Land matters and rural development: 2010

1 General

In some municipal areas, land grabbing was instigated which led to illegal clearing of land and settlement even within wetland areas (Coetzee 'Jeugliga-hoof deel grond uit' *Beeld* (2009-08-11) 4). In the Tshwane Metro Council area informal settlement seems to be orchestrated in certain mining areas. Although the Council is able to provide land to 29 500 people, land invasions are still a common feature and the Council is constantly embroiled in eviction proceedings (Versluis '29 500 kan blyplek kry met plan, hoor hof in uitsettingsaak' *Beeld* (2010-03-25) 18). In Johannesburg people were evicted from derelict buildings without any alternative accommodation. They paid rent for the flats and were unaware that they were illegal occupants (Thakali 'Red ants evict 1000 from derelict block' *Saturday Star* (2010-02-13) 5).

A Rural Development and Land Reform General Amendment Bill [B33-2010] was introduced into Parliament. The main purpose of this Bill is to 'amend certain laws of which the administration, powers and functions have been transferred to the Minister of Rural Development and Land Reform in terms of Proclamation no 44 of 1 July 2009.' The legislation is amended to reflect the correct names of the Minister, Department and Director-General wherever the amendments are applicable.

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

2 Land restitution

According to a presentation by the Chief Land Claims Commissioner to the Portfolio Committee on Rural Development and Land Reform on 28 October 2009 (http://www.pmg.org.za/files/docs/090811drdala.ppt), a total of 545 rural restitution claims were settled in the 2008/2009 financial year. 1.5 million individuals have benefitted from the restitution programme since 1995, and the total claims settled (as at 2009-03-31) amount to 95.5% of all claims lodged. A total of 15 439 urban claims has been settled through land restoration, 47 726 through financial compensation, and 2 477 through alternative

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[1] In this note the most important literature, legislation and court decisions are discussed for the period 2009-09-01 to 2010-11-15. Only one note on land matters and rural development will be published in 2010 due to a special edition of the (2010) *Southern Africa Public Law*.

remedies. With regard to rural claims settled, 4 652 claims have been settled through land restoration, 52 288 through financial compensation, and 2 913 through alternative remedies. 108 rural claims have been dismissed. This amounts to a total of 75 400 claims which have been settled (the total land cost being R11 306 194 957). All these statistics relate to the period between 1995 and 2009-03-31. In terms of the briefing document on the analysis of the Annual Report (2008/09) of the Commission on Restitution of Land Rights (http://www.pmg.org.za/files/docs/ 090811analysis.rtf) 4 296 claims are still outstanding, the majority of which are in KwaZulu-Natal (with 1 652 (mostly complex) outstanding claims).

The Gauteng, Free State, Northern Cape and Western Cape regional offices planned to finalise their claims at the end of the 2009/2010 financial year. The Mpumalanga regional office plans to finalise its claims in 2012, followed by the Limpopo office in 2013 and the KwaZulu-Natal office in 2014. During the financial year under review, strategic support partnerships were concluded with, amongst others, First National Bank, the Development Bank of Southern Africa, the Amahlathi Forestry Company and Anglo-American. In addition, AgriSETA has agreed to provide critical skills training to new land owners. The recapitalisation programme will be applied to approximately 200 struggling projects.

The Commission on the Restitution of Land Rights identified a number of challenges to the successful finalisation of the restitution programme, including, amongst others, the fact that many land parcels are unsurveyed, the lack of funding as a result of projects not being included in municipal IDPs, the lack of capacity building and expert training for community members, the lack of co-operative governance, escalating costs for productive land and inadequate post-settlement support (see also 10 below).

2.1 Notices

Various land claims notices were published in the *Government Gazette*, the majority being in the Eastern and Western Cape (see, eg, Peninsula (Cape Town, Parow, Goodwood, Rylands, Jakkalsvlei, Elsies Rivier, Belville, Retreat, Brackenfell, Vasco, Kensington, Crawford, District Six, Landsdowne, Mowbray, Newlands, Wynberg, Woodstock) 52; Stellenbosch 6; Porterville 3; Robertson, and Worcester 2 and one each for Plettenberg Bay, Ottery, Simon’s Town, Paarl, Muizenberg, Bredasdorp, Grabouw, Barrydale, Clanwilliam, Struisbaai, Ceres, Gouda, Worcester, Tulbagh, Wellington, Rooiberg, Riebeeck West, Malmesbury and one with no details); Mpumalanga (Nkangala 18; Msukalikwa 1; Steve Tshwete 3; Gert Sibande 10; Emakhazeni 7; Enkangala 2; Ehlanzeni 2; Umjindi; No district; Mkhando and Msukaligwa 1 each); Eastern Cape (King William’s Town 7; Flagstaff/Alfred Nzo 2; Port Elizabeth 10; Sterkspruit/Ukhahlamba 23; Alexandria/Cacadu 25; Humansdorp/Cacadu 1; Buffalo City/Amathole 1; Engcobo 1; Middledrift 4; Maclear 1; Nqamakwe/Amathole 1; Butterworth 4; Mqanduli 1; Mzimkhulu 7; Ngqeleni 1; Port St Johns 2; Peddie/Amathole 81; Stutterheim/Amathole 1; Lady Frere 2; Mount Fletcher 4; Whittlesea/Chris Hani 1; Tsolo 17; Umtata 1 and Glen Grey 1); Free State and Northern Cape (Siyanda, Kenhardt, Mangaung and Kuruman one each); North West and Gauteng (Madibeng 2; Bojanala 6; Pretoria 1; Kenneth Kaunda 1, Westonaria 1; Zusterstroom 1); Limpopo (Greater Giyani, Sekhukhune and Capricorn one each). Several withdrawal and amendment notices were published (in the case of KwaZulu-Natal, eg, approximately 8 amendment and 3 withdrawal notices were published.) The Limpopo

Province gave reasons for withdrawal notices, for example, that the claimant had already received just compensation or that the farm listed was not claimed. In another instance it was stated that the notice is withdrawn but that the commission may re-gazette the notice after investigation. The reason for some of the withdrawal notices are most probably the investigations that are taking place into fraudulent claims in the Limpopo Province.

2.2 Case law

In *The Baphiring Community v Uys* (case number LCC 64/1998, decided on 2010-01-19), the issue to be decided was whether specific restoration would be feasible under section 33(cA) of the Restitution of Land Rights Act 22 of 1994 in the particular circumstances of this case. In 1971 the community was dispossessed of land known as the 'Old Mabaalstat' and relocated to land known as the 'New Mabaalstat'. The Baphiring community, being the erstwhile landowners, is a Tswana speaking community and comprises about 400 households. They requested that the whole area of land known as the Old Mabaalstat be restored to them by way of a communal property association. The original area of land, presently referred to as Romsicol, has since the dispossession been subdivided and is now owned by eight different owners.

When the land was dispossessed, it was occupied by the Baphiring community on a small scale farming or subsistence basis and was not commercially developed. Homes were rustic and water was drawn from the river (para 6). In contrast, Romsicol is presently occupied by a small number of persons, intensive cattle farming exists and large tracts of land were cultivated. In fact, the whole area was developed for commercial farming (paras 8-9). Regarding the future of Romsicol and New Mabaalstat, respectively, evidence was placed before the court as to what would be needed to ensure that specific restoration, if ordered, would be successful. It was argued that the community ought to receive Romsicol while being allowed to keep New Mabaalstat (para 12). Equitable redress should be limited to R2.6 m, based on a resettlement grant of R6 500 per household for 400 households. On the other hand it was argued that the claimants had already received substantial compensation when they were dispossessed (para 13). However, in *Baphiring Community v Uys* (case number LCC 64/98 delivered on 2003-12-05 per Gildenhuys J) the LCC found that the claimants had at that stage, not received just and equitable compensation within the meaning of section 2(2) of the Act (quoted in para 14 of the present application). Accordingly, the court was now confronted with the task of determining the form restitution ought to take which w ould l redress the injustices of the past sufficiently: 'In these proceedings the Court is only required to determine whether the restoration of Romsicol is feasible and equitable, bearing in mind that if the community (or part of the community) is relocated to Romsicol the relocation will not be successful without additional financial assistance' (para 15).

Regarding specific restoration the question was posed whether it could still be specific restoration if development had radically transformed the land and its value. Four criteria were identified to guide the question whether restoration would be feasible, namely (a) the cost of acquisition of the land; (b) the disruption of the lives and economic activities of the present landowners; (c) the ability of the claimant community to use the land; and (d) the public interest, including state resources (para 17). To acquire the land would cost the *fiscus* about R70m, excluding further compensation to landowners for financial loss they may suffer resulting from expropriation. Restoration of the land would further result in large

scale disruption of the lives and economic activities of persons present on the land with the further dire impact on food production (para 19). As to the full financial repercussions of restoring Romsicol, it was explained that the various households could access grants known as integrated settlement grants valued at R6 595 per household. It was also possible to access a development grant equal to 25% of the total value of the land if the claimant community lodged an application accompanied with a detailed feasibility study (paras 22 and 24). It was acknowledged that, in the past, the restoration of agricultural land was generally unsuccessful due to inadequate financial support and inadequate knowledge of and skills in commercial farming (para 22). The person in charge of resettlement in the office of the Regional Land Claims Commissioner testified that not a single project of the running 330 projects in the North West Province has been successful due to *inter alia* lack of skills in managing projects and continuing farming, lack of strategic partners and lack of funding (para 25). The relocation from New Mabaalstat to Romsicol was furthermore problematic because community members would be forced to downgrade their living space; new houses and infrastructure would have to be provided. Not everyone wanted to move (para 26).

