

CHAPTER 14

Farm Evictions and Increasing Rural Local Municipal Responsibilities

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Farm Evictions and Increasing Rural Local Municipal Responsibilities

14.1 Introduction and Problem Statement

Since the inception of democracy in 1994, government has introduced numerous laws, policy and initiatives to regulate and improve the situation and rights of farm dwellers⁵⁴ and farm workers. The land reform policy programmes fall under three pillars: land restitution, land redistribution and land tenure. The aim was to redress imbalances in land ownership and to protect the land rights of previously marginalised people (many of whom are still living in poverty) and the rights of the vulnerable. However, an unintended consequence of the land reform programmes is the creation of a climate of uncertainty in the sector, which has resulted in disinvestment from the sector (ILO, 2005) and illegal farm occupations, and has prompted farmers to evict farm dwellers and workers.

Despite the Extension of Security of Tenure Act (ESTA) (No. 62 of 1997), farm dwellers and workers remain among the most vulnerable people in society and at risk of being evicted from farms. The direct effects of the evictions are devastating: evictees are forced to relocate to another physical environment, are deprived of work, forfeit income, and lose access to homes and fertile land for own production. Other undesirable effects include the breakdown of families and social structures, and disruptions to children's education. Where evictees move to informs the

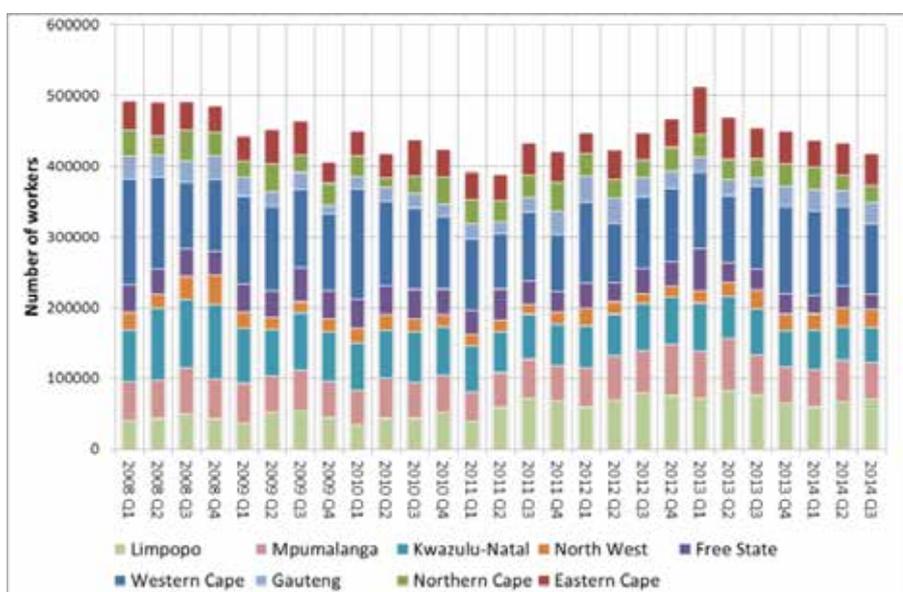
livelihood options available for them (including access to physical capital), and farmers may specifically relocate their workers to rural towns in order to avoid possible land reform measures.

Local municipalities increasingly have to deal with the ramification of this influx into rural towns in terms of shelter, services and consequences of unemployment. In a recent ruling, the Constitutional Court placed the challenge of these migrations firmly at the door of local municipalities. It ruled that, although the housing function is shared between the national and provincial government, local government is responsible for providing shelter and other services to the evictees from municipal budgets.

Therefore, when workers are evicted from farms, rural municipalities are responsible for providing services and caring for the destitute, despite being ill-equipped and having no budget. This constitutes an unfunded mandate. This chapter looks at the extent of the burden caused by farm evictions and explores how fiscal instruments can respond to this widespread situation.

Between 2008 and 2014, the number of farm workers and labourers declined throughout South Africa (Figure 115).

