its rules,<sup>26</sup> the community must determine the nature of the rights to land in a subdivided portion (eg industrial, residential, communal).<sup>27</sup> Land may be donated, sold, alienated or encumbered only if sixty per cent of the households agree to it and individualised land portions may be alienated only to another community member, a family member or the State.<sup>28</sup> The Bill also makes provision for comparable redress should it not be possible to make insecure rights secure.<sup>29</sup> The community must elect a body to administer the communal land: either a traditional council, a communal property association or any other entity as approved by the minister.<sup>30</sup> The body is to be supported by household forums.<sup>31</sup> The Bill further provides for the institution of Communal Land Boards<sup>32</sup> to advise the minister and communities. The boards will also have a monitoring function.<sup>33</sup>

It is thirteen years since the Communal Land Rights Act 11 of 2004 was declared unconstitutional.<sup>34</sup> As indicated in paragraph 3.4 below, land-tenure rights remain insecure. The Bill is a step in the right direction; however, the implementation of the Act may have its own challenges. The Bill broadens the scope to more communities and it allows communities to decide who would form part of their communities and who may be allocated land. The use of land is also to be determined. This may be more complicated than merely allowing communities to do so. Spatial and environmental legislation may complicate matters and if government departments are not going to help communities with this determination, the implementation of this legislation may follow the route of other well-meant land-reform legislation—it remains on the statute book, but it creates more obstacles for communities than solutions to existing challenges.

### **Extension of Security of Tenure Act 62 of 1997 (ESTA)**

A draft amendment to the ESTA Regulations<sup>35</sup> was published for comment.<sup>36</sup> According to the draft amendment, the minister will determine the household income for the purposes of regulation 2(1)(c) (and the definition of an occupier in section 1 of ESTA) to be R13 625 per month, using the Consumer Price Index (CPI). According to the

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<sup>25</sup> Clause 12 read with clause 18. Use rights are regulated by clause 10.

<sup>26</sup> To be determined and registered in terms of clauses 26–27.

<sup>27</sup> Clause 11. A community is deemed to be a juristic person for the purposes of registration—clause 25.

<sup>28</sup> Clause 13.

<sup>29</sup> Clause 19.

<sup>30</sup> Clause 28.

<sup>31</sup> To be established in terms of Chapter 9.

<sup>32</sup> Clause 36.

<sup>33</sup> Clause 39.

<sup>34</sup> *Tongoane v National Minister for Agriculture and Land Affairs (CCT100/09)* [2010] ZACC 10; 2010 (6) SA 214 (CC); 2010 (8) BCLR 741 (CC) (11 May 2010).

<sup>35</sup> GG 19587 (18 December 1998) GN R1632.

<sup>36</sup> GG 41270 (24 November 2017) GN 917.

Memorandum to the Draft Regulations, this is being done to give effect to the decision of the CC in *Florence v Government of the Republic of South Africa*,<sup>37</sup> where the Court ‘approved the use of the CPI as the metric to calculate changes over time in the value of money’.

Two important CC judgments dealing with ESTA matters were handed down during the reporting period. *Daniels v Scribante*<sup>38</sup> is a ground-breaking judgment, for two reasons specifically. Whereas some earlier decisions hinted at the link between tenure security, security of home and hearth, and human dignity, this judgment highlighted unequivocally the link between redress—due to historical imbalances, access to housing and tenure security—and human dignity.<sup>39</sup> Further, although it is quite common for the CC to hand down a decision consisting of various individual judgments in support of one court order,<sup>40</sup> this decision contains a judgment by one of the judges in both Afrikaans and English. This makes the overall decision generally and that particular individual judgment extraordinarily accessible. This also highlights the potential impact of the decision on all the role-players involved—landowners and occupiers alike.

The decision handed down effectively comprises five separate judgments. The majority judgment was handed down by Madlanga J. Judge Froneman provided a further judgment in both Afrikaans<sup>41</sup> and English,<sup>42</sup> with Cameron J concurring. That judgment was followed by a further separate judgment of Cameron J, a yet further judgment by Jafta J (with Nkabinde ACJ concurring) and a final, separate judgment by Zondo J. While some differences emerge regarding the content of the individual judgments, all of them, as explained, support the order handed down. The judgment is furthermore characterised by large portions of the content dealing specifically with contextualisation. To that end, the judgment is rather a lengthy one, but exceptionally detailed and an excellent backdrop for present-day land-related issues the country is still grappling with.

The facts are briefly as follows:<sup>43</sup> The applicant, Ms Daniels, had been in occupation of the land in question for sixteen years and complied with the definition of ‘occupier’ for the purposes of ESTA. The first respondent is the person in charge of the property as manager. During her occupation, her door had been tampered with, her electricity had

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<sup>37</sup> (CCT 127/13) [2014] ZACC 22; 2014 (6) SA 456 (CC); 2014 (10) BCLR 1137 (CC) (26 August 2014).

<sup>38</sup> 2017 (4) SA 341 (CC).

<sup>39</sup> *Daniels* (n 38) para 2—Judge Madlanga specifically states that an indispensable pivot to the right to security of tenure is the right to human dignity.

<sup>40</sup> See eg the well-known judgment of *Joe Slovo* that consisted of no fewer than five individual judgments: *Residents of Joe Slovo Community, Western Cape v Thubelisa Homes* 2010 (3) SA 454 (CC).

<sup>41</sup> *Residents of Joe Slovo Community* paras 72–108.

<sup>42</sup> Paragraphs 109–144.