Accordingly, the court found that it was not feasible to restore Romsicol to the claimants although the restoration of parcels of land comprising graves, was found to be feasible (para 31). The judgment is welcomed as it embodies, to some extent, the role that the Land Claims Court (LCC) has to play in directing the specific path restitution has to take in particular circumstances. Within the context of failing restitution projects it is quite possible that the courts will have to deal with many similar applications in future. An in-depth analysis relating to the concept of 'public interest' in general and whether additional aspects need to be considered in relation to restitution in particular, would have gone a long way in providing guidelines for future case law development.

In Re Kusile Land Claims Committee: Land Restitution Claim, Midlands North Research Group (2010 5 SA 57 (LCC)) concerns important issues linked to the duties of the Commission on the Restitution of Land Rights (Commission) on the one hand and costs orders against the State or organs of state, on the other. The application before the LCC was for a claim for legal costs against the Commission arising from a restitution claim referred to the LCC by the Regional Land Claims Commissioner of KwaZulu-Natal. The Kusile community lodged a claim in the course of 1998 in relation to 33 properties that were held in private ownership. The Commission accepted these claims and referred the case to the LCC when compelled to do so. The claim was contested by almost all of the opposing land owners on various grounds, *inter alia* that the properties were already in private ownership at the time of the alleged dispossession (1921) and that the claim could not be a community claim as the rights of claimant families did not derive from shared rules. As the claim was still before the LCC, the merits of these averments could not be dealt with. Instead, the factual background and arguments raised were only relevant insofar as they related to the costs application. In order to streamline matters before the hearing of the land claim, various pre-trial conferences were held between all the relevant parties. In the absence of maps, the respondents underwent an in-depth mapping exercise at their own expense in order to speed up the process (para 8). When the hearing started it immediately became clear that the two arguments raised above, had merit. Accordingly, the hearing was postponed and further pre-trial conferences were conducted in order to explore the way forward.

Initially the claimants claimed specific restoration, which option was supported by the Commission. However, as the process developed and the difficulties with the claim, as mentioned above were experienced, the claimant changed their preference and opted for financial compensation instead (para 12). None of the properties claimed, except for five properties that belonged to the Ingonyama Trust, were thereafter subject to specific restoration. The claim for financial compensation still had to be dealt with by the LCC. At a further pre-trial conference the court was informed that the five properties belonging to the Trust would no longer be claimed as the claims were erroneously lodged, accepted and published in the *Gazette*. The result was that the claim did not include specific restoration anymore and did not affect the Trust properties. At that stage the opposing landowners and Trust had incurred substantial costs before reaching the stage of proceeding with the hearing. It is within this context that the application for a costs order against the Commission and/or the claimants was lodged.

The Court per Gildenhuys J underlined that the Restitution Act fell in the 'genre of social legislation' resulting in costs orders generally not being granted in the LCC, except in special circumstances. He furthermore underlined that the Restitution Act flowed directly from the Constitution (s 25(7)) and that litigation linked with restitution was constitutional litigation because it enforced or defended a constitutional right (para 17). Reference was made to *Biowatch Trust v The Registrar, Genetic Resources* (2009 6 SA 232 (CC)) which found that in litigation between the state and private parties seeking to assert constitutional rights, the state should ordinarily pay costs if it lost. The rationale for that approach was threefold: (a) this approach would not discourage persons from asserting constitutional rights, keeping in mind that constitutional litigation usually involved numerous courts at various levels resulting in the costs involved being rather high; (b) constitutional litigation usually had an impact not only on the litigant, but also on other persons or parties in similar positions; and (c) the state bore the primary responsibility for ensuring that the law and state conduct were consistent with the Constitution (para 20).

Judge Gildenhuys then turned to the restitution process and underlined that claims for restitution were lodged against the state (and not against the private landowner). In this particular instance the Commission participated actively in the claim. Although the opposing landowners demonstrated convincingly that the claims in their initial format posed various difficulties and problems, the Commission continued on the original path chosen (paras 26, 31)). The Commission was an organ of state that managed the restitution process on behalf of the state. The court emphasised that 'this is not a task that can be done in a superficial, cursory manner' (para 34). In this context the court emphasised that the former 'normal' approach towards costs orders has been overridden by the *Biowatch* case and that it was no longer necessary for there to be exceptional reasons before costs can be awarded against the state in land restitution litigation (para 37). Even if the approach set forth in the *Biowatch* case was not followed, a costs order against the Commission would still be appropriate in this case because of the inadequate manner in which the RLCC investigated and presented the case, although not on an attorney and client scale. Here the court took into account that the Commission suffered personnel shortages and capacity problems, that there was never wilful neglect by the officials involved in the case and that once the difficulties were realised fully, officials were actively involved in finding solutions (para 39). Some fault was also laid at the door of the claimants' attorneys. Finally a costs order taxed as between party and party was awarded.

This case again underlined the importance of all role players involved in the restitution process fulfilling their role, performing their duties and being committed to reaching their objectives. Hopefully this judgment will encourage better performance and prevent similar decisions in future because it is inevitably the taxpayer that bears the brunt of costs orders against the state or organs of state.

3 Land redistribution

There are various on-going debates regarding land redistribution, ranging from nationalisation to the number of hectares each farmer may own, more BEE and the deprivatisation of land (see, eg Du Toit 'Staat wil sê hoeveel grond boere mag besit en bewerk' *Beeld* (2010-03-25) 1; *Legalbrief Today* (2010-03-24) www .legalbrief.co.za). (See also 10 below.)

4 Land reform

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

The rejection of an eviction application in the LCC was overturned by the Supreme Court of Appeal (SCA) in *Kiepersol Poultry Farm (Pty) Ltd v Phasiya* ([2009] ZASCA 119, 2009-09-25). The respondent, Gideon Phasiya, is the son of one Sam Phasiya who had been living on and been employed on the farm Zandspruit by the appellant until his retirement on pension in September 2004. The respondent, in occupation of Sam's house on the farm, had been required to vacate the house at the end of April 2005. When the respondent refused to vacate an eviction application was lodged, unsuccessfully, in the LCC. It was found that Sam (the father) had not abandoned his residence of the house on the farm and that his son, the respondent, had merely occupied the house in his (the father's) stead. The LCC found that Sam still had residence on the farm Zandspruit as he had left his furniture in the house (and did not leave 'lock, stock and barrel'), that his brother was buried on the farm, that Sam attended church services on a neighbouring farm and that he maintained contact with his son (the respondent) and kept his links with the farm intact (paras 21-22 of the SCA judgment).

On appeal the court *per* Mpati P scrutinised the evidence relied on during the LCC application and allowed further arguments and a probation report to be presented as the respondent had not been legally represented during the *a quo* proceedings. The court confirmed that 'reside' may have different meanings and that each case had to be placed within its relevant context. Relying on the definition accepted in *Barrie NO v Ferris* (1987 2 SA 709 (C)) concerning 'to reside', Mpati P found that the essence of the word is in the notion of a 'permanent home' and whether Sam's permanent home at the time of his eviction was the farm Zandspruit. It transpired that, at the beginning of February 2004 Sam had moved into the house of his son, Martin, in Honeydew, although he continued to work on the farm. After an accident in September 2004 he went on retirement. The SCA explains in paragraphs 18-21 why it prefers the testimony of the appellant to the finding of the LCC. Mpati P furthermore elaborates why, on the evidence before both the LCC and the SCA, it is clear that Sam was not resident on the farm at the time the eviction proceedings were instituted as it was not his 'permanent home' anymore (para 23). Accordingly, at the time the eviction proceedings were instituted against the respondent, he (Gideon, the respondent),

was residing in his own capacity and not in his father's stead. In order for him to be evicted, he would have to fall within the ambit of ESTA and have to meet the requirements of being an occupier. The appellant consented that the respondent could continue living on the land until the end of April 2005. As the respondent had consent and was not disqualified on the basis of his income – according to the probation report, he was indeed an 'occupier' for purposes of ESTA. This meant that his right of residence would have to be terminated and the procedural requirements set out in ESTA would have to be complied with. The court was satisfied that all of these requirements had indeed been met (para 27). The court then had to consider the relative hardship in the case of eviction regarding both the occupier and the landowner and for this purpose took into account the fact that the respondent had been occupying the house for many years without paying rent or providing services and that the house was needed for a labourer employed on the farm. The court was satisfied that the termination of the right of residence was just and equitable (para 26).

National Union of Mineworkers v Murray and Roberts Cementation (Pty) Ltd ([2009] ZALCC 13, 2009-11-09) concerned an urgent application for the immediate restoration of residence and also touched on the jurisdiction of the LCC and the status of the applicants. The applicants were migrant mine workers from mainly Lesotho and Mozambique who occupy single quarter hostels. The respondents denied the relevance of ESTA as the applicants all had homes in neighbouring countries, were not the class of persons the Act wanted to protect, did not have permanent homes in the hostels, but were only residing there temporarily (para 5). Earlier the LCC has accepted, without investigating the interpretation of 'reside' as such, that mineworkers and/or persons occupying hostels fell within the ambit of ESTA (paras 9-10). The respondents relied on the SCA judgment of *Kiepersol*, above, to underline that 'reside' essentially meant a 'permanent home'. The LCC's answer to this argument *per* Bam JP was that, in the *Kiepersol* case 'permanent home' was merely compared to the sporadic visits of the elderly man to the home he formerly occupied. However, the court did concede that 'reside' had more than one meaning and that, in some instances it can also mean 'to live' (para 26). Furthermore, the authority relied on in the SCA *Kiepersol* judgment, namely the *Barrie v Ferris* case (above), was decided before ESTA was promulgated. Concerning the aim of ESTA, Bam JP emphasised that it was indeed drafted to protect a particular class of vulnerable persons, and that the primary aim was indeed to protect poor farm dwellers (para 13). However, migrant workers are the very next class of grossly exploited people living on land belonging to other persons (para 13). The court therefore found that ESTA was applicable to mineworkers living in single quarter hostels, irrespective of the length of their employment contracts (para 18).