Figure 115. Formally employed farm workers and labourers in the agriculture sector (2008–2014)



Source: ILO (2015: 19)

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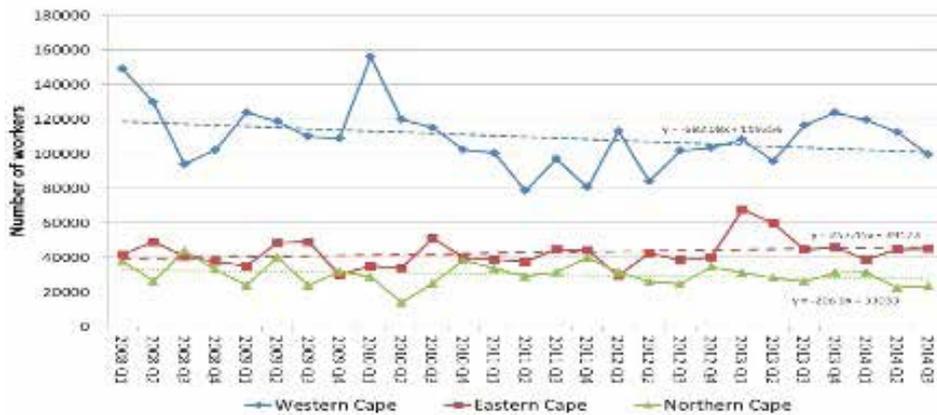
⁵⁴ Farm dwellers is defined in this section as people living on farms in Farm areas of South Africa (ILO, 2015: 8).

The nature of farming is changing (ILO, 2015: 1), as “feudal relationships between farmers and farm workers are increasingly breaking down through movement off farms (for various reasons, including, but not only, evictions) and a shift away from use of permanent workers towards the use of indirect labour and short-term employment contracts”.

Figure 116 shows that the formally employed farm workers and labourers in the agriculture sector is fluctuating but comparatively is declining in the Eastern Cape and Northern Cape.

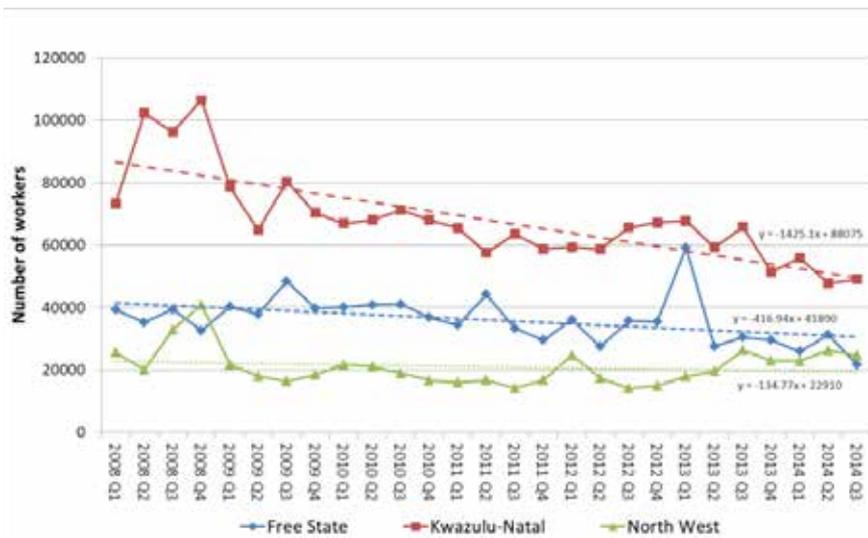
Figure 117 shows that, although numbers fluctuate, the number of farm workers and labourers shows a persistent decline in three provinces: Free State, KwaZulu-Natal and North West.

Figure 116. Formally employed farm workers and labourers in the agriculture sector in Free State, KwaZulu-Natal and North West (2008–2014)