<sup>43</sup> Paragraphs 4–10.

been disconnected and her house generally had not been maintained. This forced her to approach the local court for a declaration that she was an occupier under ESTA and the failure to maintain constituted an infringement of her right to human dignity. An order was handed down in her favour and maintenance work was completed. However, Ms Daniels wanted to effect further improvements to the property, including levelling the floors, paving part of the outside area and installing an indoor water supply, a wash basin, a second window and a ceiling. In her communication to the respondents, to which she received no response, she indicated specifically that she would carry all the costs. Once the work started on the dwelling, the respondent informed her by letter that she had to stop all activities as (a) the respondents had not consented to the improvements; and (b) no building plans had been submitted. Her reply that she relied on sections 5, 6 and 13 of ESTA was unsuccessful in local court proceedings and a subsequent approach to the LCC was likewise unsuccessful. Both the LCC and the SCA refused leave to appeal, resulting in the present application in the CC.

The main issues were: (a) whether ESTA afforded an occupier the right to make improvements to his or her dwelling; (b) if so, was the consent of the owner required for such improvements; and (c) if consent was not necessary, whether an occupier could effect improvements to the total disregard of an owner?<sup>44</sup> The Court first focused on the right to make improvements. The point of departure was section 25(6) of the Constitution that provides for legally secure tenure or comparable redress. Sections 5 and 6 of ESTA had to be approached and interpreted in the light of South Africa's racial background. In this light, occupiers enjoyed certain fundamental rights, including the right to human dignity.<sup>45</sup> Under section 6 an occupier had the right to reside on and use the land in issue. Arguably, living in deplorable conditions would not constitute 'reside'. Instead, the right to reside had to be consonant with the fundamental rights contained in section 5, especially the right to human dignity: 'But it is about more than just that: it is about occupation that conduces to human dignity and the other fundamental rights itemised in section 5.'<sup>46</sup> Denial of the right asserted by Ms Daniels could therefore inadvertently result in what would be effectively evicting occupiers.<sup>47</sup> In the context of 'reside' and 'tenure security' it would thus mean that the dwelling had to be habitable.<sup>48</sup>

The issue was whether such a right would place a positive duty on the landowner to ensure an occupier's enjoyment of the section 25(6) right.<sup>49</sup> As section 13 of ESTA provides for the payment of compensation in relation to improvements, the argument was that the landowner would then finance the improvements, which constituted a

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<sup>44</sup> Paragraph 11.

<sup>45</sup> Paragraph 29.

<sup>46</sup> Paragraph 31.

<sup>47</sup> Paragraph 32.

<sup>48</sup> Paragraph 33.

<sup>49</sup> Paragraph 37.

positive duty on the landowner to ensure that the occupier lived under conditions that afforded them human dignity. Being private parties, though, no such positive duty ought to be placed on landowners. In this regard, the CC emphasised that whether private persons would be bound by positive duties depended on a number of factors, including the nature of the right, the history behind the right and the objective of the particular rights.<sup>50</sup> As a point of departure, it would be unreasonable to require the exact same obligations under the Bill of Rights from private parties as those placed on the State.<sup>51</sup> On the other hand, in the light of the *Mazibuko* judgment,<sup>52</sup> it did not mean that under no circumstances would the Bill of Rights impose a positive obligation on private persons.<sup>53</sup>

Accordingly, the real question was therefore: What is the extent of an occupier's constitutional entitlement as expounded in ESTA? Whether an owner will be ordered to pay compensation depended on a variety of considerations, including the need of the occupier to improve their living conditions and lift them to the level that accorded with human dignity.<sup>54</sup> The *crux* of the matter was the following: just because there was a possibility that the landowner might have to pay compensation could not automatically mean that the occupier ought to be satisfied with the state of their living conditions. Clearly this could not be the case.<sup>55</sup> The conclusion was reached that Ms Daniels was indeed entitled to effect the proposed amendments as this flowed 'naturally' from a proper interpretation of 'what Parliament itself has said'.<sup>56</sup>

The second issue was consent. In practice an owner could accept that a dwelling was not fit for human habitation but could still not be open to effecting improvements. Here a simple refusal by the landowner would render the occupier's right to secure tenure nugatory. In this light the landowner's consent could not be a prerequisite for effecting improvements aligned to human dignity.<sup>57</sup>

Would this mean that an occupier could effect improvements in total disregard of the owner? This issue highlighted the landowner's rights,<sup>58</sup> including section 5 of ESTA, which were relevant to both owners and occupiers. Although the consent of the landowner was not a prerequisite, meaningful engagement of an owner or person in

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<sup>50</sup> Paragraph 39.

<sup>51</sup> Paragraph 40.

<sup>52</sup> *Mazibuko v City of Johannesburg* 2010 (4) SA 1 (CC).

<sup>53</sup> Paragraphs 43, 47.

<sup>54</sup> Paragraph 51.

<sup>55</sup> Paragraph 52.

<sup>56</sup> Paragraph 57.

<sup>57</sup> Paragraph 60.

<sup>58</sup> Paragraph 61.



charge was indeed still necessary.<sup>59</sup> If the engagement resulted in a stalemate, the court had to address the matter. At no point could the occupier resort to self-help.<sup>60</sup>

The final part of the majority judgment dealt with the appropriate relief, highlighting the recognition of Ms Daniels' right and how it was to be dealt with and acknowledged in practice. The order was handed down that the applicant was entitled to level the floors, pave part of the outside area, install a water supply inside the dwelling, as well as a wash basin, a second window and a ceiling. The parties were furthermore ordered to engage meaningfully in relation to particular issues, namely the times and movements of the builders and the need for and approval of building plans. If the parties were unable to reach an agreement within a month, either party could approach the magistrate's court for appropriate relief.

The majority judgment was followed by an Afrikaans judgment by Froneman J, immediately followed by its English translation. The Afrikaans version is a poignant, beautifully written judgment that underscores and acknowledges the injustices of the past—in general, but also specifically with regard to farm land, rural areas and the class and racial distinctions that had evolved in these arenas. This judgment underlined dignity and specifically highlighted the place and role of the property concept in South Africa and the necessity to rethink and re-conceptualise ownership in the light of prevailing needs and demands. The Froneman judgment also embodied the need for redress and human dignity and underscored the legal findings of the majority judgment set out above.