In *Randfontein Municipality v Grobler* ([2009] ZASCA 129, 2009-09-29) the issue of tacit consent on the one hand and the applicable legislation on the other, was raised. If the community had consent, ESTA would be relevant and if occupation was without consent, the Prevention of Illegal Eviction and Unlawful Occupation of Land Act 19 of 1998 (PIE) would be relevant. The eviction order granted in the South Gauteng High Court is appealed against on the basis that the High Court lacked jurisdiction because ESTA was applicable. It was therefore imperative that the court had all the necessary information before it in order to determine whether there was consent or not. The appellants averred tacit consent, which was disputed by the land owner.

Factors that could lead to the inference that there was indeed tacit consent included, *inter alia*, the lengthy period for which the occupiers settled on the farm (some for 30

years), the size of the community (2 000 persons) and the fact that the municipality provided certain services (para 7). It was clear that by far the majority of the occupiers were present on the land before it was purchased by the new owner (para 11). On the facts as presented to the court *a quo*, as well as in light of the papers, it was impossible for the court to determine whether they occupied with consent or not. A proper investigation into the relevant circumstances was thus required. For that purpose the application was postponed to a later date for the hearing of oral evidence (para 21). The issues to be dealt with at that time included whether consent was granted and consequently whether the occupiers were occupiers for purposes of ESTA.

Pietersen v Van Deventer (LCC 158/2009, delivered 2010-03-25) is an appeal against an eviction order granted by a Magistrate 's Court under ESTA. The grounds for appeal related to the non-joinder of the then Department of Land Affairs (DLA), the local municipality and the live-in partner of the appellant, as well as findings relating to section 8(1) of the Act and sections 9(2)(c) and 10(1)(c) respectively. The appellant derived his right of residence from an employment contract and his live-in partner, Eva, derived her right of residence from him. Due to his failure to report for work, the appellant was dismissed in March 2005. The dismissal was referred to the CCMA and was thereafter found to be procedurally and substantively fair (para 5). Despite being served a section 9(2)(b) notice, the appellant refused to vacate the residence.

The joinder of the parties listed above was raised in the court *a quo* as a point *in limine*. The basis for the joinder was that these organs of state and bodies had a direct and substantial interest in the matter. This approach was supported with reference to case law developments relating to PIE where various parties were successful with joinder applications. The basis for those findings was that any eviction application could only be approached effectively if all relevant role players were joined in the proceedings. As the local authority is the only body that is really able to give the full picture regarding the housing situation in the relevant area, the joinder makes sense. In this regard the LCC underlined that those joinders, particularly in relation to *Occupiers of Erf 101 v Daisy Dear Investments* ([2009] JOL 23840 (SCA)), dealt with considerations of sanitation, electricity and crime on land occupied by a community as opposed to a farm devoid of such issues and by a single occupier only (para 8). The possibility of joining the relevant parties in this particular case, was not, however, further investigated. On behalf of the respondent it was also argued that it was unnecessary to join the local authority or the DLA as section 9(2)(d) of ESTA already provided that notices be served on these institutions. It was found that the legislature already recognised the need to notify these role players of an eviction in the area 'short of them being joined' (para 10). In this regard the court found that joinders could prove to be practically inconvenient, costly and result in unnecessary delays. As these bodies had been notified, their non-joinder would not result in prejudice to the occupiers whose eviction is sought (para 10).

The appellant's live-in partner was not formally joined in the eviction proceedings either. However, as she had received section 9(2) notices, she knew what the eviction application entailed. The court thus concluded that it was not necessary for her to be formally joined either (para 11). The LCC further found that the magistrate had correctly made findings with regard to sections 9(2)(a), 8(1) and (2), 9(2)(c) and 10(1)(c). Concerning the granting of an eviction order in the absence of alternative accommodation, the LCC found that it was not necessary to consider alternative accommodation in

circumstances such as the present where a material breach, as contemplated in section 10(1)(c), occurred (para 15). Even if suitable alternative accommodation had been a factor, the fact that the appellant had been in occupation for five years after his employment was terminated without paying rent, would also be taken into consideration. The appeal was consequently dismissed and new eviction dates were handed down.

This appeal has underlined that, depending on the particular circumstances, it may be just and equitable to grant an eviction order. However, the question as to where an occupier, once evicted, should find housing, remains unresolved. Chapter 12 of the Housing Code places the burden on the state to provide housing for persons who stand to be evicted or persons who are otherwise in an emergency situation. How is the state, in its different spheres and levels of government, to be involved? Surely a notice served on the local authority and the DLA that an eviction application has been lodged, is not enough.

4.2 Labour tenants

Selsley Farm v Mhlongo ([2009] ZASCA 124, 2009-09-28) deals with an appeal against a finding of the court *a quo* that an individual was indeed a labour tenant for purposes of the Land Reform (Labour Tenants) Act 3 of 1996. In order for a person to be deemed a labour tenant, all three subparagraphs ((a), (b) and (c)) of section 1 have to be complied with. Section 2(5) of the Act also provides that, if it is proved that a person falls within paragraphs (a), (b) and (c) of the definition of labour tenant, that person shall be presumed not to be a farm worker, unless the contrary is proved. In the present circumstances the court *a quo*, despite stating that 'the evidence falls short of proving that, the right to use cropping or grazing land on the farm was exercised in consideration for the labour which he and his mother provided to the owner of the farm', still found the respondent to be a labour tenant. It reached this conclusion by finding that the appellant had the onus of proving that the person was a farm worker and that it had not discharged that onus. The appeal court *per* Leach AJA discussed the reasoning of the court *a quo* and found that it was misdirected. The presumption in section 2(5) that a person is not a farm worker only arises where the person concerned is shown to fall within the definition of labour tenant. If the person does not meet all the requirements in paragraphs (a), (b) and (c), the presumption cannot arise. As it could not be proven that the grazing and cropping rights had been exercised in exchange for the rendering of services, the court *a quo* should have found that the requirements of section 1 had not been met (paras 12-13) and that the application ought thus to have been dismissed in the court *a quo* (para 14).

4.3 Provision of Land and Assistance Act 126 of 1993

Notice was given of the designation of land for land reform purposes (GN 940 in *GG* 32600 of 2009-10-02 in the Swellendam District).

4.4 Land Titles Adjustment Act 111 of 1993

Land in the District of Albany and the division of Humansdorp in the Eastern Cape was designated under section 2(1) of Act 111 of 1993 (GN 881-882 in *GG* 33600 of 2010-10-08).

4.5 Interim Protection of Informal Land Rights Act 31 of 1996

The application of the Interim Protection of Informal Land Rights Act was extended to 31 December 2010. After 14 years the Act is still necessary and could still not be repealed. It is either an indication of the slow progress of land reform, or an indication of the necessity of an A ct protecting informal land rights. It implies that the Act should no longer be regarded as an interim act.

4.6 Communal Land Rights Act

The Communal Land Rights Act (CLaRA) was drafted specifically to embody the aims of tenure reform focused on communal land as such, thereby encompassing sections 25(8) and 25(9) of the final Constitution. The purpose of CLaRA is to give secure land tenure rights to communities and persons who occupy and use land formerly part of, especially, the national states and self-governing territories. However, since the earliest drafts of the Act were published, various concerns were raised amongst academics and practitioners regarding key issues embodied in the Act. Some of the problems identified involved complaints that the term 'community' was vague and that the Act did not acknowledge and reflect the 'nested' system of land rights inherent in traditional customary communities. The specific deeds system propagated by the Act was also found to be problematic. These issues resulted in a court challenge lodged by the Kalkfontein, Makuleke, Makgobistad and Dixie communities in the course of 2008 which led to an unconstitutionality finding in *Tongoane v National Minister for Agriculture and Land Affairs* ([2009] ZAGPPHC 127, 2009-10-30). The order was thereafter confirmed in the Constitutional Court in May 2010 – *Tongoane v Minister of Agriculture and Land Affair* (CCT 100/09 [2010] ZACC 10), albeit on a different basis. Essentially the judgment deals with the procedural and not the substantial matters. The Act had been tagged as an Act referred to in section 75 of the Constitution and had followed the procedure set out in that section. However, as the Act clearly dealt with provincial matters, namely customary law in general and traditional leadership in particular, it ought to have been tagged as a section 76 Act. Accordingly, the wrong procedure had been followed in promulgating the Act. On this basis alone the Act was found to be unconstitutional (para 97). It is a pity that the substantive matters were not analysed at all in the judgment. To some extent it is understandable, as the Minister indicated that the Act would be withdrawn anyway and that it would be a waste of the court's precious time to adjudicate on the substantive issues. However, as the substantive matters were not dealt with, it is possible that a new Act could be drafted with much the same approach and content, thereby rendering a future constitutional challenge a real possibility.

