

# Land matters and rural development: 2014 (2)

## 1 General

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

## 2 Land restitution

The Annual Report of the Commission on Restitution of Land Rights 2013 – 2014, entitled 'Reversing the Legacy of the 1913 Native's Land Act' (<http://www.pmg.org.za/report/20140702-land-reform-sector-budget-process-and-audit-process-analysis-committee-staff-auditor-general-department-rural>), states that 77 610 claims were settled by 31 March 2014; 3.07m hectares were acquired at R17b, and 1.8m restitution beneficiaries opted for financial compensation (R8b); R4.1b was provided as development assistance to successful beneficiaries who opted for land, bringing the total expenditure of the restitution programme to R29.3b (Annual Report 5). During the Department's reporting period 270 new claims (47 rural and 223 urban) claims were settled, and 292 claims which were previously settled were finalised (Annual Report 6). The 997 outstanding land claims submitted prior to the initial closing date (31 December 1998) will be prioritised in 2014 (Annual Report 7; 12). With the reopening of restitution (until 30 June 2019, as determined by the Restitution of Land Rights Amendment Act 15 of 2014), a new electronic lodgement procedure (information in respect of which will be accessible to the public), as well as fourteen lodgement sites and nine provincial mobile lodgement units, have been established, and a communication campaign is to be rolled out (Annual Report 7; see also *Citizen's Manual: How to Lodge a Land Claim* (30 July 2014)).

The Strategic Plan of the Commission on Restitution of Land Rights (CRLR) 2014–19, submitted to the Portfolio Commission on Rural Development and Land Reform on 2 July 2014 (<http://www.pmg.org.za/report/20140702-land-reform->

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<sup>1</sup>In this note the most important literature, legislation and court decisions are discussed for the period 2014-04-30 to 2014-10-15.

sector-budget-process-and-audit-process-analysis-committee-staff-auditor-general-department-rural), indicates that the National Development Plan (NDP) is the guiding framework, whilst sustainable land reform will be a priority also for restitution initiatives. The strategy of the Commission for Restitution of Land Rights (CRLR) has three foundations, namely (a) the restoration of land rights with the view to supporting land reform and agrarian transformation; (b) enabling the lodgement of claims for the restitution of land in cases where the 31 December 1998 cut-off date was not met; and (c) 'organisational changed management'. In terms of the Annual Performance Plan 2014/15 of the Department of Rural Development and Land Reform (DRDLR) (<http://db3sqepoi5n3s.cloudfront.net/files/140702stratplan.pdf>), the Minister indicated that government is not 'chasing statistics with regards to land restitution anymore but quality. The four issues that we are concerned about are the restitution, reform, development, and security of land tenure' (Annual Performance Plan 4). The emphasis will be on ensuring that all land reform farms will be 100% productive, through the implementation of the Recapitalisation and Development Programme (RADP). Inter-sector and inter-sphere cooperation and collaboration will be facilitated, and the service delivery model will be adapted (Annual Performance Plan 6).

Despite the positive reports and plans of the DRDLR, the South African Human Rights Commission conducted an investigative hearing into land restitution matters at the end of 2013 (SAHRC *Report of the SAHRC: Investigative hearing: Monitoring and investigating systemic challenges affecting land restitution in South Africa* (30 July 2014) 45-50). The main findings include amongst others that there 'are a significant number of problems' associated with the land restitution process that are not related to the Constitution or the legal framework. The Commission indicated that the roles of the DRDLR and the CRLR are not clearly defined. They also indicated that the CRLR indicated that one of the factors that they take into account is that food production should not be disrupted, but that this factor is not taken into account where mining is involved. Other challenges include the valuation of land where the historical value of land is taken into account and not the current value of the land (see also the discussion of cases that deal with this matter under the Restitution Act). The loss of mineral rights and the benefits that would have accrued to the community are also not considered. The Commission raised their concern about the number of claims outstanding as well as bureaucratic failure in determining the initial number of claims lodged. It seems that the CRLR experienced capacity problems in doing the necessary research to finalise the land claims and had to outsource this function. The Commission stressed the need to expedite the CRLR's access to information in government archives and systems. It is also difficult to establish what a 'community' is and who the persons would be that belong to such a 'community'. The CRLR also has to take post-settlement issues and compen-

sation into account which make their task even more difficult. It is stressed that the CRLR will need additional resources to complete the existing land claims before they would be able to embark on the new land claims process that is re-opened. The SAHRC also raised concerns about the new land restitution process and how it may influence existing land claimants (even the successful ones).

To illustrate the complications of the existing land claims, eight beneficiaries of a group who received land in Sea Point want 'to reverse its approval of the R51m sale of their prime Sea Point land.' The beneficiaries would have divided the money of the sale amongst them but due to a dispute amongst the beneficiaries it seems that the deal could be jeopardised (*Legalbrief Today* 11 November 2014).

## **2.1 Notices**

Various notices were published in terms of the Restitution of Land Rights Act 22 of 1994 for land claims that are still not finalised as set out above (KwaZulu-Natal: Umlazi and Umbumbulo 1 each, Camperdown 2; Eastern Cape: Lady Grey, Grahamstown, Stutterheim, Middelburg, Alice, Keiskammahoek, Cala and Amathole 1 each, East London 7; King Williams Town 3; Stockenstrom 9; Umtata 2; Sterkspruit 10; Humansdorp 18; Western Cape: Vanrhynsdorp, Sandvlei Macassar, Houtbay/Fish Hoek, Prince Albert, Grabouw, Clanwilliam, Grassy Park, Kensington, Mossel Bay 1 each, Paarl and Cape Town 2 each, Retreat and Goodwood 4 each; Limpopo: Sekhukhune, Waterberg, Mopane and Vhembe 1 each; Mpumalanga: Nkangala 9, Gert Sibande 7, Ehlanzeni 2; Northern Cape: Holpan, Pixley Ka Seme, Gasegonyana, no district 1 each, ZF Mgcawa 2; Free State: Brandfort 1; Gauteng/North-West: Ekurhuleni 1, Tshwane 2. A few withdrawals (KwaZulu-Natal 3, Eastern Cape 11, Gauteng/North-West 1 and Mpumalanga 3) and amendment notices (KwaZulu-Natal 9, Limpopo 5 and Mpumalanga 12) were published.

Due to all the numerous claims in the Camperdown and Richmond areas in KwaZulu-Natal and subsequent claims that arose from the amendment to the Restitution Act two notices were published in the *Government Gazette*. GN 604 (in GG 37889 of 2014-08-08) stated that all claims in these areas should be lodged before 14 November 2014 – several existing claims are also listed. GN 605 (in GG 37889 of 2014-08-08) urged claimants to intervene in land claim cases that deals with matters pertaining to claims in these two districts and that are currently before the courts.

## **2.2 Restitution of Land Rights Amendment Act 15 of 2014**

The Restitution of Land Rights Amendment Act 15 of 2014 (Restitution Act), assented to on 29 June 2014, was published for general information on 1 July 2014 (GN 526 in GG 37791 of 2014-07-01). The land claims process stands to be

re-opened, based on a new submission date for land claims set on 30 June 2019. The new date replaces the existing submission date of 31 December 1998. Because about 3000 claims are still outstanding from the first round, section 6 of the Act is amended to provide specifically for the prioritisation of existing outstanding claims (s 6(1)(g)). Section 6(1)(1A)(a) also provides for a National Land Restitution Register into which all new claims will be entered following the commencement of the Amendment Act. The re-opening of the claims process enables applicants who had not lodged their claims previously, to do so now. This may result in (a) aspirant claimants being hindered or prevented from lodging claims; or possibly (b) the lodging of fraudulent claims. To that end section 17, which provides for offences, has been amended to provide for two new offences. Section 17(1)(e) now lists the prevention, obstruction or undue influence of claimants or any other persons from pursuing their rights under the Act an offence, whereas section 17(2) provides that a person who lodges a claim with the intention of defrauding the state shall be guilty of an offence and liable on conviction to a fine or imprisonment or both.

Though the Amendment Act is essentially aimed at providing for and regulating the re-opening process, other amendments also relate to the appointment of judges to the Land Claims Court (LCC) (ss 22 and 22A) and to framework agreements set out in section 42D of the Act. In that regard a new sub-section (s (1A)) has been inserted into section 42D providing specifically that the Minister, when considering a decision to enter into an agreement, must have regard to the factors listed in section 33 of the Restitution Act.

It is important to note that, while the process of lodging claims had been reopened, the qualifying criteria and requirements for lodging such claims have not been altered. That means that the formal and legal requirements set out in section 2 of the Act remained unchanged.

### 2.3 Case law

Interesting case law was handed down during the period of discussion dealing with technical matters relevant in the processing of claims and approaches to determining monetary compensation under the Restitution of Land Rights Act 22 of 1994. *The Manok Family Trust v Blue Horizon Investment 10 (Pty) Limited* ((220/13) [2014] ZASCA 92 (13 June 2014)) concerned the question whether a regional land claims commissioner, having determined that a claim for restitution was precluded by the provisions of section 2 of the Restitution Act because there had been no dispossession of the land in issue, could subsequently reconsider that decision and reopen the investigation into the claim.

The background is briefly the following: a land claim was lodged on the basis that land, held in a three-eighths undivided share by Jacobus Manok, was lost when the land was subdivided in 1915. In June 2000 the family was informed that

the claim was precluded as no dispossession occurred for purposes of section 2 of the Act (paras [3]-[9]). Following an inquiry on 6 June 2005 as to whether any land claims had been lodged relating to the land in question, which was answered in the negative, the first and second respondents in the present appeal proceeded with the development of residential and industrial erven on the farm. However, on 11 June 2005 a meeting was held between relevant parties after which the investigation into the claim was reopened. No new claim was lodged, the original claim was merely revived. The land claim was thereafter validated and published in the *Gazette* on 19 September 2008. Following a letter from the first respondent the regional commissioner was requested to withdraw the notice after which an application was lodged in the Land Claims Court (LCC) for an order setting aside the decision of the regional commissioner to reconsider and/or to accept and/or to reinstate the Manok land claim, previously dismissed by him. The court thereafter set aside the decision of the regional commissioner to publish the notice in the *Gazette* on the basis that the regional commissioner, 'having made the decision to reject the claim on 14 June 2000, ... was indeed *functus officio* and, consequently, could not reverse his first decision' (para [10]). It was against that finding that the appeal was lodged, on the following grounds (para [10]): (a) the LCC incorrectly interpreted the provisions of the Act and failed to appreciate the true nature of the regional commissioner's decision of 14 June 2000; (b) the LCC failed to appreciate the investigative nature and function of the regional commissioner; and (c) that it would be overly burdensome for investigative bodies, wherever they find themselves within the broader state administration, to have to approach a court every time they believe a previous decision was incorrect and that, for the sake of efficacy and justice, such investigative bodies be at liberty to change their stance should other facts come to their attention.