Likewise, the Cameron judgment concurred with the legal findings of the majority judgment, but with some reservation regarding its historical reflection and completeness. Despite his reservations about the completeness of history, he too concurred with the findings above.<sup>61</sup>

The judgment of Jafta J also concurred with the main thrust of the majority judgment, save for the finding that a positive duty was placed on the landowner, as explained above. Instead, he found that section 8(2) of the Constitution ensured that some of the rights entrenched in the Bill of Rights were enforceable against the State (vertical application) and others against private persons (horizontal application).<sup>62</sup> He emphasised that there was no provision that expressly imposed a positive obligation on a private person in the Bill of Rights.<sup>63</sup> Apart from the specific wording in section 25(6), he also highlighted that it formed part of the property clause that began by safeguarding

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<sup>59</sup> Paragraph 62. See also the suggested methodology set out in para 64.

<sup>60</sup> Paragraph 65.

<sup>61</sup> Paragraph 153.

<sup>62</sup> Paragraph 157.

<sup>63</sup> Paragraph 162.

property rights.<sup>64</sup> The positive obligation to address injustices in relation to loss of tenure or possession was on the State alone. In this light he considered the application of ESTA to the facts at hand. Instead of a positive duty, there was in fact a negative obligation on the landowner to refrain from interfering with the exercise of the rights of Ms Daniels.<sup>65</sup> That meant that the right, properly construed under ESTA, also included making improvements that were necessary to make the dwelling suitable for human habitation. By preventing her from effecting the necessary improvements, they effectively interfered with her right to reside on the property.<sup>66</sup> ESTA becomes relevant only after access to land has already been gained. Central to security of tenure which the Act sought to promote was the consent of the landowner to reside on and use the land.<sup>67</sup> As there was indeed interference with her right to reside on the property, this judgment ultimately also supported the order handed down.

The final judgment was that of Zondo J, which formulated the legal question as follows: Did the landowner have the right to prevent an occupier defined under ESTA from effecting improvements to their dwelling which would enable them to live in the dwelling under conditions that did not violate their right to human dignity?<sup>68</sup> The judgment confirmed that an occupier had a right to effect such improvements—tied to human dignity—without the landowner’s consent. Section 5 of ESTA formed the basis of this approach as it set out the various rights of occupiers, including the right to human dignity.<sup>69</sup> When considerations of justice and equity were taken into account and a balance was struck between the rights of the applicant and those of the respondents (under section 6), there could only be one answer to the question: the improvements were basic, they would not prejudice the landowner and would, on the other hand, mean a great deal to the applicant and her family. However, having the right to effect improvements did not mean that she could do whatever she wanted. She still needed to engage regarding the logistical implications, thereby also supporting the order handed down.

In all of the judgments the right of the applicant to effect these specific improvements was confirmed. The main judgment reached the conclusion that the applicant, as occupier and on the basis of human dignity, had the right to effect the improvements—also because there was a positive duty on the landowner to ensure access to land and, ultimately, secure tenure. The Froneman and Cameron judgments did not alter these findings, except to the extent that the Froneman judgment emphasised the necessity to change the role, function and concept of ownership in South African law in general and

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<sup>64</sup> Paragraph 167.

<sup>65</sup> Paragraph 193.

<sup>66</sup> Paragraph 195.

<sup>67</sup> Paragraph 201.

<sup>68</sup> Paragraph 209.

<sup>69</sup> Paragraph 212.

specifically in the light of the need for redress and acknowledgement of the wrongs of the past. This dimension is critical and ought to have been highlighted much more in the main judgment; it ought also to have been commented on in the subsequent judgments. The Cameron judgment warned against the incompleteness and built-in bias in the reporting and writing of history. While supporting the order handed down as there was specific interference with Ms Daniels in exercising her right to reside, the Jafta judgment denied any positive duty placed on private landowners. Instead, a negative duty is placed on the landowner not to interfere with the exercise of the right set out and framed in legislation. The final judgment of Zondo called for the balancing of rights and duties of landowners and occupiers and finding the balance in that process. Where the specific improvements are considered, as well as the surrounding circumstances, then it is clear that Ms Daniels must have the right to effect improvements.

While the outcome is welcomed, many questions remain, especially regarding what this judgment means for landowners: Is a positive duty indeed placed on landowners to secure access to land and guarantee tenure security and, if so, on what basis? Is that duty possibly the result of a balancing act, of section 25(5) and/or (6), or due to the transformative role of ownership as such? Or is there in fact a negative obligation on all landowners not to interfere with rights specifically set out in legislation?

Following on the Daniels judgment is *Baron & Others v Claytile (Pty) Ltd & Another*.<sup>70</sup> The facts were briefly the following: The magistrate's court granted an eviction order against the appellants from privately owned land under ESTA, which eviction was confirmed on automatic review by the LCC under section 19(3) of ESTA. In the present application for leave to appeal before the CC the issues were twofold: (a) whether the eviction was just and equitable; and (b) what it means when occupiers are granted 'suitable alternative accommodation' under certain circumstances.<sup>71</sup> Also relevant was whether section 10 of ESTA had been complied with, read with sections 25 and 26 of the Constitution.<sup>72</sup> Of the seven applicants, four were section 10 occupiers (thus already in occupation when the Act was published for comment in 1997), one had become an occupier at a later stage (thereby resorting under section 11 of ESTA) and had passed away, his family having voluntarily moved away. The owners operated a brick-manufacturing business and were the former employers of the applicants. As employees, the applicants had a right to reside in housing units. Following disciplinary enquiries premised on misconduct, their employment was terminated, which also terminated their right to reside. Despite these developments the first, second, third, fourth and fifth applicants remained on in the housing units. In 2013, eviction proceedings were instituted, at which time the City indicated that no suitable alternative accommodation was available because of long waiting lists. In 2014 an eviction order was indeed

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<sup>70</sup> Case CCT 241/16 [2-17] ZACC 24, decided on 13 July 2017.