4.7 Black Administration Act

The Repeal of the Black Administration Act and Amendment of Certain Laws Amendment Act 20 of 2009 came into operation on 2009-12-29. The coming into force of section 1 of the Repeal of the Black Administration Act and Amendment of Certain Laws Act 7 of 2008 (amending Act 28 of 2005) has been postponed to 2010-12-30. A Repeal of the Black Administration Act and Amendment of Certain Laws Amendment Bill [B37-2010] was introduced in Parliament to postpone the repeal of the Act to 2012-12-30. The fact that the Act and its proclamations and regulations have not been repealed yet is fortunate,

especially in light of the Constitutional Court's decision to declare CLaRA unconstitutional (see 4.5). If the proclamations and regulations issued in terms of the Black Administration Act had already been repealed when CLaRA was declared unconstitutional, there would have been no legal system except customary land law in place to regulate communal land tenure. A Black Authorities Repeal Bill has also been published for comment (Gen Not 1223 in *GG* 32554 of 2009-09-11).

5 Unlawful occupation

Two appeal cases against magistrates' orders with similar issues were dealt with simultaneously by the SCA in *Theart v Deon Minnaar NO and Senekal v Winskor 174 (Pty) Ltd* ([2009] ZASCA 173, 2009-12-03). The procedural matter relates to section 4(2) of PIE and the service of written and effective notices. In the *Theart* case the sheriff served a section 4(2) notice and a notice of motion on the appellants as authorised by the order of the magistrate's court. In the *Senekal* case no dedicated section 4(2) service was issued, but the notice of motion contained the information prescribed by both section 4(2) and 4(5) of PIE. In both these cases the appellants' appeal attacked the procedures adopted by the respondents: in the *Theart* case the two notices were served simultaneously and in the *Senekal* case only one notice was issued (paras 3-4). However, in both these cases all the necessary information, as required by section 4 in general, was incorporated into the notices that were issued; both appellants were represented by legal counsel; and all the relevant parties were in court at the prescribed date for the respective hearings. Accordingly, the real aim of the respective notices had in fact been reached (para 7).

The court *per* Bosielo JA emphasised the underlying motivation for section 4(2) notices, namely that the parties must be informed that they stand to be evicted, the grounds for the eviction application and when the hearing is to take place (para 9). Essentially, such respondents must be fully informed of the nature of the application so that they can prepare themselves. If the respondents had indeed been so informed, then one of the main aims of PIE, namely the regulation of evictions in a fair manner, is achieved (para 11).

The special overarching role courts play in section 4 applications was furthermore emphasised (para 11). Before a court authorises a section 4(2) notice, the notice must contain all the essential information prescribed by section 4(5). In the present appeals both applications were properly served by the sheriff on the two appellants. When called upon to do so, counsel could not indicate any prejudice suffered by the appellants due to the respondents' failure to serve separate notices (para 13). In light of all of these considerations, both appeals were unsuccessful. Concerning applications for eviction in the High Court, the relevant Uniform Rules apply. Regarding applications for eviction in the magistrates' courts, two notices contained in two different documents are not required as long as they contain all of the relevant information required in section 4(2) and (5) of PIE. The case is important as it again confirms that the real aim of the provisions, viewed in light of the purpose of the Act in general, as opposed to technicalities only, must be considered.

Thutha v Thutha (case number 745/09, delivered on 2010-02-12 (Eastern Cape High Court)) concerns an application for eviction under section 4(2) of PIE. Procedurally the applicant complied with the formal requirements set out in the Act and served the relevant notices as required (para 2). The applicant and the first respondent were married years

ago, but had been divorced since 2002. The ex-wife and two children occupied the house in question which was registered in the name of the applicant. The application was aimed at evicting only the former wife from the house. The court per Dawood J specifically focused on the following questions: whether the applicant was the owner of the property; what the effect of the divorce settlement agreement was; whether the children born from the marriage ought to have been joined in the proceedings; whether the first respondent was an unlawful occupier under PIE and whether it would be just and equitable to evict the former wife from the house.

Regarding the question of ownership, the deeds registries reflected the applicant as the registered owner. This question was important in light of the settlement agreement the parties entered into in 2002. Under paragraph 4.4 of the agreement the applicant undertook to transfer the house into the names of the children in joint ownership, in equal undivided shares (para 5). Seven years had gone by since the divorce and the property had still not been transferred. The first respondent argued that the applicant only had bare *dominium*, as the house stood to be transferred to the children. The settlement agreement, being a valid and binding contract thus incorporated the applicant's intention to relinquish his ownership. In this regard the court found that the ownership was transient and of a temporary nature as he could be divested of ownership at any time upon enforcement of the agreement (para 5.16).

However, as the registered owner he was certainly within his rights to lodge the application. The question whether the children ought to have been joined was approached from the perspective that the house was promised to them on the one hand, while, on the other, the papers before the court indicated the applicant's intention to sell the house, which intention led to the eviction application. The settlement agreement referred to above would effectively preclude the applicant from selling the property. As the application was aimed at the former wife only, the children's occupation of the house would not be affected even if the application were successful (para 6.7). On this basis the court found it unnecessary to join the children in the present proceedings (para 6.10).

Although the settlement agreement did not grant permission to the first respondent to reside in the house, she had indeed occupied the property since 2002. In considering whether to grant an eviction application, all circumstances have to be taken into account. With reference to *Transnet Ltd v Nyawuza* (2006 5 SA 100 (D) 107C) the court emphasised that the discretion was open-ended, that it was not limited to the specific factors listed in section 4(7) of the Act and that, depending on the particular circumstances, the court could refuse an application even if the occupation was unlawful (para 8.3). In the present instance the court followed an even-handed approach by considering factors to the benefit and detriment of both parties respectively. For example, factors that could support the granting of the eviction order included the fact that the first respondent had alternative accommodation in the form of a house that she owned; that she had means of providing for herself; that she was gainfully employed and that the children's rights of occupation would not be affected negatively if she was evicted. The fact that one child was a student and the other was disabled, was not considered in favour of the respondent (para 8.5). The court did not elaborate on why these considerations could not come into play, possibly because it had already found that the occupational rights of the children would not be affected or, possibly, because the application sought only the eviction of the former wife. The provisions of the settlement agreement and the applicant's undertaking to transfer

property to the children were brought into the equation as well (para 8.8). The children expressly stated that they wish their mother to remain with them in the house. Consequently the court reached the following conclusion that it would not be just and equitable to evict the first respondent (para 8.15).

The wish of the children that their mother resides with them in the house was the determining factor in the question whether justice and equity would be served in these circumstances by the granting of an eviction order (para 8.16). Accordingly, the discretion was exercised in favour of the first respondent, despite her being an unlawful occupier. This case is a clear indication that there is no 'fixed recipe' to follow that could, to some extent, predict the outcome of an eviction application. Instead, as this case has clearly shown, the outcome depends entirely on the particular circumstances of each case. *The Occupiers, Shulana Court, 11 Hendon Road, Yeoville, Johannesburg v Steele* (case numbers 102/09 and 499/09) delivered on 2010-03-25 (SCA)) concerned two appeals that were heard simultaneously: one directed against an order of eviction that was granted by default against the appellants and another related to the dismissal of an application for rescission of the order of eviction. In 1993 the respondent became the owner of the property. Although oral lease agreements were entered into, all leases were cancelled when a programme to upgrade the building was embarked on. When no one complied with the eviction notices that were served, formal eviction applications were lodged (paras 2-4). When the appellants failed to oppose the proceedings at the hearing on 2008-06-18, the court granted an eviction order. An application to rescind the order was later dismissed.

In order to have a court order rescinded, the appellants have to show good cause. Generally good cause will be established by giving a reasonable explanation for the default by showing that he or she had a *bona fide* defence to the claim, which *prima facie* had some prospect of success (para 4). Right from the outset the intention of the occupiers was to oppose the application. The occupiers consisted of approximately 70 people, including children and disabled persons and women who were heads of their households. Most of them had been living in the building for a considerable number of years, were poor and informally employed (para 5). Mr Ngcobo, who acted on behalf of the occupiers, had attempted to secure legal representation by approaching the Inner City Resources Centre (ICRC) who contacted the Centre for Applied Legal Studies (CALS) on behalf of the occupiers. Due to miscommunication and the absence of staff members, the CALS was unable to assist the occupiers, but the occupiers were never informed thereof. When they were finally informed, the eviction order had already been granted (paras 5-6). The court was satisfied that the occupiers genuinely believed that they were being assisted by the ICRC and that they failed to appear at court because they *bona fide*, but mistakenly, believed that they would be represented.

For a defence they relied on the following two grounds (a) under section 4(6) and (7) of PIE an eviction order could only be granted if the court is satisfied that it would be just and equitable in the given situation; and (b) where the granting of an eviction order would render the occupier homeless, the municipality was a necessary party to the proceedings and the failure to join it rendered the granting of the eviction order premature (para 9). The court approached these last two matters with reference to section 26 of the Constitution and the well-known judgement of *Government of the RSA v Grootboom* (2001 1 SA 46 (CC)). In this context the underlying aim of PIE was emphasised, namely to ensure that evictions took place in a manner consistent with the values of the Constitution (para 10).

Essentially this meant that eviction orders could only be granted when it was just and equitable. The court was obliged to consider the interests of children, female headed families, the elderly and disabled as well as the availability of suitable alternative accommodation since the occupiers had been in occupation of the property for a period longer than 6 months (para 10). A court would be unable to do its duty in considering all of these factors if the necessary information was not before it. In the founding affidavit the respondent set out the run-down condition of the building, that it was overcrowded and that the residents paid low rentals. This ought to have sensitised the court to the fact that persons living in these conditions probably did not have a choice but to stay there and that, if evicted, they could be left homeless. Due to the non-appearance of the applicants the court was not in a position to consider all the relevant information and should have taken steps to ensure that it was appraised of all relevant information in order to make a just and equitable decision (para 15). Accordingly, in light of these circumstances which included the real prospect that the eviction could lead to homelessness, the court was satisfied that a *bona fide* defence had been established that carried some prospect of success (para 16).