Of importance is that the decision of the regional commissioner was an administrative act that stood to be reviewed. However, the decision remained in place until reviewed or set aside. It had consequences for as long as it remained in place and could not merely be ignored (para [11]). By deciding to reopen the investigation into the claim the regional commissioner merely ignored his previous decision. That could not be. The Act makes provision for the withdrawal or amendment of a notice of claim that had been published under section 11(1). That may be done, following investigations conducted upon receiving representations. The original decision may thus be changed. The Act does not, however, provide for a reversal by the regional commissioner of a decision taken in terms of section 11(4), that the criteria set out in section 11 had not been met, thereby in effect, declining to process the claim any further (paras [12]-[13]). The decision that the Act precluded the claim, made in June 2000, was furthermore conveyed to the Manok family. Indications were that the family was aware of the decision. Accordingly, the decision became final when it was conveyed to the Manok family (para [14]). Because the decision was final and because the

regional commissioner had no power, sourced from the Act, to reverse the decision made in terms of section 11(4) of the Act, he was *functus officio* and could not merely ignore the decision he already made (para [17]).

With regard to the issue whether the claim had sufficient merits to pass the low threshold for acceptance, the court was satisfied that the Act required the regional commissioner to investigate the claim and to ascertain whether the threshold was passed (para [20]). If the commissioner was not satisfied, the Act mapped out the course of the claim thereafter. That was exactly what happened in the present case: the commissioner had found that the threshold was not passed and had thus rejected the claim. The appeal was accordingly dismissed and no order as to costs was made.

*The Salem Community v Government of the Republic of South Africa* (LCC 217/2009, delivered on 2 May 2014, LCC) dealt with the validity requirements for lodging a land claim. Two sets of validity requirements are relevant: (a) formal requirements, dealing with the deadline for submission of the claim and whether just and equitable compensation had already been paid; and (b) legal requirements involving the applicant's *locus standi*, whether a right in the land had been dispossessed after 19 June 1913 and whether the dispossession resulted from a racially discriminatory law or practice. The applicants based their claim on a subdivision of commonage land which resulted in the loss of land rights for the community (para [3]). The respondents disputed the claim on the following grounds (para [3]): (a) the plaintiff was not a community; (b) the subdivision of the commonage was not a result of the application of any racial discriminatory law or practice; (c) the plaintiff never held any rights in land in respect of the commonage prior to or after 1913; and (d) the plaintiff was not dispossessed of rights in land as a result of racially discriminatory laws or practices.

It is a very lengthy judgment that contains much historical information. Although such background is provided, the court per Sardiwalla AJ accentuated that the crucial date was 19 June 1913 and that dispossessions for purposes of the Restitution Act, had to occur *after* that date (para [14]). Therefore, what had to be determined was whether there existed a right in land on 19 June 1913 and whether that right in land was dispossessed thereafter, as a result of a racially discriminatory law or practice. In this context much emphasis was placed on pertinent case law, including the well-known cases of *Richtersveld Community v Alexkor Ltd* (2003 6 SA 104 (SCA)); *Alexkor Ltd v the Richtersveld Community* (2004 5 SA 460 (CC)) and *Department of Land Affairs and Goedgelegen Tropical Fruits (Pty) Ltd* (2007 6 SA 199 (CC)). Various witnesses were called to elaborate on the background, including persons testifying on the behalf of the community (applicants who lodged the claim) and the CRLR (paras [14]-[24]). Expert witnesses were also called (paras [25]-[32]). (While much information is provided, the judgment is not always clear on which rights existed, at what stage, when exactly and on what basis the rights were dispossessed.) The defendants likewise

called many witnesses (paras [38]-[54]) and expert reports were also submitted (paras [55]-[71]). All-in-all the parties reached consensus that the following issues had to be dealt with in particular: (a) the applicants' *locus standi* as a community, defined in section 1(iv) of the Act; (b) whether the plaintiffs had a right in land; and (c) whether the dispossession was indeed the result of a racially discriminatory law or practice.

With regard to the plaintiffs being a community, the court referred to academic publications (paras [78]-[81]), case law (paras [82]-[91]) and foreign case law (paras [92]-[108]). Reference was also made to published material and provisions impacting on indigenous peoples and indigenous rights in general (paras [109]-[112]). From all of the above it became clear that the original occupiers were the Khoih and San communities, followed by the Xhosa community. When settlers invaded the relevant area, the Xhosa community had already been in occupation. Granting registered title to the settlers ignored the rights of existing occupiers, being the Xhosa community. While some members stayed on at the commonage, the later sub-division of the land by way of a high court decision again ignored any land rights the members of the Xhosa community had. In this regard the court stated that the judgment handed down by Justice Gane in the Supreme Court was regarded as being part of the nefarious panoply of racially discriminatory laws and that in context it had the effect of dispossessing the plaintiff of its grazing rights, residential rights, ploughing rights, and burial rights, amongst others. The court emphasised that a generous approach to what constituted 'community', had to be followed (para [132]). The members living on the commonage used the land in terms of shared rules and practices and the right to use the commonage was held communally. These persons were the remnants of the original Xhosa occupiers in the area. Accordingly, the court was satisfied that they constituted a community for purposes of lodging a claim (para [132]). Any right in land qualified for purposes of the Restitution Act. While the community exercised traditional or indigenous customary law land rights, the question was whether these rights or other rights in land survived up to the point when the commonage land was finally subdivided in the 1940s. Although various portions of land were taken by force and acquired through conquest and war, the particular area within the Zuurveld where the commonage was located, was highly contested and constituted a frontier zone. Accordingly, no single authority prevailed in that particular area (para [141]). Evidence placed before the court confirmed that after 19 June 1913 certain 'Natives' resided on the commonage, all of whom were not full time labourers or sharecroppers. In fact, many persons occupying land there remained unemployed. These persons were the Salem Community (para [146]). Accordingly, the court concluded that the plaintiff enjoyed a right in land in the commonage after 19 June 1913.

The final question to be dealt with was whether the dispossession resulted from a racially discriminatory law or practice. Despite evidence before the court in 1940, when the subdivision of the commonage was handled by Justice Gane that there were people living on the commonage and that not all of them were employed, the decision to subdivide the land was taken knowing that it would affect the persons living there. That particular judgment had to be considered within the context of the grid of discriminatory practices. The judgment ignored the rights of persons living there, despite being aware of them, only because they were black. That constituted a racially discriminatory practice for purposes of the Act (para [155]). Accordingly, the community constituted a community for purposes of the Act and a valid claim had been lodged. The claim could thus be validated. No order as to costs was made.

The case builds on the foundations laid in the constitutional court (CC) judgments linked to the Richtersveld and Popela-communities respectively. Of importance is that a law or practice need not be racially discriminatory on the face of it to qualify for purposes of section 2 of the Restitution Act. What is crucial, however, is the actual impact of the specific measure or practice, having regard to the fact that it need not have been intended to discriminate specifically. In this regard the impact of the subdivision of the commonage, affected by way of a court judgment, was in actual fact racially discriminatory because it ignored the rights of black people. The subdivision was not *per se* aimed at discriminating, but the end result was indeed racially discriminatory. Therefore, depending on the circumstances, a 'racially-neutral' law or practice may indeed be racially discriminatory.

A groundbreaking judgment was handed down by the CC in *Florence v Government of the Republic of South Africa* (CCT 127/13, decided on 26 September 2014, CC) dealing with just and equitable redress within the context of the restitution programme. The judgment is extensive and complex consisting of five separate judgments overall, of which two main judgments are especially important for purposes of this discussion. The Moseneke judgment is the main judgment as five judges concurred (Skweyiya ADCJ, Dambuzza AJ, Jafta J, Madlanga J and Zondo J and Khampepe J concurred with the main appeal). The Van der Westhuizen judgment is the minority judgment with Cameron J, Froneman J and Majiedt AJ concurring and Khampepe J concurring on the cross-appeal only. For purposes of this discussion the Van der Westhuizen judgment will be set out first so as to better contrast the Moseneke judgment thereafter.

The main issue before the court was what constituted equitable redress under the Restitution Act. The appeal from the Supreme Court of Appeal (SCA) to the CC was based on Mrs Florence's argument that the Consumer Price Index (CPI), which was confirmed in both the LCC and the SCA decisions before, did not give sufficient effect to the right to restitution or equitable redress. The government applied for leave to appeal against the SCA's decision to order the



state under the Restitution Act to bear the costs of a memorial plaque on the property as symbolic relief. While both the main appeal and the cross-appeal were dealt with in the CC, this discussion effectively deals with the main appeal that centres on whether the CPI is indeed the appropriate mechanism to determine financial or monetary redress. To that end subsidiary questions also emerged (para [6]), *inter alia*, what the meaning of 'equitable redress' entails, the purpose of financial compensation and whether the CPI was the appropriate means of converting past loss into present-day monetary terms. If indeed the finding was that the CPI was not the best suited mechanism, the question arose as to the alternatives available, and finally, also the significance of section 33 of the Restitution Act.