<sup>71</sup> *Baron & Others* (n 70) para 2.

<sup>72</sup> Paragraph 4.

granted, on the basis that it was just and equitable, allowing eight months for the occupiers to vacate the premises.

The Court *per* Pretorius AJ approached the matter by first setting out the constitutional and legislative frameworks, starting with sections 25 and 26.<sup>73</sup> The point of departure is interesting, namely, that section 25(1) (protecting against arbitrary deprivation) ought also to apply to the rights of occupiers, not only to those of landowners.<sup>74</sup> Based on the subsidiarity principle, however, legislation (ESTA) crafted to deal with the rights of occupiers (and not the Constitution itself) has to be relied on.<sup>75</sup> ESTA sets out the relevant rights and duties of the parties, dealt with in detail in the *Daniels* case above, as well as the procedural requirements regarding the termination of rights and subsequent eviction. At the magistrate's court level the possible disruption an eviction order would cause, especially in relation to the school-going children, was raised specifically.<sup>76</sup> In response the City indicated that temporary accommodation may be available in the Delft Temporary Area (Blikkiesdorp), consisting of corrugated iron structures. The occupiers averred that the move from a brick house to a corrugated iron house was difficult to comprehend. At that stage the two reports submitted by the City indicated that no alternative accommodation was available. Having regard to all the factors, including that the occupiers had been in occupation for many years without rendering service, that the business required the housing for their employees, as well as the comments in the probation officer's report, the Court concluded that the granting of the eviction order was indeed just and equitable.<sup>77</sup>

The LCC thereafter confirmed the eviction order on automatic review under section 19(3) of ESTA.<sup>78</sup> Relevant factors here included that the occupiers had paid neither rent nor for electricity consumed during their occupation since their dismissal and the need for the owner to house his own employees, coupled with the corresponding hardship it caused the owner and employees. With regard to the issue of suitable alternative accommodation, the LCC highlighted the reality that, while being important, it remained but *one* factor only. Furthermore, the duty to supply housing was on the State and not on private citizens.<sup>79</sup> As the employer had been shouldering the responsibility to provide housing for many years and as it had been detrimental to the business and its employees, the appeal could not succeed.<sup>80</sup>

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<sup>73</sup> Paragraph 10.

<sup>74</sup> Paragraph 10.

<sup>75</sup> Paragraph 11.

<sup>76</sup> Paragraph 13.

<sup>77</sup> Paragraph 14.

<sup>78</sup> Paragraph 15.

<sup>79</sup> Paragraph 17.

<sup>80</sup> Paragraph 20.

The CC pointed out that the above conclusion was reached with reference to, inter alia, the Prevention of Illegal Eviction from and Unlawful Occupation of Land Act (PIE) 19 of 1998, whereas the relevant legislation was ESTA.<sup>81</sup> This was relevant as it had to be kept in mind that different pieces of legislation existed, each with a different purpose. Accordingly, the particular balance to be struck in the various legislative measures may differ. As agreed, only the issue of suitable alternative accommodation would be dealt with.<sup>82</sup>

The Court focused, first, on the City's constitutional obligations.<sup>83</sup> In February 2017 the City had indicated that five housing units could be made available in Wolverivier and that the applicants had to indicate whether the offer was acceptable. The offer was turned down due to the distance to and from the children's school and because the buildings were constructed of corrugated cladding.<sup>84</sup> While the court was called on to make a value judgment as to what would be just and equitable, (including the distances to and from amenities), the issue of hardship was not raised. Although the housing units were emergency units only, they had fitted toilets and basins and were of better quality than the housing previously offered in Delft.<sup>85</sup> At the hearing the respondents (the landowners) offered to provide the necessary school transport for the children.

The duties of the landowner are specifically dealt with in paragraphs 35–49. In this context the previously handed down judgment of *Daniels*, discussed above, formed the point of departure, namely, that ESTA can, under certain circumstances, place a positive obligation on a private landowner. However, that in itself did not mean that private landowners carried all or the same duties as those of the State. Of critical importance was the recognition that landownership held certain duties and obligations, which differ from the duties and obligations which rested on private landowners in the pre-constitutional context. The applicants accordingly highlighted that the landowners, as commercially able private landowners, were obligated to assist the applicants in obtaining suitable accommodation. It was in this context that the Court had to determine whether this case was indeed such that an obligation could be imposed on the private landowner.

Whether the landowner had such a duty was also related to the horizontal application of the Constitution. The real question, however, was<sup>86</sup>

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<sup>81</sup> Paragraph 20.

<sup>82</sup> Paragraph 28.

<sup>83</sup> Paragraph 30 and further.

<sup>84</sup> Paragraph 31.

<sup>85</sup> Paragraph 33.

<sup>86</sup> Paragraph 36.

whether, within the relevant constitutional and statutory context, a greater ‘give’ is required from certain parties. Any ‘give’ must be in line with the Constitution. This Court has long recognised that complex constitutional matters cannot be approached in a binary, all-or-nothing fashion, but the result is often found on a continuum that reflects the variations in the respective weight of the relevant consideration.