Oelofson v Gwebu (2010 5 SA 241 (GNP)) entails an eviction application with a focus on the necessity of local authorities to appoint mediators in particular instances. In the present case the family had been in occupation of the property since about 1997. When the first respondent became insolvent the applicant attempted to sell the property, followed by an eviction application under section 4 of PIE. Service of notice and the language of the notice were raised *in limine* by the respondents' attorney. However, the main issue before the court was whether the local authority should not have been cited, apart from the section 4(2) notice that was served on it (para 16). Section 7 deals with mediation but does not make it obligatory. Section 7(1) deals with land that is privately owned, as is the case at present, but located within the jurisdictional area of the local authority. Here the local authority may appoint a mediator to mediate and settle any dispute in terms of the Act. Section 7(2) deals with land that is state land. In these circumstances the MEC, designated by the provincial premier, may appoint a mediator to attempt to mediate and settle any dispute under the Act. Apart from these two scenarios, section 7(3) provides that any party may request the municipality to appoint a person or persons in terms of subsections (1) or (2), for purposes of those subsections. Counsel for the respondents argued that the local authority had to be joined as a necessary party (para 17). Counsel for the applicant, however, averred that the local authority had no 'direct and substantial interest' in the matter and needn't be joined' (para 18). With reference to *Cashbuild (SA) (Pty) Ltd v Scott* (2007 1 SA 332 (T)) it was argued that the local authority had an option whether or not to take steps to have an identified dispute mediated and settled. Although Poswa J generally supported that conclusion, he emphasised that such an option would only arise after the municipality had gone into the exercise of determining whether or not there was a dispute between the owner of the property and the occupiers thereof (para 20). The court furthermore underlined that the *Cashbuild* case was the first reported case in which the local authority acted under section 7, precisely because local authorities argued that they did not have a direct or substantial interest in the matter (para 22). Because eviction notices were usually ignored by local authorities, the court emphasised that the legislature had inserted section 7 dealing with mediation, for a particular reason (para 23). Regarding the identification of disputes, as referred to in section 7, the court was satisfied that it was not the function of the court. The joinder or not of the local authority should furthermore not

depend upon the identification (by a court or the parties) of possible disputes between the parties. Instead, it should be based entirely on the legislature's intention when enacting section 7.

Because the unlawful occupation had been longer than six months, the availability of suitable alternative accommodation had to be considered specifically, resulting in the local authority having a direct interest in the matter. Furthermore, because the local authority would have a duty to take the necessary steps to determine whether or not a dispute existed, it had to be joined first. It would thereafter have to report whether a dispute existed that necessitated the appointment of a mediator. If the land in question was state-owned, nothing was demanded of it under section 7. The task to determine whether there was a dispute that had to be settled then fell on the MEC, designated by the Premier. The local authority was consequently joined in the present proceedings. The question whether mediation should occur, would thus be addressed after the local authority had investigated whether possible disputes exist.

The Ark City of Refuge v Mike Bailing and Five Respondents (case number: 8969/2007 delivered on 2010-09-15 Western Cape High Court per Dlodlo J) was also delivered during the period of report. The applicant instituting an eviction application under section 4 of PIE is a non-profit entity focused on sheltering and providing assistance to vulnerable individuals in society. The particular premises were leased from the provincial government at a nominal rent of R1 per month. The respondents were all destitute residents who had been in occupation of the premises for 16 or 17 years. The applicant averred that the respondents had resided on the basis of *precarium* and that they stood to be evicted as they had already been rehabilitated and the room was needed for new residents. Judge Dlodlo considered whether PIE was relevant in these circumstances and if so, whether the granting of an eviction order was 'just and equitable.' For these purposes sections 26 and 25 of the Constitution were considered. In this regard the court found that section 25 did not come into the balance as the application was not lodged by the owner of the building – ownership rights were thus not relevant here. This resulted in the court finding that 'the respondents' constitutional rights to housing outweighs the applicant's other interests (para 15). The argument that the respondents were exploiting free accommodation was rejected by the court as the applicant was a non-profit organisation specifically involved in providing free accommodation. Instead, the following relevant circumstances were taken into account: the length of their occupation and whether they had means to procure alternative accommodation (para 18). From enquiries to the local authority it became clear that neither the local authority nor the respondents themselves could provide alternative accommodation. This finding was followed by a lengthy quote from the well-known *PE Municipality* case where the employment of section 6 and the factors to be taken into account were set out (para 18). The non-availability of alternative accommodation was particularly underlined by the court. The personal circumstances of the respondents were thereafter analysed. The respondents had families, including minor and school-going children. There was also a disabled person among them. The facts clearly underlined that the respondents were as indigent and in need of accommodation as the residents housed in the facility. In light of the fact that the local authority has already performed their constitutional duty by making available the premises, the court concluded that all the circumstances taken together do not justify the making of an eviction order (para 22). The application was accordingly dismissed with costs. There was no clear

finding that the respondents had been in unlawful occupation as the basis for their occupation had been unclear. The question then remains as to on what basis PIE was applied in this case.

6 Housing

The Social Housing Act 16 of 2008 came into operation on 2009-09-01 and a call for nominations for members to serve on the Social Housing Regulatory Authority (SHRA) was issued (Gen Not 1602 in *GG* 32780 of 2009-12-11). The members were appointed on 2010-09-03 (Gen Not 834 in *GG* 3500 of 2010-09-03).

The Department of Human Settlements published Draft Housing Regulations in September 2010 for comment (Gen Not 862 in *GG* 33518 of 2010-09-10). The regulations deal *inter alia* with the accreditation of institutions that intend to be involved in social housing projects. A Rental Housing Amendment Bill (Gen Not 719 in *GG* 33384 of 2010-07-23) and a work policy document for the Built Environment Professions (in terms of s 20 of the Council for the Built Environment Act 43 of 2000 – BN 137 in *GG* 32694 of 2009-11-13) were published for comment. The Rental Housing Amendment Bill intends to make the establishment of Rental Housing Tribunals in the provinces and Rental Housing Information Offices in local authority areas mandatory (ss 6-7, 14 to be amended by cl 2 and 5).

The Minister of Trade and Industry noted his intention to publish regulations regarding environmental sustainability for buildings (in this instance relating to energy efficiency – Gen R504 in *GG* 33265 of 2010-06-11). Regulations were issued in terms of the Council for the Built Environment Act 43 of 2000 dealing with the appointment of office bearers.

7 Land use planning

Oudekraal Estates (Pty) Ltd v City of Cape Town ((25/08) [2009] ZASCA 85 of 2009-09-03) is an excellent example of how important perspectives on development of land in general and township establishment in particular, can be in direct conflict with the protection of the environment, culture and religion. In 1954 the then land owner applied for township establishment in relation to certain portions of the farm Oudekraal. At that time the location of graves and kramats on the land was not disclosed. In 1957 the application was granted, a general plan was submitted in 1961 and a notification of approved township was published in 1962. The present owner, (Oudekraal) Estates, acquired the land in 1965. Nothing much happened until an announcement was made in 1996 that the owner was going to proceed with developing the area. This announcement was met with a huge public outcry on the basis of the area's unique floral and environmental attributes, the importance of the two kramats on the land for the Muslim community, as well as the existence of numerous graves (para 18). The City thereafter announced that the Administrator's approval regarding the development had lapsed and that the extensions thereof were unlawful. The land owner then instituted an application in the High Court to declare the extensions lawful and the consent to develop the area still intact (para 24). The High Court found that the extensions were indeed invalid after which an appeal was lodged to the SCA. The SCA decided the matter on the non-disclosure of the kramats and graves and dismissed the appeal. However, in its judgment the SCA found that, despite being

unlawful, the Administrator's approval existed and had certain consequences. These consequences would continue until the approval was set aside by a court in proceedings for judicial review (para 29). Unsurprisingly the SCA judgment was followed by an application of the three respondents for review proceedings in the High Court in September 2004. T he 'delay rule' in relation to administrative review was the sole basis advanced on behalf of Estates in response to the application (para 33). In reviewing and considering whether to set aside an administrative decision, courts have a discretion, in the exercise of which relief may be withheld on the basis of an undue and unreasonable delay causing prejudice to other parties, notwithstanding grounds being present for the setting aside of the decision. In this regard the court found that the City, the SA Heritage Resources Agency (SAHRA) and SANPARKS all delayed unreasonably before attempting to review the Administrator's decision (para 37). Deciding whether to condone the delay the court considered the consequences for the public at large, including future generations, of the consent remaining intact. That the area was conservation-worthy was uncontested (para 40). While the proposed development would severely devalue Table Mountain as a heritage resource, the Muslim community regarded the whole area as sacred (para 41).The court also determined the prejudice to Estates (paras 43-48). The value of Portion 7 with and without development rights was R570m and R20m respectively. Even without development rights the return in the land owner's initial investment would still be substantial. Keeping in mind the value of the area in light of conservation considerations as well as the importance of the area for the Muslim community, the court disregarded the delay in launching the application and made an order reviewing and setting aside the Administrator's decision to approve the township. It is that order that was appealed against in the present proceedings.