The facts were the following: the Florence family lived in a house on Erf 44408 in present day Rondebosch for the period 1952-1970. In 1957 a purchase agreement was entered into after which instalment payments were paid up in full by 1970. When the property was classified as 'white', the sale agreement was cancelled and the Florence family was refunded R1 350. A land claim was lodged in 1995, initially claiming actual restoration, but changed later to reflect financial compensation instead. It also pleaded for the erection of a memorial plaque on the property erstwhile owned by the family. The claim was successful in the LCC and was approached as follows: the compensation paid to the Florence family in 1970 was, as mentioned, R1 350. The value of the property, however, at that stage was just below R32 000. Accordingly, they were under-compensated by about R30 513 in 1970. Based on section 33(eC) of the Restitution Act that specifically refers to 'changes over time in the value of money' and, applying the CPI, the LCC reached the conclusion that the under-compensation, re-calculated in present day terms amounted to R1 488 890. In addition to that, the LCC also awarded R10 000 as *solatium*, but found that the court did not have the authority to order the state to install the memorial plaque. The SCA thereafter confirmed the CPI as mechanism to determine the changes in value of money over time but disagreed with the LCC concerning the memorial plaque. With regard to the latter the court found that the Restitution Act, by providing for 'any alternative relief' would include ordering the memorial plaque, resulting in the present cross-appeal in the CC.

Before dealing with the issues highlighted above in more detail, the court first elaborated on the importance of the judgment. In this regard Van der Westhuizen J underlined that it was critical that courts established an approach to measuring compensation under the Restitution Act (para [25]). Furthermore, while the matter involved issues of principles, these issues had major practical implications. Although the usual approach would be not to interfere with discretion exercised by another court, including a specialist court like the LCC, the matters that were highlighted embodied both principled and practical importance and would therefore need to be canvassed in detail. In order to establish the correct

approach to compensation, the CC first considered the main aims of the Restitution Act. In paragraph 38 and further the CC per Van der Westhuizen explains that the aims of the Act are to provide for overall redress, at two levels: (a) at a national scale, and at (b) an individual, case-by-case scale. It is therefore important that each and every case had to be considered in particular. 'Redress' may therefore take place both by way of restoration or equitable redress. In this light Van der Westhuizen J seemed to consider actual restoration as ideal and therefore preferable and equitable redress as second prize. Interestingly, the court did not consider the point of departure that, in instances where monetary compensation had already been paid, the formal or threshold requirements also come into play. That is the case because land claims may only be entertained when just and equitable compensation had not been received before. Accordingly, irrespective of whether actual restoration was claimed or whether monetary compensation is claimed, any funds already received by the claimant would have to be considered in principle. The question therefore also arises at this point: how is the money or compensation received at the point of dispossession to be considered so as to determine in principle whether the claim may be processed further? If just and equitable compensation had already been paid at the moment of loss, the claim would not be processed further. The changing value of money over time is therefore an issue that effects both the (a) starting point of the claim in order to determine whether it can proceed further (as part of the threshold requirements), as well as the (b) end result when actual restoration is not claimed, but monetary compensation or 'equitable redress' is at stake. It is therefore critical that the approach be set out and clarified: would one consider (a) the compensation paid at the moment of dispossession, re-calculated in modern-day terms, or (b) the present-day value of the property, as if the claimant never lost the property? These approaches are vastly different. With respect to the first-mentioned approach it is accepted and acknowledged that dispossession, however unfair and cruel, occurred and that it has to be dealt with in modern terms as fairly and equitably as possible. However, with respect to the second approach, the dispossession is effectively ignored and the possible increase in value of the property is calculated. For all intents and purposes, the dispossession is thus ignored. In order to determine which approach is correct, the overall structure of the Restitution Act and the unique, very particular characteristics of the South African restitution programme have to be considered specifically.

The Van der Westhuizen judgment is in support of the last-mentioned approach in terms of which the dispossession is effectively ignored and the present day value of the property is considered. That is essentially ascribed to the emphasis that is placed on the loss of a home, not only as a place you call home, but as a commodity or as a vehicle for investment (para [49] ff). In this context Mrs Florence and her family had been deprived of a low-risk, interest-accruing,

long-term asset, constituting property. When the family lost their home, they also lost the opportunity to exploit it, to let it increase in value and to ultimately benefit from it financially. Therefore, what the family lost were the opportunities linked to having a home. In this light she was thus worse off than (a) a person who lost property but who received land or a right in land (actual restoration), and (b) persons who never lost their land or properties.

When considering which approach to follow, difficulties emerge because the Restitution Act provides no guidelines or formula and because to date, no case has dealt with financial compensation *per se*. The point of departure, however, remains that the claimant should be placed in the position in which she should have been, but for the loss of possession (para [53]).

Aligned with the point of departure above, the CC thereafter considered the CPI (para [54] ff). The CPI is a mechanism that essentially quantifies inflation with regard to consumer goods. It follows and tracks the depreciation of money and its buying power. Mrs Florence argued that it was inappropriate because money used in investment was different from money used in consumption. For example, the CPI did not calculate capital gains in value of property. It was furthermore inappropriate because it under-compensated the poor. Arguments in favour of the CPI included that courts have used it with success before and that it was a better reflection of the public interest as it also impacted more favourably on the *fiscus* and the public purse. Judge van der Westhuizen found the arguments against employing the CPI convincing. He agreed that it measured expenditure and that expenditure was not at the core of what needed to be calculated in this instance. It furthermore denied any account of long-term investment and savings. In this context it thus highlighted the disparity between persons who received property as restoration and those who received compensation. It was, finally, also a blunt instrument that was based on a basket of goods and did not cater for particular cases sufficiently. On this basis Van der Westhuizen J concluded that the CPI was not always the most appropriate launch pad for determining equitable redress in the form of financial compensation (para [63]).

In instances where the CPI was not the best suited mechanism the following alternatives emerged: (a) the 32-day notice period deposit rate; (b) government bond rate; (c) prime overdraft rate; (d) mortgage rate; (e) ABSA house price index; and (f) the current market value approach (para [65]). The court thereafter considered and evaluated each of these approaches in detail, also having regard to expert witnesses. Judge van der Westhuizen acknowledged that all of the above mechanisms had difficulties and shortcomings and that it was indeed a great challenge to find the best suited mechanism (para [66]). Also impacting on the challenge to identify the best suited mechanism, were the following factors: the Act was restorative rather than punitive, the approach was not based on the apportionment of blame and culpability and the public interest and the public purse also came into play. With regard to the current market value the Court

found that it could be useful in some instances but may be less useful in others. In principle, however, it could be used to gain some sense of value of the property in present-day terms (para [76]). However, like all of the other mechanisms listed above, market value also had its pitfalls as a mechanism to indicate investment and capital gain. After considering each of the mechanisms above, Van der Westhuizen J found in favour of the 32-day notice period method. He was satisfied that this approach balanced the requisites of redress most closely, but did not penalise the public purse unduly (para [82]).

Having identified the best suited mechanism, the court turned to section 33 of the Act. This section listed all of the factors that have to be considered in adjudication by courts when considering any claim-related matter. Section 33(eC) specifically lists the factor 'changes over time in value of money'. Judge van der Westhuizen emphasised that this was but one factor in a list of many. All factors listed here would have to be considered, weighed and balanced carefully. Equitable redress paid out as financial compensation could not be fixed rigidly to the CPI. Instead, other actors in section 33 'should do the conceptual lifting to vindicate the aim that the claimants be put in a position as close as possible to restoration' (para [87]). It was with regard to this issue that the Van der Westhuizen judgment found that the LCC was misdirected in exercising its discretion. Because the LCC only focused on the CPI and did not consider the other factors listed in section 33, the discretion was not exercised judicially (paras [88], [97]). Considering all factors listed in section 33 of the Restitution Act and in light of section 25(3)(c) of the Constitution, the 32-day notice period approach was found to be the best-suited mechanism to employ here. That was the case because it highlighted the complexity and difficulties inherent in finding the correct approach, it was based on solid data from 1970 and it could therefore provide a clear calculation from 1970 onwards (para [92]). On that basis the equitable redress amounted to R2 211 732.54, compared to R1 488 890 awarded by the LCC and SCA. Therefore, on the basis that the LCC (and therefore also the SCA) did not exercise their discretion judicially because it had only focused on one factor listed in section 33, the Van der Westhuizen judgment supported the appeal. It replaced the CPI as the mechanism used by the 32-day notice period method and thereby ordered the payment of the above-mentioned amount, being 'the amount of under-compensation'. It confirmed the decision of the SCA regarding the memorial plaque.

The Moseneke judgment highlighted two aspects in particular: (a) that a discretion exercised by another court, including a specialised court, may only be set aside if there was misdirection on the facts or where the discretion was not exercised judicially (paras [111] and [113]); and (b) the Restitution Act was aimed at dealing with dispossession that actually occurred. With respect to the former, it is important that a discretion may still have been exercised judicially even if another court would have reached another end result. With respect to the latter,

it was important that dispossessions had to be dealt with on the basis that they occurred and that redress must be determined, fairly, as best the courts are able to. Essentially the Moseneke judgment underlines that the LCC and the SCA were not misdirected when they exercised their discretion and that they had done so judicially when they found that the CPI was a good indicator of changes over time in value of money. That is the case because the dispossession occurred at a particular point in time – in 1970 – which was the point in time when the monetary compensation had to be determined. That meant it had to be determined in 1970. To determine whether just and equitable compensation had been paid at that time, the change over time in value of money would have to be considered. That can be done by way of the CPI, which was structured to do exactly that. To that end it made no sense to ignore dispossession or to pretend that it did not occur. Because the loss did take place, the value at that time had to be considered, but re-calculated in modern terms. Basically it embodied the following (para [105] ff): what were the Florence family due in 1970? What did they get in actual fact? What is the under-compensation? What is that in today's terms? The discretion exercised by both the LCC and the SCA neither related to an incorrect appreciation of the facts (paras [118]-[119]), nor did it rely solely on section 33(eC) of the Restitution Act (paras [120]-[128]). Instead, the overarching aim of the Act as well as its basic structure also entered into the picture. In this regard Moseneke J emphasised that compensation within the scheme of the Act was neither punitive nor retributive, in fact: '[i]t is a constitutionalised scheme paid out of public funds in order to find equitable redress to a tragic past. Ultimately, what is just and equitable must be evaluated not only from the perspective of the claimant but also of the state as custodian of the national *fiscus* and the broad interests of society as well as all those who might be affected by the order made' (para [125]). Accordingly, the overarching aim of the Act, its structure, as well as the underlying ethos and public interest embodied therein, resulted in a methodology that was not purely technical and which would not result in a technical, arithmetic exercise. The Act furthermore mentions 'calculated at the time of dispossession' (para [129]) which was a clear indication that the legislation did not warrant an approach that fixed compensation as if the loss never occurred (para [131]).