Of note is that ESTA is silent on who or what has to supply the suitable alternative accommodation. In this particular case the State was a party to the proceedings; it participated and engaged meaningfully and was still unable to provide suitable alternative accommodation. Within the context of section 10(2) of ESTA, where the occupier is evicted in the absence of a breakdown in relationship, it could be expected from the landowner to assist in providing suitable alternative accommodation. This, however, had to be a contextual enquiry, having regard to all the relevant circumstances.<sup>87</sup>

As all the requirements of ESTA had been complied with, the only outstanding matter was the suitable alternative accommodation and the obligations of the City and the landowners, respectively. The obligation of the landowner was pointed out, in the very limited scope that section 10(2) of ESTA set out. The duties of the City, on the other hand, were located in section 26(2) of the Constitution, and were also linked to its available resources. The City had up to that point made two offers which were both refused, namely the Delft and the Wolverivier units. The question was thus whether the City had an obligation to continue offering accommodation until the applicants were satisfied.<sup>88</sup> In addressing this issue the Court referred to case law that dealt with PIE, stating the relevance of PIE ‘in so far as it cannot be expected of the first respondent to accommodate the applicants indefinitely when an offer of alternative accommodation has been made by the City.’<sup>89</sup> The reference to PIE is interesting, given the previous statement of the Court alerting the parties to the fact that different legislative measures were in application and that the balancing of rights may differ accordingly. With further reference to the *Molusi* case,<sup>90</sup> where the Constitution was identified as the starting point in the enquiry, the Court reached the conclusion that a constitutional duty clearly rested on the City, where occupiers were legally evicted and rendered homeless, to provide suitable alternative accommodation.<sup>91</sup> That duty could not be avoided by the submission of reports indicating that housing was unavailable.

ESTA is also relevant with regard to landowners and their rights and duties. In this context the Court emphasised that the occupiers had enjoyed free accommodation since

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<sup>87</sup> Paragraph 37.

<sup>88</sup> Paragraph 40.

<sup>89</sup> Paragraph 43.

<sup>90</sup> *Molusi v Voges* 2016 (3) SA 370 (CC).

<sup>91</sup> *Molusi* (n 90) para 46.

2012, that the landowner therefore had restricted property rights for the relevant period and could not, in fairness, be expected to continue granting free accommodation while its own employees were being disadvantaged in the process. In the light of all the relevant circumstances, the Court was satisfied that the occupiers had to be evicted so as to provide accommodation to the current employees.<sup>92</sup>

On the basis that the City's duty to provide housing was one of progressive realisation, the Court accepted that the housing units at Wolverivier qualified as suitable alternative accommodation which the City had provided within its available resources.<sup>93</sup> Eviction could thus not be avoided indefinitely by refusing the accommodation that was offered. The remaining concerns regarding the children's schooling were addressed by the respondents' offer to provide transport. Accordingly, the eviction order was granted and a just and equitable date set down for eviction, three months from the date of the judgment. A costs order was awarded against the City as it had refrained from providing until a few days before the hearing information concerning suitable alternative accommodation. Although leave to appeal was granted, the appeal thus failed.

Clearly, contextual approaches are integral in matters such as these. As the judgment underscores the complexity and the contextual approach required, it is welcomed. However, given that the approach is contextual, one would have expected more guidelines, especially concerning when precisely which duties would be expected from the private landowner. Accepting that different duties are at play currently compared to ownership in the pre-constitutional context—which factors specifically would be considered? Are these general considerations or do they emerge only where section 10(2) of ESTA is relevant? In this particular case, the financial and business dimensions of the enterprise were underscored specifically. Would the same considerations prevail if the landowners operated a small-scale family-owned farm, for example? The fact that the Court is clear in deciding that the City has a duty to provide accommodation where the occupiers had been evicted lawfully and had been rendered homeless goes a long way in framing specific duties. That is indeed to be welcomed. Critical to effective compliance with such duties is the channelling of sufficient and suitable resources. It is crucial that local authorities have sufficient capacity to perform these duties.

## **Unlawful Occupation**

*Geneva Claassen v The MEC for Transport and Public Works, Western Cape Provincial Department and the City of Cape Town*<sup>94</sup> deals with an application for the rescission of an eviction order from property belonging to the State. The facts of the matter were

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<sup>92</sup> Paragraph 49.

<sup>93</sup> Paragraph 50.

<sup>94</sup> Case no 23595/2015, 11 November 2016, Western Cape High Court Division, Cape Town.

briefly as follows: the applicants had resided at the property, Geneva House,<sup>95</sup> for a long time. The property belonged to the first respondent, who applied for and was granted an eviction order to be executed on 29 February 2016. At the time of the eviction application there were approximately 115 people living on the premises, half of whom were female-headed families, families with minor children and some elderly and disabled persons.<sup>96</sup> The applicants approached the court for the rescission of the eviction order, which had been granted in their absence. When the matter reached the court, only nineteen adults and about thirty-seven children resided at the property. Although the first respondent tendered to find all of the current occupiers alternative accommodation in other shelters, the offer was refused by the applicants on the basis that they did not want to be separated from each other and because they would be on the streets the whole day as they had nowhere to go during the day. Following a postponement, all the persons indicated in an annexure were ordered to remain on the property pending the determination of the dispute. The following transpired from this determination:

In terms of a lease agreement concluded between the first respondent and the Geneva Crisis Centre in 2003, the lease would expire on 31 March 2004, after which the centre had two months to vacate the premises.<sup>97</sup> When the centre did not vacate the property, various events occurred which finally led to the deregistration of the centre and the applicant's forming and registering another non-profit organisation, Geneva House, in June 2004. At the time of lodging the eviction application in 2015, which was opposed despite no opposing papers having been filed, no formal lease agreement existed between the first applicant and the first respondent. Leading up to the eviction application, the Department of Transport and Public Works lodged various complaints, including allegations of drug and sexual abuse at the centre, as well as allegations of prostitution and gang-related activities.

When the matter was heard in January 2016 the Court *a quo, per* Blignault J, enquired as to the absence of the applicants and ordered the respondent to request their attendance, failing which the eviction order would be granted. Various attempts to contact the applicants were unsuccessful. When the applicants failed to appear on the date of the hearing, the eviction order was consequently granted.<sup>98</sup> It was against this order that the application for rescission was lodged.