Navsa JA accepted in favour of Estates that there was unreasonable delay commencing shortly after the grant of the township approval in 1957 (para 56). The second leg of the enquiry deals with the question whether the delay should be disregarded or condoned (para 58). The court emphasised that, although the appellant would suffer some financial prejudice due to the respondents' failure to act promptly, the return on its initial investment (£50 000) was still substantial (para 64). It was also relevant that the initial application for development was lodged without any reference to the existence of kramats or graves on the land (para 65). Accordingly, approval was obtained without disclosure of material information. When the development was resurrected in 1996 Estates also denied the existence of the graves and thereafter displayed insensitivity towards the Muslims' view on exhumation (para 67). The importance of the area for Muslims as well as the relevance of environmental considerations (floral and marine value), was again underlined by the court (paras 70-74). The importance of cultural diversity and the exercise of concomitant rights in this context, were further emphasised (paras 74-75). Regarding the land owner's rights, the Court found as follows (para 78: 'Of course Estates' property rights deserve recognition. But, property rights have never been absolute. Estates have not been deprived of its property. Nor is Portion 7 valueless without developmental rights. ... Estates' concerns in relation to future expropriation and adequate compensation can be met by resort to its rights set out in section 25 of the Constitution.'

Although the delay was unprecedented, the other circumstances of the case were also unique. Furthermore, the court had to be mindful of the public interest in the finality of administrative decisions and acts (para 80). Accordingly, in the totality of circumstances,

the court was inclined in favour of the respondents as in exercising its discretion, it would promote the spirit, purport and objects of the Bill of Rights (para 82). For these reasons the appeal was dismissed and the order of the High Court confirmed.

In *Club Mykonos Langebaan Ltd v Langebaan Country Estate Joint Venture* (2009 3 SA 546 (C)) the nature and enforceability of conditions laid down by the municipal council as part of the subdivision of land came to the fore (see para 50). In this matter the building of a link road and the reflection of the whole length of the road on the subdivision plans were at issue. Regarding the nature of these kinds of conditions the court found that the imposition of conditions attached to the approval of a subdivision of land application under section 42 of the Land Use Planning Ordinance 15 of 1985 (Western Cape) (LUPO) was not a recording of an agreement, but a unilateral administrative act that acquires the force of law when the conditions are imposed. Before registration of subdivided land can take place, all conditions connected therewith would have to be complied with and proof to that effect would have to be furnished (s 31(1) of LUPO). Only once such proof had been furnished, would written authority to register the subdivision be provided. 'Written authority' is currently contained in rates clearance certificates as provided for in section 118 of the Local Government: Municipal Systems Act 32 of 2000. (Also see paras 30-36 relating to the application and subdivision procedures.) Not only is a local authority empowered to prevent the registration of subdivision of land if the conditions had not been complied with, it is its duty to enforce their compliance. In circumstances like these the court found it would not be an unnecessary or undesirable duplication of a remedy if the court were to order the municipality to do what LUPO and the conditions imposed by the council, require of it (para 56-58). Accordingly compliance with the subdivision conditions was ordered.

In *Bitou Municipality v Timber Two Processors CC* (2009 5 SA 618 (C)) the duty of the local authority regarding zoning scheme regulations and the court's discretion in these matters were scrutinised. This application in the High Court was threefold: for (a) a declaratory order that the operation of a commercial sawmill by the first respondent on the second respondent's farm and the use of certain buildings on the farm for the sawmill were unlawful; (b) a final interdict preventing the first respondent from operating the sawmill on the farm and using the buildings on the farm for these purposes; and (c) a final interdict prohibiting the second respondent from permitting the first respondent to operate a commercial sawmill on the farm and to allow the use of buildings on the farm to that effect. The area in question was zoned to be used for agricultural purposes and as the sawmill was a commercial enterprise, the zoning scheme, promulgated under section 8 of the Land Use Planning Ordinance 15 of 1985 (C) was contravened (para 3). In order for the logs to be transported to and from the farm, the area would furthermore have to be rezoned as 'Industrial Zone 1'. Accordingly, the operation of the mill was unlawful (para 6). The respondents had, however, applied for rezoning and requested that, though the local authority was entitled to the relief sought, that the court should suspend the final interdicts pending the final determination of the rezoning application.

The question before the court was whether it had a discretion to suspend final interdicts in these circumstances where the conduct of the respondents was criminal (para 23). Judge Fourie stated that 'in the event of a court finding that a respondent is guilty of criminal conduct, I am of the view that no discretion exists (except possibly where the contravention may be regarded as *de minimis*) to suspend the operation of a final interdict prohibiting such conduct' (para 32). As it was clear that the conduct of the respondents

was indeed criminal, the next matter to be dealt with was whether these contraventions could be regarded as *de minimis*. In this regard Fourie J concluded the transgressions were serious (paras 33.3-34) and that the suspension of the interdicts would be tantamount to the sanctioning of criminal conduct, which would seriously undermine the applicant's authority to enforce its zoning scheme (para 36.1). The applicant was thus entitled to the declaratory relief sought. As all requirements for the granting of the final interdicts sought were met, the interdicts were granted and forthwith became operative.

City of Johannesburg Metropolitan Municipality v Gauteng Development Tribunal ([2009] JOL 24271 (SCA)) deals with an appeal against a judgment handed down by Gildenhuys J in the South Gauteng High court. That decision dismissed the application of the present appellant to have chapters V and VI of the Development Facilitation Act 67 of 1995 (DFA) declared unconstitutional. Before addressing the issues, Nugent JA first provided an exposition of the legislative framework regulating land use in provinces. In the first instance the former provincial ordinances set out the regulatory guidelines. In the present case the Town-Planning and Townships Ordinance 15 of 1986 (T) was at stake. This Ordinance confers upon local authorities the authority to regulate land use within the relevant jurisdictional area. This is done by enforcing a town-planning scheme, sometimes also referred to as a zoning scheme. Apart from this legislative measure, the Local Government: Municipal Systems Act 32 of 2000 requires the municipalities to adopt an integrated development plan (paras 1-10). Ideally the relevant bodies and structures have to follow a co-ordinated approach to ensure that the objectives of the particular municipal jurisdiction are achieved. Over and above these mechanisms the DFA furthermore provides that a further regulatory body can be involved in order to consider and grant development applications. The complaint by the appellant is aimed at those portions of the DFA (Chapters V and VI) that create and confer authority upon tribunals to approve land use applications that might be in conflict with the municipality's plans (para 14). The effect of such an approach is that the tribunal is able to override any and all control that a municipality is capable of exercising over the use of land. To this end three examples are provided for in the affidavits (see paras 19-23). Accordingly, the issue before the court is the constitutionality of chapters V and VI of the DFA that have the potential to create such confusion and chaos.

In light of the new approach to government at different levels (para 25), it was confirmed that, while national and provincial government may legislate in respect of the functional areas in Schedule 4, including those in Part B of that Schedule, the executive authority over, and administration of, these functional areas is constitutionally reserved to municipalities. Legislation, whether national or provincial, that purports to confer these powers upon a body other than municipalities will be constitutionally invalid. What needed to be decided in this instance, was whether the authority that the municipality exercised at present under the Ordinance, fell within the terms of one of these functional areas (para 28). Thus, the question was whether the functional area described as 'municipal planning' included the functions that had been and continued to be performed by municipalities in the regulation of land use. After an in-depth analysis of case law and with reference to the meaning of 'planning' the court found that 'municipal planning' as it was used in Part B of Schedule 4 included the various functions that are assigned to municipalities under the Ordinance and accordingly, could not be assigned to other bodies (para 43). Due to the formulation and structure of chapters V and VI it was impossible to declare only some

portions or words thereof unconstitutional. Instead, the whole of chapters V and VI stood to be declared unconstitutional. As such declaration would invalidate the legislation since its inception, it would lead to considerable disruption (para 45). An immediate declaration of invalidity would furthermore deprive tribunals to deal with other matters as well. Therefore an approach was followed that would (a) protect the validity of decisions that had already been granted at that stage by development tribunals, while (b) enabling tribunals to continue their legitimate functions until such time as the offending legislation had been replaced, but (c) limiting tribunals to act only in relation to their legitimate functions (para 47). The court emphasised that the declaration of unconstitutionality still had to be confirmed by the Constitutional Court. Lewis JA, while concurring with Judge Nugent, wrote a separate judgement in whichs he gave further reasons why it was impossible to construe chapters V and VI of the DFA in such a manner so as to render them constitutional.

8 Deeds

Notice was given of definitions of areas in the Deeds Registries at Pietermaritzburg and Mthatha (GN 1044-1045 in *GG* 32680 of 2009-11-04). The regulations and schedule of fees relating to registration of deeds were amended (GN R659 in *GG* 33413 of 2010-08-02; amendment notice: GN 707 in *GG* 33452 of 2010-08-11). The Minister approved amendments to the Deeds Registries Regulations (GN R474 in GG 466 of 1963-03-29). Regulation 16 is substituted providing that the Registrar must keep a register of all conveyancers and other people authorised to prepare a deed or other document that has to be filed in the deeds registry. In terms of regulation 34(3) where a partnership is continued after the death of a partner, the Registrar may endorse the title deed to the effect. Regulation 47 now reads: 'No cession of the balance due under any bond shall be registered until the amount paid in reduction thereof has been noted'. In terms of regulation 29 'land' must be described in words and figures. Regulation 50(1) is substituted dealing with the transfer of land in pursuance of wills, codicils and other testamentary documents. A true copy of the will certified by the Master must be lodged with the deed. Regulation 53 requires that where land is partitioned and an undivided share is registered in the name of a deceased person, his or her estate or surviving spouse, the consent of the Master in the case of minor heirs and legatees and all major heirs and legatees are needed before the land can be registered. The only exception will be if there are satisfactory documentary evidence that the testator agreed to the partition during his or her lifetime. The 'Registrar may accept for registration a unilateral notarial deed of (a) cancellation of a *fideicommissum* by the fideicommassary heirs, (b) cession of a personal servitude, and (c) cessions of trading rights by the holder of the servitude or rights, provided that such deed does not impose any obligations upon the owner of the land in case of (a) or upon a cessionary in the case of (b) or (c)' (reg 61(2)). Regulations 65(10), 73(2) and 74 have been substituted while regulations 68(11A) and 73(2A) were added. Regulations 38, 39(4), 48, 72, 73(1), 73(4) and 75 were deleted. Forms D, W, PP, QQ, RR, EEE and FFF were substituted and forms AA-JJ, NN, OO and OO(1) were deleted.