Essentially, the difference in approach amounts to the following: (a) accept the loss that occurred in 1970 and deal with it in modern day terms as fairly and equitably as possible, having regard to the fact that the Act is neither based on blameworthiness nor aimed at calculating damages identical to those within a private law context; or (b) ignore the loss and deal with it as if possession continued unhindered up to present day. While the Van der Westhuizen judgment favoured the latter approach, the Moseneke judgment argued for the former, based on the following considerations: land claims are *sui generis* and cannot be equated to private law claims, land claims have reparatory and restitutionary

elements; land claims are neither punitive in the criminal sense nor compensatory in the civil sense; land claims advances public purpose and finally, land claims deploy public funds (para [137]). In light of the above, the Moseneke judgment dismissed the appeal and upheld the cross-appeal. To that end the CPI was found to be a suitable mechanism to consider the change over time in value of money, having regard to the fact that dispossession occurred in 1970 and that the under-compensation would have to be considered at that point in time.

The difference in the two main judgments is interesting. Essentially the Van der Westhuizen judgment is based on a fiction. This includes the fiction that the property was never lost and that it therefore continued to gain value and increase its financial and investment value. It also ignores the fact that the property could have decreased in value and may even have been lost due to poor financial decisions by the owners. This approach therefore also ignores the tax duties and levies that link up to owning immovable property. While having regard to the investment dimension of houses, the approach ignores that house purchases are not inherently identical to commercial, trade and investment transactions. The latter is aimed at financial gains and investment specifically, resulting in different markets, different risk-determination endeavours and ultimately different insurances and support for these additional risks. On a different level, the approach furthermore ignores the fact that, though a constitutional right to restitution exists, there is no right to specific restoration – that much had already been confirmed in an earlier CC judgment in *Concerned Land Claimants' Organisation (PE) v PELCRA* ((2007 1 SA 531 (CC)). To that end it has always been part and parcel of the South Africa land reform programme that not everyone would be able to claim *actual restoration*. In fact, right from the outset other forms of redress were placed on the table, including monetary compensation. Section 34 of the Restitution Act specifically provides that in some instances, where it is in the public interest, property may be taken out of the restitution programme because actual restoration is not suitable. Accordingly, claiming that actual restoration is always the first prize and monetary compensation is always the second prize, paves the way for disappointment in principle, places the process on an incorrect launch pad to start with and does not take heed of realities. It is essential that the loss has to be accepted, however tragic or unfair; and that the approach to redress is set out in the Act itself. Redress in this sense is not a private law concept that may be approached and calculated in exactly the same fashion as one would calculate damages under the law of delict or compensation under the law of unjustified enrichment.

### 3 Land reform

On 4-6 September 2014 a Land Tenure Summit took place (<http://www.drdir.gov.za/publications/land-tenure-summit-2014/file/2871>). A

Concept Document was made available to participants who indicated that the 2014 Summit represented the third major national conference focussing on land reform, following on the 2001 National Land Tenure Conference and the 2005 Land Summit (<http://www.drdlr.gov.za/publications/land-tenure-summit-2014/file/2877>). The 2014 Summit was located within the parameters of the 2011 Green Paper on Land Reform (Concept Document 13–14). The Summit's objectives (Concept Document 3–4) were to: '(a) address the main land tenure reform challenges raised in the 1997 White Paper on Land Policy; (b) follow-up and implement the resolutions of the Land Tenure Conference, 2001 and 2005 Land Summit; and (c) build an inclusive partnership around a common, single and coherent four-tiered land tenure system with the following policy proposals from the Green Paper on Land Reform, 2011 as key focus areas: '(i) Strengthening land tenure rights for people living on commercial farming area; (ii) Communal land tenure policy; (iii) Communal Property Associations; and (iv) Regulation of land holdings.'

Within the context of the historical patterns of dispossession, exclusion and the need to rectify the inequalities of the past, promote access and ensure security of tenure issues relating to tenure insecurities in commercial farming areas and communal areas, Communal Property Associations (CPA) challenges and the regulation of land holding issues were to be addressed (Concept Document 4-8). The Summit also discussed a number of proposed policies namely the Land Tenure Security Policy for Commercial Farming Areas (LTS), and the Policy for the Strengthening Relative Rights of People Working the Land, the Communal Land Tenure Policy (CLTP) and the Land Regulation Policy. The main aim of the Land Tenure Security Policy for Commercial Farming Areas (LTS) is the resolution of all disputes relating to land rights and of all tenure insecurities within the context of commercial farming areas (inclusive of all restitution, redistribution and freehold land through, amongst others, 'share equity, co-management and other empowerment schemes to enable farm dwellers and workers to become owners, managers, professionals, protected and skilled employees and consumers' (Concept Document 15). The proposed policy on the Strengthening of Relative Rights of People Working the Land has at its aim the fundamental transformation of 'the agricultural landscape and control mechanisms of commercial farms by strengthening the position of both the farm-worker and the farmer' (Concept Document 15) through, amongst others the provision of co-ownership by means of the allocation of 50% of every farm to the farm worker-dwellers, with the compensation for such 50% not payable to the owner, but jointly owned by both farmer and farm worker-dwellers as an investment and development fund (Concept Document 16). (See also <http://www.drdlr.gov.za/publications/land-tenure-summit-2014/file/2878>). The Communal Land Tenure Policy has at its main objective the reform of communal tenure in order to 'ensure security of land rights and production relations for

people deciding in South Africa's communal areas' (Concept Document 16). Within this context it is proposed that land use rights in communal areas must be institutionalised; rights inquiries, surveys and registration to be undertaken; the strengthening and rationalisation of land administration systems in communal areas, the determination of authorities, roles and responsibilities; the improvement of land use (with reference to planning, regulation and development); the clarification and formalisation of land rights pertaining to State and Trust land within the communal areas (Concept Document 16-17). Within this context, the DRDLR has developed the so-called 'Wagon Wheel' model relating to communal tenure and the administration of community areas for communal areas without traditional institutions (with a CPA to be established) and communal areas with existing traditional institutions see <http://www.drdlr.gov.za/publications/land-tenure-summit-2014/file/2882>.) The proposed Land Regulation Policy envisages the establishment of a framework (and concomitant institutions to determine the race, nationality and gender) of persons owning land in South Africa, and to ensure that land is distributed in an equitable manner, used to its maximum potential for the greater benefit for South Africans, allocated in an appropriate manner to the various categories of land reform beneficiaries in respect of both commercial farming areas and state-owned land, and administered by means of a 'transparent, fair, accessible and accountable land administration system' (Concept Document 17-18).

### ***3.1 Land Titles Adjustment Act 111 of 1993***

Land was designated in the Madibeng and Rustenburg Local Municipalities in the North-West Province in terms of section 2(1) of the Land Titles Adjustment Act (GN 524-525 in GG 37783 of 2014-07-04). Notice is also given of possible claims for land title adjustments in terms of section 6(1) of the Act in the same province (Gen Notice 665 in GG 37915 of 2014-08-22).

### ***3.2 Extension of Security of Tenure Act***

*De Facto Investment 255 (Pty) Ltd v Nkala* (LCC 51/2010, judgment delivered on 30 May 2014 in the LCC, Randburg) dealt with an eviction application from farm land and raised the question whether Extension of Security of Tenure Act 62 of 1997 (ESTA) or labour tenancy legislation was applicable. The facts were the following. The eviction of two families from a farm situated in the district of Bergville, KZN, was sought. The first defendant was 68 years old and the second was 64 and both occupied homesteads with their respective families. The sale agreement in terms of which the farm was sold to the plaintiff was on condition that the seller would ensure that his employees (the defendants) would vacate the farm at a certain date. Accordingly, agreements were entered into in terms of which the defendants were to vacate the land on payment of R1000 each (paras



[1]-[3]). They later explained that when they 'signed' the agreement, they did not understand that they were agreeing to vacate the farm (para [9]). On failing to vacate the homesteads eviction applications were lodged. The defendants pleaded that they were labour tenants and that the labour tenancy legislation had not been complied with. Alternatively, they pleaded that they were occupiers under section 10 of ESTA. The following facts were undisputed (para [6]): that both defendants were born on the farm, that both defendants were heads of their respective families and that they both provided labour to the land owner and his predecessor in title and other lessees of the farm. However, when the farm was sold to the present plaintiff, the latter brought in outside labourers and the defendants have not employed since then. The Court per Loots AJ first established in terms of which legislation the eviction was sought. That was necessary as the plaintiff's particulars of claim did not specifically identify the relevant legislative measure. The court accepted that ESTA might be relevant as the documents indicated that a probation officer's report would be requested. Such a report was necessary under section 9(3) of ESTA and did not come into play under labour tenancy legislation. Having established that ESTA was the relevant measure, the court proceeded to determine whether the requirements of the Act had been met. Firstly, under section 8 of the Act, the right of residence had to be terminated. Despite the agreement alluded to above, no termination of residence as such occurred. Having regard to section 8(1) the court concluded that there was no just and equitable termination of the rights of residence of the defendants (para [12]). There was furthermore no ground for eviction under section 10 of ESTA (para [14]). There was no evidence before the court of a fundamental breach of the relationship, as required by the Act. In this regard the court concluded that the plaintiff could not succeed in its claim for eviction in terms of ESTA because neither a lawful termination of the rights of occupation of the first and second defendant, nor a ground for their eviction has been established (para [15]).