Two points were raised *in limine*, including whether the first applicant had the necessary standing to act on behalf of the third applicant. This issue was raised as counsel for the applicants neither set out who comprised the third applicant nor produced confirmatory

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<sup>95</sup> Geneva House was once operated as a non-profit organisation aimed at assisting destitute persons, especially women and children.

<sup>96</sup> *Geneva Claasen* (n 94) paras 3–4.

<sup>97</sup> Paragraph 6.

<sup>98</sup> Paragraph 13.



affidavits in support of that. In response, the first applicant claimed standing under section 38 of the Constitution, that she acted in the public interest and thus also on behalf of the group. Davis J accepted that a purposive interpretation of section 38 would be in favour of standing and thus dismissed the first point.<sup>99</sup>

The second *in limine* point related to the basis on which the rescission application was brought, which had an impact on Rule 42(1) and Rule 31(2)(b) of the Uniform Rules of Court. Davis J queried the reliance on Rule 42(1) since the applicant did not indicate how the eviction order had been granted in error. Reliance on Rule 31(2)(b) was likewise unclear since it related to a rescission of a default judgment, embodying a judgment granted where the defendant did not deliver a notice of intention to defend, which was not the case here. As to the rescission of the eviction order in terms of the common law, the applicants had to provide a reasonable explanation for default, that the application had been made *bona fide* and that there was a *bona fide* defence which had prospects of success.<sup>100</sup> The applicants' response in this context was contradictory and confusing, which led the Court to entertain a degree of latitude, provided that the other requirements for rescission were met. As to the requirement of providing a *bona fide* application, Davis J held that the Court was compelled to take the view that the case involved applicants who would be homeless.<sup>101</sup> It was difficult to see on what basis the rescission application had not been launched as a final, desperate and *bona fide* attempt to ensure security of a dwelling in parlous circumstances.<sup>102</sup>

With regard to the prospect of success based on the merits of the case, the Court had to engage fully with the implications of the eviction application and was compelled to consider a range of factors in its deliberations.<sup>103</sup> Since eviction would have a massive effect on the persons in question, it was imperative that engagement had to be meaningful and aimed at alleviating homelessness. On the facts of the case it was clear that the Court was not in possession of key information regarding the identity of the residents or the number of children, disabled persons or households headed by women, or their personal circumstances. This was the case despite the involvement of social workers and the efforts of the Court *a quo* to order the applicants to appear before it.

With regard to the question what would be a just and equitable order, all the relevant facts, events and circumstances had to be considered, including allegations of unsafe and dangerous living conditions and the possibility of accommodation in alternative shelters. In this regard Davis J held that meaningful engagement had to take place in a

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<sup>99</sup> Paragraphs 14–17.

<sup>100</sup> Paragraphs 25–26.

<sup>101</sup> Paragraphs 28–33.

<sup>102</sup> Paragraphs 25–26.

<sup>103</sup> Paragraph 29.

manner that would cause the least disruption to the affected occupiers.<sup>104</sup> The initial order therefore had to be rescinded as it was inconsistent with the requirements of the Constitution and had to be replaced with an order designed to protect and enforce the rights of those affected. To that end the State Attorney had to be furnished with all the personal particulars of the applicants and the necessary supporting affidavits. The first and second respondents were obliged to submit a report regarding the accommodation to be made available to the occupiers, its availability and its proximity to Geneva House. The respondents were further ordered to provide the applicants with temporary emergency housing within seven days from the date of receipt of the supporting affidavits, given available resources, suitable accommodation and the needs of school-going children.

This judgment is an excellent example of the difficulties involved in the rescission of an eviction order and the balance to be found between appreciating the plight of the applicants and upholding constitutional values. Yet again, meaningful engagement and the availability of sufficient information were integral to the matter.

## Deeds

A Draft Deeds Registries Amendment Bill, 2017 was published for comment.<sup>105</sup> According to the Memorandum, the amendments were aimed at improving the implementation of the Act. Section 3(1) of the Act is, for example, to be amended to include the registration of waivers of preference in favour of leases. Section 3(1)(u) is to be amended to avoid fraud. It will no longer be necessary to file more than one copy of powers of attorney in more than one deeds registry.<sup>106</sup> Section 9 of the Act will be amended to describe the duties of the Deeds Registries Regulations Board.<sup>107</sup> Section 34 will allow for the issuing of a certificate of registered title where a person ‘wishes to register a real right over an undivided share’ in land that is jointly owned.<sup>108</sup>

## Expropriation

Seven farms in Limpopo received expropriation notices. Organised agriculture is concerned that the Valuer-General is applying a draft valuation formula to determine the price of the land and has indicated that they will contest the expropriation notices in court.<sup>109</sup>

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<sup>104</sup> Paragraphs 41–49.

<sup>105</sup> GG 41041 (15 August 2017) GN 589.

<sup>106</sup> Clause 2.

<sup>107</sup> Clause 3.

<sup>108</sup> Clause 6.

<sup>109</sup> Anon, ‘Litigation: Farm Expropriation Resistance Heads to Courts’ *Legalbrief Today* (17 October 2017).