9 Sectional titles

A Sectional Titles Schemes Management Bill, 2009 was introduced in Parliament (Gen Not

685 in *GG* 33366 of 2010-07-09). According to the long title of the Bill the purpose is to 'provide for the establishment of bodies corporate to manage and control sections and common property in sectional title schemes and for that purpose to apply rules'. A sectional title schemes management regulation board is also to be established. According to the Memorandum to the Bill, the aim is to bring the management of sectional title schemes under the Department of Human Settlements and to allow the Department of Rural Development and Land Reform to deal with the registration and survey issues. It is also stated that the Bill does not substantially change the substance of the scheme management measures that are contained in the Sectional Titles Act 95 of 1986.

The Bill defines amongst others 'exclusive use area,' 'rules,' 'special resolution' and 'unanimous resolution' (cl 1). A body corporate will come into being on the date that someone other than the developer becomes owner of a unit in a scheme. Subsequent owners will become members in the body corporate (cl 2(1)). The developer ceases to be a member of the body corporate if he or she no longer has a share in the common property (cl 2(2)). The powers and functions of the body corporate are described in clauses 3 to 7. Clause 8 deals with the rules of the body corporate and clause 9 with the effect of quotas and the variation thereof. All matters relating to the common property are also regulated (cl 10-17). The duties of owners are dealt with in clause 18 and payment of insurance by clause 19.

The Sectional Titles Act's regulations (GN R664 in *GG* 11245 of 1988-04-08) have been amended. Regulation 13(4A) was inserted stating that all documents, notices and correspondence referred to in sub-regulation 4(a), (b) and (c) (including certificates, plans, schedules, rules and other documents) must be filed in a sectional title file and 'must be endorsed with a deeds registry date endorsement upon the lodgement thereof.' Form Z is substituted and forms AJ (Collateral Sectional Mortgage Bond) and AK (Surety Bond) were added.

Notice was also given of the introduction of a Community Schemes Ombud Service Bill, 2010 (Gen Not 686 in *GG* 33366 of 2010-07-09). The purpose of the Bill is to establish a Community Schemes Ombud Service that 'will provide a dispute resolution service for all 'community schemes' being those property developments (including sectional titles schemes, share-block companies, homeowners associations and housing schemes for retired persons) in which there is governance by the community involved, shared financial responsibility and land and facilities used in common' (Explanatory Summary).

10 Agriculture and rural development

10.1 Agriculture

The Department of Agriculture, Forestry and Fisheries' Annual Report for 2009/2010 (http://www.nda.agric.za/doaDev/topMenu/AnnualReports/) sets out the 2009-2010 DAFF strategic priorities, which included the acceleration of economic growth and the creation of decent work and sustainable livelihoods; the building of economic and social infrastructure; the strengthening of skills and the human resource base; as well as the rolling out a comprehensive rural development strategy linked to land and agrarian reform and food security. The Report also stated that the Department engaged its sector partners in order to improve its strategies for effective agrarian and land reform programmes. The resuscitation of land reform projects was one of the focus areas of the Department in the

financial year. This entailed the conducting of a number of land audits. In this regard, certain projects were assessed. Support for these farmers includes, amongst others, intensive training and extension services. In addition, affected farmers will have access to funds from the Comprehensive Agricultural Support Programme (CASP).

DAFF had six main programmes during the year of assessment, namely Administration, Production and Resources Management, Agriculture Support Services, Trade and Agricultural Development, Food Safety and Bio-security and Forestry. Achievements by the Department include the fact that a Declaration of Intent on Vocational Training was signed between the Department and Germany. This entailed technical assistance for land reform, postgraduate scholarships and student exchange programmes. A total of 14 042 beneficiaries on 748 farms adopted sustainable innovations on LandCare projects and land reform farms. Regarding sustainable natural resource management practices, 264 602 ha (from a total of 1 019 709 ha) of land reform farms (1296 farms) that have been inspected are using sustainable natural resource management practices, or sustainable land use practices are in the process of being adopted. DAFF supported and contributed to the Presidential Sites and the CRDP, for example, in Muyexe and Riemvasmaak.

A total of 809 extension personnel were nationally trained in technical skills, generic soft skills and ICT skills. 29 courses were presented and training was provided for land reform beneficiaries in 434 targeted skills; this brought the total for the year to 1 546 targeted beneficiaries. Challenges faced by the Department included economic and political changes, challenges relating to food security and employment, the low levels of production and underutilisation of land, the transformation and growth of the forestry sector and the 2010 FIFA World Cup.

Provincial funds were transferred to the primary banking account of each province in accordance with the provisions of the Division of Revenue Act 12 of 2009 and the approved payment schedules. With regard to the transfers to public entities, Ncera Farms (Pty) Ltd is a public company under schedule 3B of the PFMA with the Department as sole shareholder. It provides extension services, training and other agricultural support services for settled farmers and neighbouring communities in the East London area to enable them to become self-sufficient.

According to the Strategic Plan for the Department of Agriculture, Forestry and Fisheries 2010/11 (http://www.nda.agric.za/docs/Policy/StratPlan2010.pdf) the strategic priorities for the three year period 2010/11- 2012/13 are to speed up economic growth and transform the economy to create decent work and sustainable livelihoods; roll out a massive programme to build economic and social infrastructure; strengthen the skills and human resource base; roll out a comprehensive rural development strategy linked to land and agrarian reform, and pursue the advancement of Africa, enhance international cooperation and affirm that South Africa builds its competitiveness globally.

Three categories of farmers are distinguished in the Strategic Plan, namely subsistence, smallholder and commercial farmers. A rescue package has been made available to assist 77 land reform beneficiary farmers (and later approximately an additional 130 who have been unable to finance their Land Bank loans) in turning around their farms within the next three years (or a longer period, if required).

As regards rural development and land reform, the Strategic Plan states that the revival of the rural economy is a key priority:

> A three-pronged strategy or agrarian transformation, rural development and land reform will be implemented through cooperation between government and the private sector.
>
> At present, rural communities are not utilising natural resources at their disposal effectively because of various reasons, ranging from lack of investment in rural areas, lack of finance for production inputs to lack of skills. To fast-track rural development, the sustainable use of natural resources has been identified as a critical area for development to ensure maximum returns and an increase in agricultural production. Investment will also be increased in the areas of agro-processing as well as the strengthening of institutional structures that are critical to sustainable development.

The Department of Agriculture, Forestry and Fisheries has seven programmes: (1) administration; (2) policy, planning and monitoring and evaluation; (3) economic development, trade and marketing; (4) food security and agrarian reform; (5) agricultural production, health and food safety; (6) forestry and resource management; and (7) marine fisheries and coastal management. As regards programme 4 (above), three sub-programmes (food security, sector capacity development and national extension support services) have been identified, with 'vibrant, equitable, sustainable rural communities contributing towards food security for all' as the key outcome thereof. In respect of the implementation strategy, the focus will be to support agrarian reform beneficiaries to evolve from subsistence smallholder farms to emerging commercial, and, eventually, full commercial farms through the provision of DAFF support for production and access to markets.

10.2 Rural Development and Land Affairs

According to the Annual Report 2009-10 of the Department of Rural Development and Land Reform, the first six months (2009-04-01 - 2010-09-30) was spent on the reorganisation of the Department in order to integrate the additional mandate (rural development). Three new branches, responsible for the following programmes, were established: GTD (Geo-Spatial Services, Technology Development and Disaster Management); STRIF (Social, Technical, Rural Livelihoods and Institutional Facilitation); and RID (Rural Infrastructure Development). The CRDP (Comprehensive Rural Development programme) was launched in July 2009.

A total of R6.391 billion was allocated to the Department, of which R5.854 billion was spent during the 2009-10 financial year (92% of the final allocation was therefore spent in said financial year, compared to 99% during the preceding year). The Department made it clear that the restitution programme in the medium term posed the biggest challenge from a budgetary perspective. The Ministry ordered the development of a Turn-Around Strategy for Land Restitution, which will be informed by the CRDP principles. The focus of the Redistribution and Tenure Reform programme shifted from the emphasis on the number of hectares that are transferred, to the sustainability of land reform projects. In this regard, the Recapitalisation and Development programme was introduced. 240 000 ha of land were delivered (even though non-achievement of set targets was reported). Improvement in monitoring and evaluation and controls is required by the programme, as fraud and corruption was uncovered in certain provinces. The CRDP has been implemented in eight provinces (24 wards in 16 communities). According to the Auditor-General, all but one audit qualifications were eliminated, and a number of inadequacies in the Department's risk management strategy were identified.

In the foreword of the Department of Rural Development and Land Reform's (DRDLR) 2010 - 2013 Strategic Plan (www.ruraldevelopment.gov.za/publication/), the Minister of Rural Development and Land Reform stated that the ANC's 2007 resolution on agrarian change, land reform and rural development recognised the land question as central to the resolution of race, gender and class issues in South Africa. According to the Plan, land should be seen as a national asset, and as such there is a need to fundamentally review the current land tenure system during the current MTSF. The Minister argued that the DRDLR's strategy should be one of 'agrarian transformation', in order to bring about 'a rapid and fundamental change in the relations (systems and patterns of ownership and control) of land, livestock, cropping and community', with the outcome being 'social cohesion and development'. He defined the indicators for 'development' as 'shared growth and prosperity, full employment, relative income equality and cultural progress', and the indicators for 'under-development' as 'poverty, unemployment, inequality and cultural backwardness'.