The court then proceeded to consider the possible application of labour tenancy legislation. If the defendants were labour tenants, they could only be evicted under the Land Reform (Labour Tenants) Act 3 of 1996. Labour tenancy is a very particular category of rural dweller which requires specific conditions. From evidence placed before the court, it became quite clear that both defendants were indeed labour tenants and that all the requirements, including that a parent or grandparent also practised labour tenancy, had indeed been met (para [18]). A person cannot be a farm worker and a labour tenant: one person can be either a farm worker or a labour tenant. In this regard different sets of requirements come into play and one category automatically excludes the other. The plaintiff built the eviction application on the basis of defendants being farm workers, which would mean that ESTA was applicable. While a farm worker may be remunerated mainly in the form of money – usually by way of a (small) salary,

a labour tenant is usually rewarded by the right to reside on the land and to use it for cropping and grazing purposes. Therefore, when confusion reigns as to whether the person was a labour tenant or a farm worker, especially in instances where a person had rights to housing, cropping and grazing and also received some monetary remuneration (as was the case here), then the value of the housing, cropping and grazing rights had to be considered in light of the monetary compensation. That consideration could only take place when sufficient evidence is placed before to court to enable such an exercise. To that end some value has to be attributed to the cropping, grazing and residential rights. However, where the person already falls within the definition of a labour tenant because he or she complied with paragraphs (a), (b) and (c) thereof – as was the case here – then it is presumed that that person is a labour tenant, unless the contrary is proved. That means that, like in the present situation, the land owner had the onus of proving the defendants were indeed farm workers and not labour tenants (paras [23]-[26]). As alluded to above, in the present case evidence placed before the court underlined that the defendants were labour tenants, as they were born on the land, had parents and grandparents who also provided labour and exercised rights of residence, grazing and cropping. Since the plaintiff, on whom the onus rested to prove the contrary, did not adduce sufficient evidence to discharge the onus, the presumption that the first and second defendants were labour tenants, prevailed (para [26]).

The eviction application was therefore dismissed: it could not be granted under ESTA because the defendants were labour tenants and the requirements of ESTA had in any event not been met. The eviction order could also not be granted under the labour tenancy legislation because the Act was not relied upon in the particulars of claim and also because there was not compliance with its requirements (para [26]). Having established that the two defendants were indeed labour tenants, the court dealt with the amended additional prayers, including that the defendants be ordered to relocate their homesteads and that a registered land surveyor be appointed to subdivide a particular portion of the farm for occupation by the defendants. In this regard the court underlined that the Act specifically provided for the lodging of labour tenant claims and the corresponding acquisition of land ownership under Chapter III and that those provisions had to be complied with (para [29]). It later transpired that the defendants had in fact both lodged labour tenancy claims, but that the Department had lost the relevant documents. In this regard the court suggested that a mediator be appointed to assist the parties in reaching an equitable solution. The Department was furthermore criticised for its serious dereliction of duty. In the court order the eviction application was dismissed as well as the alternative relief sought. A copy of the judgment was also to be served on the Director-General of the DRLR.

### 3.3 Property valuation

The Property Valuation Act 17 of 2014 was published on 1 July 2014 (GG 337793 of 2014-07-01) and will come into operation on a date as published in the *Government Gazette* (s 21). The Act provides for the establishment of the Office of the Valuer-General and the appointment of a Valuer-General and Chief Operating Officer (ss 4-5, 8-10). The Act also describes their functions (s 6) and powers (s 7). Only authorised valuers and assistants will be used (s 11) who will have to conduct their powers in terms of the Act (ss 13-14).

## 4 Unlawful occupation

Decisions set out below deal with a range of issues, including formalities and due process involved in eviction applications, as well as placing sufficient information before the court, eviction from rental accommodation and the nature of emergency accommodation. The appeal and cross appeal dealt with in *Rustenburg Local Municipality v Mdango* (937/13, delivered on 30 May 2014, SCA, Bloemfontein) related to a decision of the North West High Court in terms of which an eviction order was granted against the respondents but suspended pending the availability of suitable accommodation for settlement of the respondents. The respondents were all occupiers of certain Reconstruction and Development Programme (RDP) houses at Seraleng Township, Rustenburg. The litigation was initiated when the respondents invaded said houses, earmarked for occupation by other persons, in November 2007. The background of the occupiers is not unique: they had been uprooted numerous times before and had been on waiting lists for housing for many years. Expecting to receive houses in the new development, they were shocked when the homes were allocated to other beneficiaries, their shacks were demolished and they were left homeless (para [8]). While the unlawfulness of the occupation of the respondents was uncontested, the manner in which the eviction order was granted was questioned. Despite the involvement of the local authority and the municipal manager, no information was placed before the court as to the availability of suitable alternative accommodation. While the court *a quo* was concerned about the lack of planning regarding resettlement and the failure to provide alternative land, it nevertheless granted the eviction order (para [10]). In the appeal two issues emerged: (a) whether it was just and equitable to evict the respondents; and (b) whether the court *a quo* erred in suspending the eviction order.

The appeal was approached by Mhlantla JA (with Bosielo, Theron and Willis JJA and Swain AJA concurring) by first setting out the legal framework, essentially consisting of sections 26 and 28 of the Constitution and section 6 of PIE (paras [13]-[15]). From the outset the court lamented the paucity of information before the court. This was the case because the MEC had elected to

abide the decision of the court and refrained from placing information before it. The municipality had likewise failed to submit a report (para [16]). None of the personal circumstances of the respondents were before the court. In considering whether it would be just and equitable to grant an eviction order, various considerations came into play, *inter alia*, the manner in which the occupation was effected, the duration thereof, the willingness of the occupiers to respond to reasonable requests, the extent to which serious negotiations had taken place and the gender, age, occupation or lack thereof and state of health of those affected (para [17]). What is quite clear is that courts are not able to make sensible and fair orders when the information is lacking or insufficient.

The occupiers had been in occupation since 2007, yet no information surrounding their occupation was before the court. Similarly, the MECs involvement and input were crucial to the determination of whether it would be just and equitable to evict the respondents. In these circumstances it was unavoidable that the case be remitted to the high court and that both parties, including the MEC, be allowed to provide the relevant information to enable the court to make a proper determination of the issues (para [19]). This case highlights that, having initiated the process, it can only come to fruition once all the relevant information is placed before the court. Information in this context reflects on all parties involved: those standing to be evicted as well as those seeking the eviction. No court can reach the conclusion that the granting of an eviction would be just and equitable without considering all the relevant circumstances. Consideration of relevant circumstances can only take place when they have been placed before the court.

*Zulu v Ethekwini Municipality* (CCT 108/13, decided on 6 June 2014, CC) entailed an application for leave to appeal against an order handed down in the KwaZulu-Natal High Court, refusing leave to intervene in certain proceedings initiated by the MEC for Human Settlements. The relevant area, known as Lamontville, was the location for a new low-cost housing development to be managed by the municipality, and was unlawfully occupied by the appellants. While still living in Lamontville in backyard accommodation, the appellants were promised RDP housing (para [4]). When backyard rental became too expensive, they settled on the Lamontville property in informal homes. While most of the appellants had been in occupation of Lamontville since 2012, some others have only recently moved to that area. Soon after their settlement in September 2012 the municipality's Land Invasion Control Unit demolished their structures. The appellants immediately re-erected their homes. Thereafter the demolition and reconstruction of the informal homes continued unabated, apparently constituting 24 separate occasions (para [6]). In none of these occupations were court orders presented. The municipality averred that the initial demolition in September 2012 related to structures in the process of being erected and of which the construction had not been completed (para [7]). Accordingly, the structures so demolished

were half completed and unoccupied. That was done as the unlawful occupation constituted a threat to the low-cost housing development, possibly enabling the appellants to jump the housing queue (para [8]). In the course of March 2013 the MEC brought an application in the high court against the municipality and the Minister of Police. The court issued a rule *nisi* granted with an interim interdict showing cause why a final order would not be made granting the first and second respondents authorisation to prevent any persons from invading or occupying property, to remove any building materials placed there by any person, to dismantle and/or demolish any structures and interdicting and restraining any persons from invading and/or occupying the land in question (para [11]).

In April 2013 the appellants launched an application in the high court against the present respondents. They sought various orders, including an interdict restraining the respondents from demolishing their homes or evicting them or removing their belongings without an order of court. They also sought an order compelling the municipality to rebuild the homes that had been demolished (para [12]). In the answering affidavit the municipality declared that it had demolished structures before and after April 2013 and that some of the structures were completed while others were not. It was at that stage that the application for leave to intervene in the MEC's application (the interim order) was launched (para [14] ff). The basis for the application was that the appellants were not cited and yet they were living on the land in question and would be affected by the order. Accordingly, having a direct and substantial interest in the matter, they ought to be part of the proceedings. That application, as well as an application for leave to appeal, was dismissed.

The question before the CC per Zondo J (with Moseneke ACJ, Skweyiya ADCJ, Cameron J, Dambuza AJ, Jafta J, Khampepe J, Madlanga J and Majiedt AJ concurring) was whether or not the high court was correct in refusing the appellants leave to intervene. That question depended on whether the appellants had *locus standi* in the proceedings. That in turn would be determined by whether the appellants had a direct and substantial interest in the matter. Whether they had an interest depended on whether the order affected their rights or interests adversely or had the potential to affect their rights or interests (para [16]). The reason why the initial application was dismissed centred on the fact that the appellants had already been in occupation at the time the interim order was handed down. It was contended that the interim order was not intended to affect, or to apply to, the appellants or to persons who claimed to have been in occupation of the Lamontville property prior to its grant. To that end the interim order was aimed at *preventing* the invasion and thus not aimed at dealing with prevailing conditions (paras [17]-[19]). Accordingly, the interim order did not affect the appellants' rights. However, when considering the actual wording of the interim order, the court concluded that there was nothing in that particular part of the order to

suggest that the occupation of the property that was to be prevented did not include continuing occupation that had commenced prior to the grant of the order (para [24]). In fact, the order seemed wide enough to include the prevention of the continuation of such occupation. The interim order therefore authorised the taking of steps which could have the effect of evicting from the Lamontville property those persons already living there or those who had completed building their homes when the order was granted. Accordingly, the appellants had a direct and substantial interest in the interim proceedings and in the discharge of the rule *nisi* (para [29]). That gave them standing to intervene. On that basis the appeal had to succeed (para [29]).