## Surveying

The new scale of fees for diagrams, general plans and draft sectional plans to be submitted to the Chief Surveyor-General's Office was published.<sup>110</sup>

## Sectional titles

In *Goldex 16 (Pty) Ltd v Body Corporate of Waterford Golf and River Estate SS 139/2006*<sup>111</sup> the Free State High Court had to determine whether the owner of the real right of extension in the sectional title scheme was 'obliged to contribute to the Body Corporate's levy fund in accordance with the provisions' of the Sectional Titles Act 95 of 1986 and the Sectional Titles Schemes Management Act 8 of 2011.<sup>112</sup> The Court found that 'Goldex in its capacity as the owner of a Real Right of Extension in the Scheme is not an owner ... and therefore not statutory [sic] liable for payment of levies as claimed by the Body Corporate.'<sup>113</sup> It is, however, contractually liable to do so.<sup>114</sup>

The case of *Singh v Mount Edgecombe Country Club Estate Management Association Two (RF) (NPC)*<sup>115</sup> dealt with rules within gated communities.<sup>116</sup> The rules dealt with the issuing of speeding fines and the rules imposed on domestic workers in relation to working hours and their movement on the estate.<sup>117</sup> The Court held that the Management Association had no right to impose a speed limit or to enforce it as the roads within the estate are public roads.<sup>118</sup> The Court likened the rules applying to domestic workers to rules from the apartheid era and found that they violate 'their rights to human dignity, equality, freedom of association, freedom of movement, freedom of occupation and fair labour practices.' The rules were therefore deemed to be unreasonable and unlawful.<sup>119</sup>

It is laudable that the Court would not allow management associations to abuse their powers to slip in apartheid-style rules into their schemes. The rectification of the Court's finding of disallowing speed limits by management associations may have implications for the safety of children and other users of roads within these gated communities as

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<sup>110</sup> In terms of the Land Survey Act 8 of 1997 and the Sectional Titles Act— GG 41082 (1 September 2017) GN 933.

<sup>111</sup> (3979/2016) [2017] ZAFSHC 173 (13 October 2017) (3979/2016) [2017] ZAFSHC 173 (13 October 2017).

<sup>112</sup> *Goldex 16 (Pty) Ltd* (n 111) para 9.

<sup>113</sup> Paragraph 39.

<sup>114</sup> Paragraph 60.

<sup>115</sup> (AR575/2016) [2017] ZAKZPHC 48 (17 November 2017).

<sup>116</sup> *Singh* (n 115) para 3.

<sup>117</sup> Paragraph 11.

<sup>118</sup> Paragraphs 35–36.

<sup>119</sup> Paragraph 43.

well as for the liability of the management authority should any accidents happen within its area of authority, and so a solution will have to be found to regulate these matters.

## **Rural Development and Agriculture**

The Land Audit Report Phase 2 that should have been released at the end of October 2017 had not been published by the end of November 2017.<sup>120</sup> AgriSA, however, released its own report in November 2017.<sup>121</sup> They acknowledge that land is a sensitive matter and further indicate that the extent of agricultural land has decreased from 79.3 per cent in 1994 to 76.3 per cent in 2016. According to the report, previous disadvantaged individuals' ownership increased its share nationally to 29.1 per cent and 'in terms of land potential, the share is 46.5%'. In 1994 their ownership share was 14.9 per cent.

During March,<sup>122</sup> the Department of Agriculture, Forestry and Fisheries (DAFF) and DRDLR made a presentation on the Operation Phakisa: Agriculture, Land Reform and Rural Development Lab.<sup>123</sup> Approximately 161 registered participants participated in a five-week Lab during September and October 2016. The specific objectives of the Phakisa Lab were, inter alia, to reduce the environmental impact of agriculture; to address the fragmented and low impact of financial and non-financial support of agriculture; to ensure equitable access to land, and to stimulate the development of the rural economy. It is foreseen that the Operation Phakisa Plan will become the common plan between DAFF and DRDLR and as such will serve as the basis for budget reprioritisation. DAFF and DRDLR will set up a common Lead Delivery Unit and additional governance structures at both the national and the provincial level to oversee the implementation of the plan.<sup>124</sup>

On 20 June 2017, DAFF made a presentation to the Portfolio Committee on Agriculture, Forestry and Fisheries on progress made in implementing the CAADP.<sup>125</sup> The following priority programmes were identified: intensification and development of sustainable production systems; agribusiness, value chain and market development and policy reform to create profitable and competitive on- and off-farm enterprises; education,

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<sup>120</sup> Anon, 'General: Land Audit Phase Two to be Released Next Month' *Legalbrief Today* (28 September 2017).

<sup>121</sup> AgriSA, 'Land of Excellence Land Audit: A Transactions Approach.' (November 2017) <[https://www.agrisa.co.za/wp-content/uploads/2017/11/AgriSA\\_Land-Audit\\_November-2017.pdf](https://www.agrisa.co.za/wp-content/uploads/2017/11/AgriSA_Land-Audit_November-2017.pdf)> accessed 2 December 2017.

<sup>122</sup> The assistance of Nico Olivier and Clara Williams in preparing this section is acknowledged with appreciation.

<sup>123</sup> DAFF, 'Report to the Portfolio Committee on Agriculture, Forestry and Fisheries' <[http://pmg.org.za/files/170322Operation\\_Phakisa.pptx](http://pmg.org.za/files/170322Operation_Phakisa.pptx)> accessed 15 June 2017.

<sup>124</sup> *ibid.*

<sup>125</sup> <<http://pmg.org.za/files/170620CAADP.pptx>> accessed 17 July 2017.

capacity-building and professional development through comprehensive and integrated training; social development programmes for resilient livelihoods through linking farmers and social-protection programmes and encouraging home and school gardens and Agri-parks; and institutional capacity development.

On the same day, The New Partnership for Africa's Development (NEPAD) also briefed the Portfolio Committee on key issues for agriculture in Agenda 2063 and the Malabo Declaration, 2014,<sup>126</sup> and on success stories from the implementation of the Comprehensive Africa Agriculture Development Programme (CAADP).<sup>127</sup> The presentation highlighted a number of challenges, including (a) too much focus on the issue of public financing and development aid; (b) weak inter-ministerial and inter-sectorial coordination; (c) a multiplicity of initiatives; (d) food insecurity and high levels of hunger and malnutrition; (e) low agricultural productivity, rural incomes and public investment; and (f) too much focus on the supply side rather than on increasing market efficiency. NEPAD stated that agriculture holds the highest possibility for, and presents many opportunities to, the creation of employment for youths and rural populations. Critical success factors in this regard include:

- multi-sectoral and inter-government collaboration;
- leveraging private-sector capacity and resources;
- facilitating inclusive consultation and dialogue across State and non-State institutions and sectors;
- utilising public-private sector investments;
- market development support, and
- increased accountability based on peer commitment and review.