With regard to land tenure systems reform, challenges have forced the DRDLR to urgently review the current land tenure system. The most common issues raised in this respect include land ceilings and ownership, land uses, land availability, the cost of land, and forms of ownership. Taking the above into account, the DRDLR proposed two options: (a) turning all productive land into a national asset based on a quitrent land tenure system with either perpetual or limited rights (this scenario will require an amendment to s 25 of the Constitution, and all tenure legislation will have to be reviewed and brought under a single national land policy framework); and (b) reviewing current tenure policies and legislation in order to maintain the current free-hold title system but within the ambit of a land ceilings framework linked to categorisation of farmers (this option will also entail the possible establishment of a state land management board to facilitate the management of state-owned agricultural land and leases).

In addition, policy and legislation impacting on the ownership of land by foreigners will be finalised. In this regard the DRDLR is investigating the imposition of land ceilings and/or limited property rights in the form of long term leases. A certain board may also be established to manage agricultural land transactions. In relation to these proposals a Tenure System Reform Bill is set to be tabled by the DRDLR by March 2012. The Land Rights Management Facility will continue to be used as a tool to protect the land rights of farm dwellers. The DRDLR's core objective of redistributing 30% of white-owned agricultural land remains but has now been linked to a programme of support and capacity building that would ensure socio-economic development of all land reform beneficiaries.

The DRDLR is implementing programmes over the MTEF period to revitalise failing land restitution and redistribution farms. The Redistribution Programme has benefitted from key amendments to the Provision of Land and Assistance Act 126 of 1993, which now makes it possible for the DRDLR to utilise the Act for development interventions aligned to the CRDP. Notwithstanding the 5.9m hectare of land having been acquired through redistribution and restitution, tenure issues of millions of people still leave much to be desired. With regard to the Restitution Programme, the Commission on Restitution of Land Rights have settled 96% of the 79 696 claims lodged. An additional R275m has been allocated as part of the recapitalisation and development of farms restored under the restitution programme. This will form part of post-settlement support.

With reference to rural development and rural livelihoods, the CRDP has been rolled out in eight provinces. The DRDLR aims to implement the CRDP in 160 rural (municipal) wards during the current MTEF period. The social mobilisation of rural communities is central to the CRDP, and to ensure that the dynamics in every community is taken into account the DRDLR utilises a modified form of the National Integrated Social Information System (NISIS) tool used for the War on Poverty initiative. The aim is to organise all 160 wards into community organisations and cooperatives, in order to fulfil the CRDP's goal of not making people the targets of development but rather subjects of their own development. The DRDLR Director-General expects the CRDP to create the foundation for communities, government, non-governmental organisations and the private sector to come together to foster sustainable development in rural areas during the next five years. In addition, the CRDP would facilitate job creation – the DRDLR expects to generate some 320 000 two-year job contracts during the next three years. Through the infrastructure created and enterprises developed, it is envisaged that a percentage of these contract positions would be sustained in the long term. This will foster sustainable rural economic development and wealth creation. The estimated number of people to be affected by the CRDP by 2013 is 1 397 250.

The CRDP Job Creation Model consists of three phases (short-term, medium-term and long-term). The estimated number of rural households supported (people) by 2013 is 310 500.

The DRDLR's land reform programme's main priorities include the categorisation of land needs; recapitalisation and development; increasing strategic partnerships, co-management, share equity and mentorship; and strengthening security of tenure of farm dwellers and labour tenants.

According to the Chief Land Claims Commissioner, the DRDLR's approach in settling the 3909 outstanding claims will be in line with the CRDP. This includes the profiling of households, implementation of the job creation model and building capacity for conflict resolution to improve service delivery. The key aims of the Commission in the 2010/2011 financial year are to ensure that farms are productive, that individual households benefit, and that there is noticeable growth in the local economy. The Commission also aims to complete the research on all the outstanding land claims by December 2011, as well as to address the issue of betterment claims, as well as claims relating to the Kruger National Park and District Six. The Commission has introduced an outcome-based monitoring system and will focus on effective performance management, the efficient use of resources as well as on increased accountability. The implementation of *Batho Pele* principles, effective communication with claimants and other stakeholders through timely responses to public and other enquiry forms will also receive attention in the 2010/2011 financial year.

The DRDLR has been restructured into seven branches, namely (a) Geo-spatial Services, Technology Development and Disaster Management, (b) Social, Technical, Rural Livelihoods and Institutional Facilitation (STRIF) (the branch's core function is to facilitate social cohesion and sustainable rural development through a participatory community-based planning approach to enable rural people to empower themselves); (c) Rural Infrastructure Development (the branch focuses on providing strategic investment in social and economic infrastructure (eg, the development of roads, railways, dipping tanks, fencing, pack houses, stalls and markets) to enable rural communities to first address their basic human needs and, as they progress, to also begin to engage with different economic

activities); (d) Deeds Registration; (e) Cadastral Surveys Management; (f) Support Services; and the (g) Office of the Chief Financial Officer.

The Standing Committee on Public Accounts (SCOPA) reported that the Department owed R7.5 billion at the end of the financial year to farmers who accepted offers by the Department for their land. This amount has since increased to R12 billion. The Committee has heard that the 4 000 outstanding claims have not yet been investigated, but the Department has undertaken to process these claims before the end of the current financial year. The Department has already spent R700m with regard to court orders (Van der Walt 'Grondsake val vas oor vakatures, hofbevele' *Die Burger* (2010-09-14) (www.dieburger .com/)). The Department lost R53m in material losses as a result of corruption and related activities. The Department failed the assessment by the Auditor-General as targets for vested state land were not reached and as the Department has not yet finalised its asset register (Kitshoff 'OG sê department van grondhervorming druip oor teikens' *Rapport* (2010-10-03) 6).

10.3 Land Bank

According to its Corporate Plan 2009/10 to 2011/12 (http://www.pmg.org.za/), the Land Bank is currently faced with numerous challenges. In 2008, it received a qualified audit. The seven qualifications that were reported relate, amongst others, to transactions that were outside the mandate (specifically LDFU (Land for Development Finance Unit) transactions), procurement irregularities, procurement and payment system shortcomings, payroll issues, funds under administration, and non-compliance with legislation (specifically the Public Finance Management Act 1 of 1999). Other matters that were reported include, amongst others, ineffective governance structures and reporting frameworks, and non-implementation of audit recommendations. The past years have been evidenced by enormous losses on the part of the Land Bank. A R99.5m loss was recorded in the 2006/07 financial year and a R19.7m loss in the 2007/08 financial year. In 2007, the Land Bank received R700m from government in order to address the bank's declining capitalisation. This amount was ring-fenced for development. In order to address the above-mentioned state of affairs, the Land Bank identified three priorities in its Corporate Plan 2009/10–2011/12, namely cleanup, stabilisation and sustainability. The cleanup process was aimed at addressing audit qualifications and related issues, and at improving the control environment. The process functioned from September 2008 to the end of 2009/10 financial year. This process, together with the stabilisation process forms the Land Bank's turnaround strategy. According to the Corporate Plan, the stabilisation process aims to, amongst others, improve human capital, address information technology deficiencies, intensify efforts to recover on non-performing loans and improve the balance sheet, improve the bank's liquidity and manage an acceptable cost-to-income ratio. In addition, it aims to implement a divesting strategy on the LDFU portfolio (these transactions did not fall in the Land Bank's mandate, and, as a result, the Land Bank had to dispose of these projects). When the cleanup and stabilisation processes have been finalised, the Land Bank will focus on sustainability (in the 2010/11 financial year).

The sustainability initiative aims to normalise operations, as well as to put development at the centre of the Land Bank's activities. The Corporate Plan sets out the seven strategic pillars on which it is based, namely implementing development as the Land Bank's core business; securing affordable funding and maintaining financial sustainability;

ensuring appropriately skilled staff; implementing systems and driving research and innovation; improving service delivery; ensuring partnerships and stakeholder engagement; and ensuring governance, risk management and compliance. This initiative aims to 'ensure that the transformed Land Bank delivers on its developmental mandate.' According to its Corporate Plan, the Land Bank 'would have made inroads in establishing itself as a viable development finance institution' by 2012-03-31.

According to the Land Bank, failures can be attributed to, amongst others, weak risk management processes and systems, as well as lack of capacity in key risk-monitoring areas. The major risks facing the Land Bank were identified as follows: liquidity, human resources, credit, systems and new business. Current trends show that almost 50% of loans granted to developing farmers are non-performing. In this regard, the Land Bank aims to assist developing farmers in order to mitigate associated risks.

Recent progress made include the recovery of R474m (relating to non-performing loans), an improvement in the bank's liquidity, as well as the implementation of control systems. The Land Bank is considering the possibility of recapitalising itself with the National Treasury. Even though the Land Bank will prioritise development, commercial farming will still remain an important part of the bank's business. In this regard, the Corporate Plan states that '[m]eans of cross-subsidisation will be explored from this market to help bridge the gaps between subsistence, emerging and commercial farming.' Even though the Corporate Plan emphasises the importance of employment equity, it also makes it clear that the organisation should not be compromised through the 'recruitment of insufficiently qualified personnel.' In addition, the Land Bank plans to incorporate the three facets of best practice in corporate governance, namely governance, risk management and compliance.

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