Interestingly, the court went further and relayed events that took place the day after the hearing for the appeal was concluded on 12 February 2014. On 13 February 2014 the municipality went ahead and demolished a number of homes on the Lamontville property (para [30]). While during the hearing it was stated unequivocally that the interim order did not apply to the appellants, the municipality thereafter argued that the interim order was indeed the authority for demolishing the structures and that it also applied to the appellants (para [35]). Judge Zondo stated that the lawfulness (or not) of the interim order was not before the court and therefore the appeal did not extend to that issue. On the basis that leave to intervene would be granted the appellants would be able to anticipate the extended return day of the rule *nisi* in the interim order proceedings and would be able to seek its discharge. The appeal was thus upheld.

Judge van der Westhuizen, (with Froneman J concurring) went further and, while agreeing with the leave to intervene application as set out by Zondo J, also addressed the lawfulness and constitutionality of the interim order as well as the conduct of the municipality (paras [41]-[71]). This judgment argued that, simply upholding the appeal and leaving the high court to decide the fate of a patently unlawful interim order would hardly be just and equitable as far as the appellants, others in their position and the legal order were concerned (para [63]). Essentially, the interim order (or other land-invasion-control orders) authorised evictions and *carte blanche* demolition of structures that were unconstitutional. In this regard the finding was that the interim order was unlawful (para [41]) due to its total disregard for the provisions of PIE.

A third judgment was handed down by Judge Moseneke on the basis that he concurred with Zondo J and the concurring judgment of Van der Westhuizen J, thereby agreeing with the main tenets, but disagreeing with the stance that the CC had to determine the constitutional validity of the interim order (para [72]). The point of departure of the last judgment was that the issue of whether the interim order was inconsistent with the Constitution and PIE, or not, was not the point. That was irrelevant because (a) the appeal was only directed against the ruling of the high court that the appellants had no standing to intervene in

the proceedings; (b) the appeal was never aimed at declaring interim relief inconsistent with the Constitution and other law; and (c) the interim order was not appealable as it did not threaten pending, on-going and irreparable harm (paras [74]-[75]).

Although there seem to be some technical differences regarding the scope of the matter before the court, the main thrust of the judgment is that persons who stand to be evicted, by whatever means, have vested and substantial interests in such proceedings. To that end any form of eviction, be it by way of a back door like encapsulating it in a rule *nisi* or be it by way of framing it as impacting on future evictions only, have to comply with the Constitution.

*Malan v City of Cape Town* (CCT 143/13, decided on 18 September 2014, CC) dealt with the cancellation of a rental housing agreement and concomitant eviction. In the Western Cape High Court an eviction application was granted. The present application was for leave to appeal the granting of the eviction order, *inter alia* on the basis that particular clauses in the rental housing agreement were unconstitutional and in the event that they are not unconstitutional, an eviction order ought not to be granted on the basis that it would not be just and equitable to do so. Three judgments were handed down: the first judgment was handed down by Dambuza AJ (with Froneman J and Madlanga J concurring), followed by the judgment handed down by Majiedt AJ (with Moseneke ACJ, Skweyiya ADCJ, Cameron J, Jafta J, Khampepe J and Van der Westhuizen J concurring) thereby constituting the majority. Judge Zondo handed down a further judgment. Being focused on access to housing as a fundamental right, as embodied in a rental housing agreement, much of the judgement was linked to contractual matters and the impact of the Constitution on this dimension. To that end all aspects embodied in the judgments will not be discussed here in detail as the main emphasis here is placed on eviction and its relevance within the rental housing set-up.

Essentially the first judgment by Dambuza AJ granted leave to appeal and also the appeal itself on the basis that the City did not provide Mrs Malan an opportunity to rectify the shortcomings on which basis the rental housing agreement was cancelled (para [44]). Apparently the lease agreement was cancelled on the following grounds: that she was in arrears with her rent and that she allowed illegal and criminal activity to take place on her premises. The impact of the notice was such that it effectively cancelled the lease without her having the opportunity to rectify the shortcomings. The letter that was delivered to her did not call upon Mrs Malan to either pay rental or to ensure that the activities complained of were stopped. Instead, it informed her in no uncertain terms that as a result of the specified conduct a decision had been taken to cancel the lease and that she had to vacate the property on a specified date. Her rights to occupy the property ceased on that day (para [46]). The cancellation was therefore premature. As Mrs Malan was not offered an

opportunity to rectify the breach, the cancellation was invalid and contrary to public policy. For these reasons the appeal was upheld.

The second judgment, handed down by Majiedt AJ, placed much more focus on the duties and responsibilities of local government to provide access to housing. In this context the great demand for such housing, the small number of houses available and the responsibilities in conducting such an endeavour responsibly, were highlighted in particular. While he agreed with granting leave to appeal, the appeal was finally dismissed with no order as to costs. The reasons why the appeal was dismissed were manifold. Being low-cost housing for persons in need of accommodation, the parties were not on equal footing regarding the negotiations. This dimension to rental housing agreements was also alluded to in the first judgment handed down by Dambuza AJ. However, despite not being in a strong bargaining position during the negotiations phase, rental housing agreements like these would as a rule only be cancelled as a last resort (para [58]). To that end it must be clear that cancelling the agreement and thereby evicting the person was finally the sensible thing to do. The court reached that conclusion by considering the enormity of the housing backlog and the huge demand for housing like this. Accordingly, when the person was in breach of the contract, for example, by being in arrears with the rental, coupled with widespread criminal activities on the property, superimposed on the great need for housing, cancellation of the agreement and eviction became a real possibility (para [60]).

The letter referred to above was not a cancellation of the agreement but was, instead, an intention to cancel the agreement. The letter thus served as a warning of an intention to cancel on the basis of illegal activities. Thereafter Mrs Malan got an opportunity to correct the shortcomings, including the chance to pay the rental in arrears, which she failed to do (para [66]). After the date of evacuation came and went and Mrs Malan continued to reside in the property, she still refrained from addressing the shortcomings. The failure to pay the rental or to negotiate for the arrears to be paid up at some point thereby constituted a ground for cancellation (para [67]):

The city is the custodian of an exceptionally scarce public resource and is surely entitled to ration it according to just principles of payment. The City has important constitutional obligations to fulfil in providing housing. It faces enormous challenges to meet them, as a result of historical deprivations and continuing flood of people from rural areas pouring into the City in pursuit of employment and a better life. The City is duty-bound to make the most of a very scarce resource for which there is massive demand. It must fulfil its constitutional obligations fully cognisant of the need to allocate housing to the needy and the deserving on a fair and equitable basis.



Presently a fair process was followed, despite the continuance of illegal and criminal activity on the premises. When requested, the South African police provided full details of the criminal activities that were conducted on the premises (para [73]). Having regard to the process followed, as well as the relevant clauses in the contract that required persons occupying the accommodation to conduct themselves in a decent, quiet and orderly manner and refrain from criminal activities, the cancellation of the rental agreement was called for. Considering that the parties involved would not be able to negotiate more favourable clauses but are effectively forced to accept these clauses if they wanted to gain access to the housing, at least three conditions came into the picture (para [79]): (a) the contract must be clear as to what conduct would be prohibited; (b) the tenant must have the means to control the prohibited conduct (eg refrain from illegal activities); and (c) the tenant must have an opportunity to rectify the breach before cancellation. The court was satisfied that all of these conditions were fulfilled here (para [80]). Accordingly, the court was satisfied that the requirements of section 26(3) had been complied with (para [81]). After that conclusion, the court considered whether the granting of an eviction order would be just and equitable in these circumstances. Mrs Malan was a 74-year-old widow. The City offered alternative accommodation to her in one of the City-regulated old age homes. While Mrs Malan would be taken care of, the City would be enabled to make the housing available to another deserving family in need thereof (para [85]). The Majiedt judgment was satisfied that the high court was correct in ordering the eviction.

The final judgment was handed down by Zondo J. This judgment was more along the lines of the Dambuza judgment in that there ought to have been an opportunity for Mrs Malan to rectify the breach. However, the Zondo judgment goes further by finding that, even if the City was entitled to cancel the lease, it was not entitled to an order of eviction because Mrs Malan's eviction would not be just and equitable. It would not be just and equitable because the municipality did not raise its concerns with her prior to eviction, did not discuss possible solutions and did not endeavour to find ways of accommodating the concerns (para [150]). It should have taken more procedural steps before it cancelled the lease agreement. This 'duty of engagement' embodied in section 4(7) and (8) and section 6 of PIE had accordingly not been complied with (para [150]).

Previously, in *Madolamoho Housing Association v Masibi Gaitswewe* (2013 JDR 9671 (GSJ)) similar issues emerged. That judgment underlined that gaining access to housing and providing access to housing embody rights and duties with respect to both parties. In order for a critical resource like housing to be managed effectively, persons making use of the resource have to do so responsibly. If the rental is not paid or when illegal activities threaten the resource as a whole, including impacting negatively on the human dignity of

existing residents, then the whole structure is at risk of collapsing. Conversely, keeping the structure intact requires effective management, commitment, and enforcing contractual obligations. If parties do not meet the requirements and are unable to rectify shortcomings after having been granted time and opportunity to do so, they have to vacate and make room for persons who would be able to commit and keep the structure intact. Ultimately, cancelling lease agreements and evicting persons from rental housing still needs to be a last resort only.

*Dladla v City of Johannesburg* (39502/12, delivered on 22 August 2014, Gauteng Local Division, Johannesburg) highlights particular issues linked to the nature of emergency accommodation and its correlation to basic human rights. It is a follow-up judgment linked to the well-known case of *City of Johannesburg Metropolitan Municipality v Blue Moonlight Properties 39 (Pty) Ltd* (2012 2 SA 104 (CC)). In the original judgment the City was ordered to provide temporary accommodation to persons who were evicted from 7 Saratoga Avenue. The temporary accommodation had to be in a location as near as possible to the area where the property was located. Though the City had not completed their policy dealing with emergency and temporary housing as required by the Court, the former residents were in fact housed in Ekuthuleni Shelter. The relief sought in the present application flows from the Ekuthuleni emergency accommodation and is aimed at *inter alia* the following: interdicting and restraining the respondents from evicting the applicant from the Ekuthuleni Shelter; declaring rules 3 and 4 of the Ekuthuleni Overnight / Decant Shelter House Rules an unjustifiable infringement of the applicants' constitutional rights to dignity, freedom and security of person, privacy and access to adequate housing, enshrined in sections 10, 12 14 and 26 of the Constitution (para [8]). The application became necessary, it was argued, because of the manner in which the temporary accommodation was provided by the City. Essentially the problem could be relayed to two aspects in particular: (a) a gendered approach to accommodation in the sense that males and females were separated and could not reside together; and (b) the locking of the accommodation from early morning until late afternoon thereby forcing residents to leave the shelter during the daytime and to return in the evening only. The division of males and females was problematic as it disallowed spouses or permanent life partners from staying together. Incidental thereto, was the plight of mothers caring for their children during the day when the shelter was out of bounds (para [17]).