It is recommended that parliament play a leading role in advocating laws and policies that accelerate agricultural transformation in South Africa.

In the DRDLR presentation to the Portfolio Committee on RDLR on Strengthening Relative Rights of People Working the Land Policy Framework [SRR or 50 : 50]<sup>128</sup> it sets the core purpose of the framework as being the introduction of

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<sup>126</sup> <[http://www.nepad.org/sites/default/files/documents/files/malabo\\_synthesis\\_english\\_0.pdf](http://www.nepad.org/sites/default/files/documents/files/malabo_synthesis_english_0.pdf)> accessed 2 December 2017.

<sup>127</sup> <<http://pmg.org.za/files/170620NEPAD.pptx>> accessed 17 July 2017. On the CAADP, see United Nations Office of the Special Adviser on Africa <<http://www.un.org/en/africa/osaa/peace/caadp.shtml>> accessed 2 December 2017.

<sup>128</sup> <<http://pmg.org.za/files/170614drdlr.ppt>> accessed 17 July 2017.

measures to address land hunger, extreme land concentration, associated poverty and inequality by fostering asset and enterprise equity that introduce fundamental changes to land relations and factors of production.

Farm workers will be empowered and the government will acquire a stake in farming on behalf of the farm workers. The land will be owned by the government and farm workers will have land-use right certificates. A new company will be established which will be jointly owned by all the parties (and the National Empowerment Fund (5%)). The prevailing conditions of each case will determine whether the farm workers will continue to provide labour to the new company.

According to StatsSA, the percentage of households with limited access to food decreased from 23.9 per cent (2010) to 22.6 per cent (2015), and the percentage of individuals with limited access to food from 28.6 per cent to 26.4 per cent.<sup>129</sup> Between 2002 and 2015, the percentage of households that experienced hunger decreased from 23.8 per cent to 11.3 per cent and that of individuals from 29.3 per cent to 13.1 per cent. Vulnerability to hunger has remained static since 2011. There was a decline in the number of households involved in agriculture production (from 2.9 million in 2011 to 2.3 million in 2016). The percentage of individuals experiencing difficulty accessing food increased between 2014 and 2015 (the number of people with inadequate or severely inadequate access to food increased from 14.1 million (26.2 per cent) in 2014 to 14.3 million (26.4 per cent) in 2015), but has since decreased to 13 million. Levels of food insecurity increased between 2011 and 2015.<sup>130</sup>

According to the Communal Property Associations' 2015–2016 Annual Report,<sup>131</sup> a total of 1483 CPAs had been registered since the promulgation of the CPA Act. The DRDLR took various steps to assist non-compliant CPAs and those that experienced internal problems.<sup>132</sup> Inter alia, the following challenges facing the DRDLR were identified: incomplete verification by the Commission on Restitution of Land Rights; external interference by well-resourced and connected individuals; poor governance as a result of low literacy rates, and litigation rates. Interventions included capacity-building (138 CPAs received capacity-building support by way of training, workshops and focused skills transfer) and judicial administration (DRDLR has been implementing a resuscitation plan of CPAs under administration).

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<sup>129</sup> DRDLR, 'Portfolio Committee in Rural Development and Land Reform on the Policy Imperatives and Briefing on the One Household One Hectare and One Household Two Dairy Cows Policy' (9 June 2017) <<http://pmg.org.za/files/170607drdlr.pptx>> accessed 20 July 2017.

<sup>130</sup> DRDLR (n 129).

<sup>131</sup> DRDLR, 'Portfolio Committee in Rural Development and Land Reform' (2 November 2016) <[http://pmg.org.za/files/161102CPA\\_A.pptx](http://pmg.org.za/files/161102CPA_A.pptx)> accessed 20 May 2017.

<sup>132</sup> A total of 203 CPAs were supported towards compliance (exceeding the target of 200)—DRDLR (n 129).

The DRDLR and DAFF have been implementing the idea of Agri-parks that is linked to the agricultural, agri-processing and rural economy development objectives of the National Development Plan (NDP), the New Growth Path (NGP) and the Medium-Term Strategic Framework (MTSF). It is also part of the 9 Point Plan, specifically of focus area 2: 'Revitalising Agriculture and the Agri-processing value chain (RAAVC).'<sup>133</sup> Agri-parks were identified in all district municipalities (twenty-seven had been indicated as priority areas), inter alia to develop the skills of small-holder farmers and to bring underutilised land into full production where possible. The programme is also linked to the ideal of improving household and national food and nutrition security in the rural areas.<sup>134</sup> However, the implementation of this idea experienced some challenges, namely, mobilising farmers and implementing the plan when decision-making is devolved to the provincial and local levels. The fact that communities would have a seventy per cent shareholding and government or the private-sector thirty per cent may make it difficult to attract participation from the private sector. It may further be difficult to manage political expectations within the current levels of unemployment and underdevelopment, and it is doubtful whether Agri-parks would be able to deliver results within the expected time frames and with the (limited) resources at their disposal.<sup>135</sup>

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<sup>133</sup> DRDLR and DAFF, 'Joint Presentation on Agri-parks' (28 February 2017) <[http://www.drdlr.gov.za/images/2017/Agripark\\_Overview\\_Report\\_%2028Feb2017.pdf](http://www.drdlr.gov.za/images/2017/Agripark_Overview_Report_%2028Feb2017.pdf)> accessed 19 July 2017. The two departments work together with the departments of Economic Development; Trade and Industry; Science and Technology; Small Business Development; Water and Sanitation; Environmental Affairs; Cooperative Governance and Social Development.

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