The applicants based their application on the premise that the temporary accommodation in which they found themselves was their home. On that basis their constitutional rights, as set out above, have been infringed by the particular set-up on which the shelter functioned (para [20]). The City argued that the accommodation was an overnight facility, being accommodation akin to hotels, hostels and student residences and that the mere fact of residence

did not make an institution a home (para [21]). The underlying idea was furthermore based on a 'managed care model' that was aimed at assisting individuals to improve their station in life, primarily by providing overnight facilities. In that respect it could not be equated to a home in the normal sense (see paras [22]-[25]). The particular facility consisted of 30 gender differentiated dormitories or rooms which could accommodate 100 people. The rooms had bunk beds and there were common areas with kitchens and dining facilities. Each occupier had a locker for the storage of food and a trunk for personal items. There were also gender differentiated ablution facilities, a communal study area, a courtyard and a television room. The separation of males and females was motivated on the basis of safety concerns for female residents as harassment, including sexual harassment, occurred in the past (para [26]). Generally, it was argued, the condition of accommodation was much better and a great improvement on the living conditions of inmates generally, compared to the Saratoga building where there was no water or electricity and the conditions were generally unhygienic and dirty (para [26]).

Of importance is that the former Saratoga occupiers were in a unique category of residents. They were not the 'usual' case of a homeless person who needs overnight accommodation only. For one thing, their taking up residence was the result of a court order. Apart from the basic difference in point of departure, they all experienced active social and family lives before they were evicted. Many of them were furthermore employed and many of the children were of school going age. They could therefore not be placed on exactly the same footing as persons who were generally homeless. Not being able to stay on in the shelter during the day or not being able to return when work was finished earlier than usual or not being able to return from school would have a huge impact on how one could spend a day. Concerning the impact of the above on basic human rights Wepener J highlighted that, though there was no fundamental right to family life in the Constitution numerous international documents and instruments underscored such a right and that, in any event, the primary right implicated was that of the right to dignity (para [35]). It was furthermore important that dignity was not only a value fundamental to the Constitution – it was also a justiciable and enforceable right that had to be respected and protected (para [35]).

Separating the males and females and thereby splitting up families constituted a violation of sections 10, 12 and 14 (para [38]). It compromised and disrupted the family as a unit; it created emotional distance in a relationship; it created an additional financial burden on the couple's limited financial resources and it denied them the most basic associative privileges connected to a marriage or permanent relationship (para [37]). Once an infringement was established, section 36 came into play as a limitation of the right could be justified. The argument was made that the limitation was

reasonable having regard to the purpose of the short-term emergency accommodation (para [39]). The court found that even if the infringement was for a short period of time only, it would still need to meet the requirements of section 36. Though such a limitation ought to be introduced by a law of general application, no such law has been shown or submitted by the respondents to exist. In the absence of any legislative provision there could be no justified limitation of the right of spouses (and life partners) to co-habit. Any infringement of that right was an infringement of the right to dignity and unconstitutional and therefore fell to be struck down (para [40]).

The applicants were successful with their application. Rules 3 and 4 of the Overnight Shelter Rules were found to infringe unjustifiably the constitutional rights to dignity, freedom and security of persons, as enshrined in sections 10, 12 and 14 of the Constitution. The respondents were therefore directed to permit those of the applicants who wished to do so, to reside together with their spouses and life partners in communal rooms for the duration of the stay. The judgment is important because it underlines that emergency housing or temporary housing is in theory and practice still housing. It means that for all intents and purposes the accommodation constituted the relevant persons' homes. To that end living a life as normal as possible has to be a realistic option for all persons, including those who find themselves in situations like these. Amending the rules would result in families living as families would normally do. The mere fact that the accommodation is temporary does not mean it is or should be less worthy of human habitation.

A Ministerial Enquiry was launched to investigate the eviction of the informal settlement community of Nomzamo (Lwandle) near Cape Town by SANRAL (Gen Notice 451 in GG 451 of 20-06-2014; Gen Not 509 in GG 37788 of 2014-06-30).

## **5 Land use planning**

The Infrastructural Development Act 23 of 2014 came into operation on 10 July 2014 (Proc 44 in GG 37824 of 2014-07-10).

Draft regulations were published in terms of the Spatial Planning and Land Use Management Act 16 of 2013 (Gen Notice 526 in GG 37797 of 2014-07-04). The draft regulations deal with the application of the regulations and conflict management (ch 2), the publishing of ministerial guidelines and directions with regard to Spatial Development Frameworks (ch 3) and land use management in relation to land use management schemes (ch 4). Chapter 7 is devoted to land development applications. The regulations also make provision for the institution of joint municipal planning tribunals (ch 5) and provide for an appeal procedure (ch 7). Chapter 8 deals with strategic

infrastructure development and provides a specific procedure for applications for these types of projects.

## **6 Housing**

The Minister of Human Settlements issued regulations in terms of the Housing Development Agency Act 23 of 2008 (GN R610 in GG 37899 of 2014-08-12). The regulations deal with the proceedings and meetings of the Housing Development Agency Board (ch 2), the declaration of priority development areas (ch 3) as well as the implementation thereof (ch 4). Chapter 5 provides for intergovernmental and institutional collaboration between all organs of state and other housing institutions. The collaboration will have to be done in accordance with an implementation protocol concluded in terms of section 35 of the Intergovernmental Relations Framework Act 13 of 2005 (ss 22 and 26).

The Premier of KwaZulu-Natal donated land to the Msunduzi and uMshwathi Municipalities to create sustainable human settlements (s 5(3) KwaZulu-Natal Land Administration Act 3 of 2003 – GN 663-664 in GG 37915 of 2014-08-22)

## **7 Surveying**

Regulations 6, 19 and 20 of the Land Survey Regulations (GN R1130 in GG 18229 of 1997-08-29) are amended (GN 832 in GG 38128 of 2014-10-31). Regulation 20(4) now reads that '(i)t shall not be necessary to place internal beacons on a General Plan prior to approval of that General Plan, however in such instances the Surveyor-General shall caveat the Registrar of Deeds listing those erven not beacons, which erven may not be transferred until such time that beacons of those respective erven have been placed and supplementary survey records accepted for filing.' According to the inserted regulation 19(2B) 'all components of a compiled consolidation diagram must be based on the National Reference Framework, provided that the Surveyor-General may relax this requirement in exceptional circumstances.'

## **8 Agriculture and rural development**

### ***8.1 Agriculture***

In its Presentation to the Portfolio Committee of Agriculture, Forestry and Fisheries (8 July 2014) on its 2014/15 – 2018/19 Strategic Plan the Department and Agriculture, Forestry and Fisheries (DAFF) indicated that agriculture is a concurrent Schedule 4 (Part A) function, whilst forestry and fisheries are national functions (<http://www.pmg.org.za/report/20140708-department->

agriculture-forestry-and-fisheries-marine-living-resources-fund-ncera-farms-their-2014-strategic). This creates problems in the functioning of the DAFF. In addition to the Constitution (ss 24(b)(iii) and 27(1)(b)) and the 31 national acts administered by the DAFF, its policy mandates includes the National Development Plan (NDP); the New Growth Path (NGP); the Medium Term Strategic Framework 2014 – 2019 (MTSF); the Industrial Policy Action Plan (IPAP); the Integrated Growth and Development Plan (IGDP – which was developed with reference to Outcomes 4 and 7 – dealing with ‘job creation, rural development and food security’); and the Agricultural Policy Action Plan (APAP – which represents the implementation mechanism for the IGDP)). In addition, the integrated Food and Nutrition Security Policy (IFNSP) is a key policy initiative of the Department (DAFF will ‘lead and coordinate government food security initiatives by implementing’ the (IFNSP). Within this context, an amount of R1 067 524 000.00 has been budgeted for the sub-programme Food Security for the financial year 2014/15. The President in the 17 June 2014 State of the Nation Address (SONA) underscored the importance of the DAFF by stating that ‘we have to embark on radical socio-economic transformation to push back the triple challenge ... We have identified agriculture as a key job driver .... Government will provide comprehensive support to smallholder farmers and support will be provided to communities as well as to engage in food production and subsistence farming to promote food security, in line with the Fetsa Tlala food production programme.’

The Department of Agriculture, Forestry and Fisheries 2013/14 Third and Fourth Quarter Performance and Expenditure Reports submitted to the Portfolio Committee on 8 July 2014 focus on its role as regards Outcomes 4, 7 and 10(<http://www.pmg.org.za/report/20140729-minister-agriculture-forestry-and-fisheries-3rd-4th-quarter-2014-performance>). A number of shortcomings (‘non-achievements’) were identified, including the non-completion of the DAFF Legislation Review Project that was suspended as decided by the then DAFF Minister, until after the May 2014 elections, as well as the non-provision of support to 93 322 subsistence producers (whilst only 36 678 subsistence farmers received support). In addition, the Agro-processing Strategy was ‘due to poor leadership in the Branch’ not implemented, and a number of activities linked to the DAFF International Relations Strategy were also not implemented. Although work started late (2012) on the implementation of the Comprehensive Africa Agricultural Rural Development Plan (CAADP), the DAFF Draft CAADP Compact was completed by 31 March 2014

According to the Medium-Term Strategic Framework (MTSF) 2014–2019 the two main pillars of the strategic focus for the next five years are radical economic transformation and the improvement of service delivery ([www.gov.za/documents/download.php?f=213992](http://www.gov.za/documents/download.php?f=213992)). The outcomes-based approach (which has been the hallmark of governance since 2009) is to be

continued during this period (MTSF 15–35). The MTSF is located within the framework of the NDP and its aim is ‘to ensure policy coherence, alignment and coordination across government plans as well as alignment with budgeting processes’ (MTSF 5). The electoral mandate consists of eight priorities, of which ‘rural development, land and agrarian reform and food security’ is priority two (MTSF 6). Agricultural employment needs to be increased, rural infrastructure and service centres will be improved, and support to smallholders and rural enterprises will be strengthened (MTSF 8). Constraints inhibiting agricultural development will be dealt with, and improved land use a key priority (MTSF 8). As regards Outcome 7 (‘vibrant, equitable, sustainable rural communities contributing towards food security for all’), it is envisaged that the rural economy through agriculture must create 1 000 000 jobs (resulting in a decrease of rural unemployment from 49% to less than 40%). An increase in both the percentage of productive land that is owned by individuals previously excluded from access to agricultural land (from the 2013 11.5% to 20% in 2019), and the number of hectares transferred to such persons (and use productively) from the 2013 4M hectares to 7.2M hectares in 2019 (p 25). The vulnerability to hunger at household level will be reduced from the 2013 11.4% to less than 9.5% in 2019 (MTSF 25). The following policy imperatives will guide all Outcome 7 activities (MTSF 26): improved land administration and spatial planning for integrated development in rural areas; sustainable land reform for agrarian transformation; improved food security; smallholder farmer development and support (technical, financial and infrastructure) for agrarian transformation; increased access to quality basic infrastructure and services, particularly education, healthcare and public transport in rural areas; support for sustainable rural enterprises and industries characterised by strong rural-urban linkages and increased investment in agro-processing, trade development and improved access to markets and financial services resulting in rural job creation. Coordination must be improved, and capacity building of both the public and the private sector will be prioritised (MTSF 26).

## ***8.2 Rural development***

According to the DRDLR’s End of Term Report 2009–2014 with regards to Rural Economy Transformation: Agrarian transformation systems both new and existing land reform owners (beneficiaries) benefitted through the provision of both material and technical support provided in terms of the Recapitalisation and Development Programme (RADP) (<http://db3sqepoi5n3s.cloudfront.net/files/140702term.pdf>). Investments to the amount of approximately R2B were made in respect of rural communities in order to improve basic human needs, ensure the development of rural enterprises, and the provision of socio-economic structure (Report 2). In

respect of the scaling up of access to land, the following policies have been developed: (a) State Land Lease and Disposal Policy; (b) the reopening of restitution; (c) Exceptions to the 1913 cut-off date (in the case of the Khoi-San communities and the recognition of heritage sites and historical landmarks – in respect of which the ‘Kimberley 1’ conference took place in May 2013) (Report 26)); (d) establishment of the Office of the Valuer General (by means of the Property Valuations Act, and (e) an Agricultural Land Holdings Policy Framework (Report 4). As regards the focus of ‘enhanced land development for tenure reform’ three policies have been developed: (a) Land Tenure Security Policy for Commercial Farming Areas; (b) Policy on Land Ownership by Foreign Nationals; and (c) the establishment of the Land Commission’ (Report 5). In respect of the third focus (‘support productive use of land’) three policies are relevant: (a) Rural Development Policy Framework (which builds on the Comprehensive Rural Development Framework; (b) Recapitalisation and Development Policy (RADP); and (c) establishment of both the Rural Development Agency (RDA – to provide support to the ‘management and facilitation of rural development’ and ‘incentivise partnerships for rural development’) and the Investment and Development Finance Facility (Report 6). In addition, the following policies are being finalised: (a) Communal Land Tenure Policy; and (b) the Communal Property Association Policy (Report 7). At the organisational level the Social, Technical, Rural Livelihood and Institutional Facilitation Unit (STRIF) in DRDLR was converted into the Rural Enterprise and Industrial Development (REID), and the branch Land Reform and Administration was split into two units: (a) Land Redistribution and Development unit; and (b) Land Tenure and Administration unit (Report 11).

By 31 December 2013 1 277 farms have been redistributed to 18 358 beneficiaries (total hectares 1 243 117), and 1 357 farms were beneficiaries of the RDAP (in respect of which R 2,954,895,179B was made available; 5 392 jobs were created (only 2 731 permanent and 2 661 seasonal or casual jobs). (Report 14-15).

The DRDLR prepared an Executive Summary in respect of the 2009–2014 implementation of the Comprehensive Rural Development Programme (being an extract of the above Mid-Term report) (<http://www.pmg.org.za/report/20140827-comprehensive-rural-development-programme-minister-and-deputy-minister-in-attendance-progress-report-national>). Reference is made to the three phases of the CRDP: (1) ‘meeting basic needs’; (2) ‘enterprise development’; and (3) ‘establishment of village industries and creation of access to credit facilities’ (Executive Summary 2). During the five year period 17 080 jobs were created and 20 639 individuals’ skills were enhanced through the Rural Enterprises and Industrial Development (REID) sub-programme of the CRDP (Executive Summary 3), and 14 400 young people were incorporated into the National Rural Youth Service Corps



(NARYSEC) (Executive Summary 9). The Rural Infrastructure Development (RID) sub-programme spent R1 055 539 469 in the respect of the provision of infrastructure (Executive Summary 12).

On 27 August 2014, the Comprehensive Rural Development Programme (CRDP) presentation to the Portfolio Committee on Rural Development and Land Reform (<http://www.pmg.org.za/report/20140827-comprehensive-rural-development-programme-minister-and-deputy-minister-in-attendance-progress-report-national>) emphasised the interrelationship of the four areas of need: person, household, community and space. According to the presentation, six programmes were being implemented: (a) sustainable rural settlements (consisting of the revitalisation of rural towns and village revitalisation); (b) meeting basic needs; (c) the establishment of rural enterprises and industries; (d) youth employment and skilling (National Rural Youth Service Corps); (e) animal and veld management programme (AVMP – consisting of soil rehabilitation, the greening of the environment and the decongestion of space); and (f) the river valley catalytic programme. The DRDLR functions as initiator, facilitator, coordinator, catalyst and implementer.

The DRDLR Strategic Plan 2014–2019

(<http://www.pmg.org.za/report/20140702-land-reform-sector-budget-process-and-audit-process-analysis-committee-staff-auditor-general-department-rural>) identifies five programmes that will be implemented: (a) administration; (b) national geomatics management services; (c) rural development; (d) restitution; and (e) land reform (Strategic Plan 32–48). It is envisaged that more than 50 000 young people (18–35 years) will be incorporated into the NARYSEC Programme (Strategic Plan 5). According to the Director General, 'the main thrust ... is to implement appropriate policy and programme interventions which responds to the immediate needs of rural residence and rural communities whilst engaging in policy research and development that explores longer-term strategies to address the systemic deprivation of rural residence and thus contribute towards the reduction of poverty and inequality' (Strategic Plan 5). Development benefits will be maximised, amongst others through the coordination of development planning and implementation. Key priority areas are the establishment of effective systems of land administration and management, and interventions in respect of strategic land acquisitions, the improvement of governance as well as of productivity of land acquired by beneficiaries by means of the recapitalisation and development thereof. Municipalities will receive adequate support as regards the implementation of the Spatial Planning and Land Use Management Act (SPLUMA) 16 of 2013 (Strategic Plan 6-7). Land reform is deemed to consist of four pillars: land development is the fourth pillar, in addition to restitution, redistribution and tenure reform (p 11). Three principles will underpin land reform during the period 2014 to 2019 namely 'deracialisation of the rural economy; democratic

and equitable land allocation and use across gender, race and class; and strict production discipline (*sic*) for guaranteed national food security.' The policy trajectory and related policies are identical to those discussed in the abovementioned End of Term Report 2009–2014 (see above). The Land Protection Bill, 2013 (which, amongst others, provides for improved access to land, regulates land acquisition by non-national and non-residents and the establishment of a comprehensive land register) will be finalised (Strategic Plan 18).

In addition to the challenges facing the rural areas (as identified in the NDP) the DRDLR mentions the underutilisation and unsustainable use of natural resources and the insufficient co-ordination of both planning and implementation as key rural development shortcomings. In order to address these challenges, the period 2014–2019 will focus on the following policy imperatives: 'Improved land administration and spatial planning for integrated development with a bias towards rural areas; up-scaled rural development as a result of coordinated and integrated planning resource allocation and implementation by all stakeholders; Sustainable land reform (agrarian transformation); Improved food security; Smallholder farmer development and support (technical, financial, infrastructure) for agrarian transformation; Increased access to quality basic infrastructure and services, particularly in education, healthcare and public transport in rural areas and growth of sustainable rural enterprises and industries characterised by strong rural-urban linkages, increased investment in agro-processing, trade development and access to markets and financial services – resulting in rural job creation' (Strategic Plan 27).

Seven strategic goals are to be achieved: (1) the attainment of corporate governance and service excellence; (2) the improvement of land administration; (3) the promotion of equitable access and sustainable use of land identified for development purposes; (4) the ensuring promotion of sustainable rural livelihoods; (5) facilitating improved access for services in the rural areas through quality infrastructure; (6) the promotion of sustainable rural enterprises and industries that satisfy the economic, social and environmental viability requirements; and (7) the restoration of land rights by means of the restitution programme through the implementation of the Restitution Act (Strategic Plan 28). SPLUMA and the National Geomatics Management Services (NGMS) will be implemented, and the land register will be finalised (Strategic Plan 27-29). Farmer support programmes for selected commodities will be enhanced (Strategic Plan 7). A key priority will be the 'effective implementation of the Animal Veld Management Programme (AVMP) that is aimed at fighting poverty, soil degradation, unemployment and spatial congestion through soil rehabilitation, re-greening the environment and spatial decongestion' (Strategic Plan 7). R2,6B is moved to the Rural Development Programme (funding the

provision of basic services infrastructure). Furthermore R2,4B (from the Restitution Programme) and R2,1B (from the Land Reform Programme) are also moved to the Rural Development Programme, electronic mapping, the cadastre, spatial planning and land use management, and R1B thereof transferred to an increased number of officials in the regional offices in order to enhance service delivery (Strategic Plan 16). Hopefully the new plans will ensure that food security, land reform and service delivery will be achieved in the period 2014-2019 and that the policies and plans will not remain a paper exercise.

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