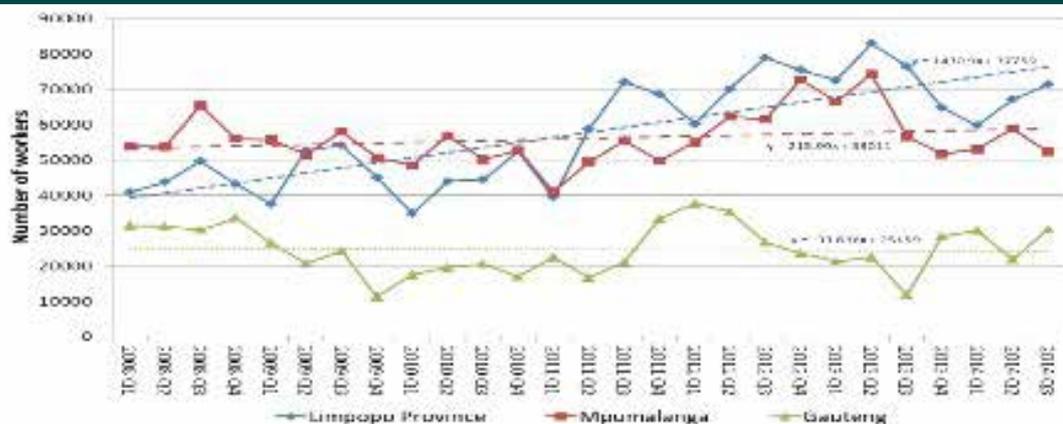
Source: ILO (2015: 19)

Figure 117. Formally employed farm workers and labourers in the agriculture sector in Free State, KwaZulu-Natal and North West (2008–2014)



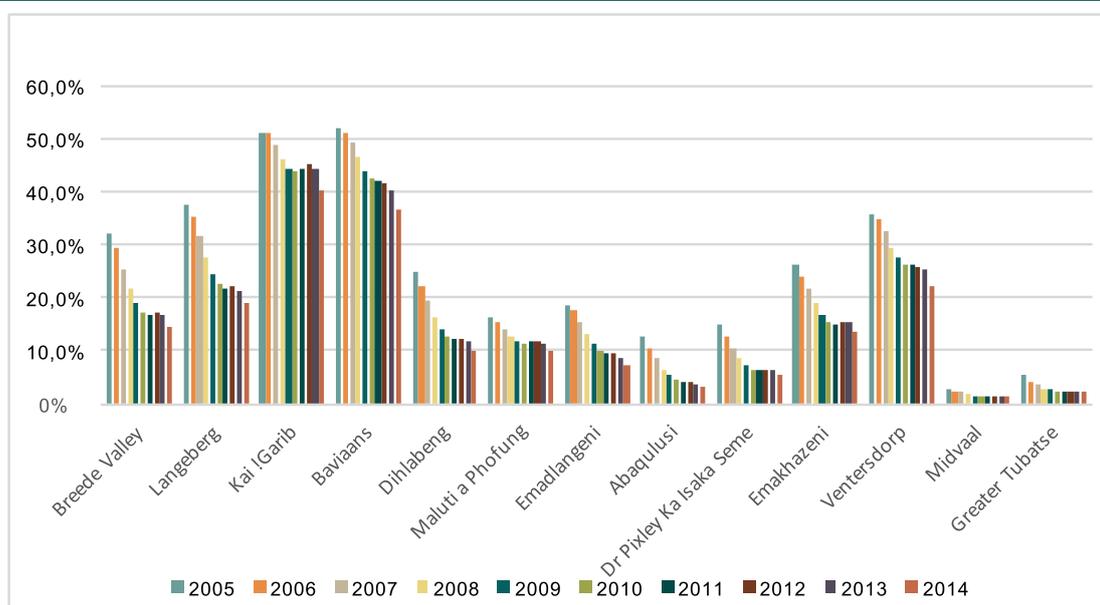
Source: ILO (2015: 19)

Figure 118. Formally employed farm workers and labourers in the agriculture sector in Limpopo, Mpumalanga and Gauteng (2008–2014)



Source: ILO (2015: 19)

Figure 119. Employment in the agriculture sector for the 13 municipalities (2005–2014)



Source: Global Insight (2015)

Figure 118 shows that in 2014 the formally employed farm workers and labourers in the agriculture sector declined in all three provinces: Limpopo, Mpumalanga and Gauteng.

Thirteen (13) case study municipalities were selected, based on whether the municipality was (i) located in the rural provinces, and (ii) experiencing farm evictions (and thus was classified by the Department of Rural Development and Land Reform (DRDLR) as a “hot spot” for land tenure disputes).

Within all the case study municipalities, employment in the agriculture sector has declined continuously since 2005. This decline concurs with Figure 115, which shows a decline in the number of farm workers in most provinces in the country. Agricultural employment continues to decline at an alarming rate, which signifies a serious problem of rural unemployment because farm employment is among the most important sources of

work in rural areas. Agriculture has in the past played a major role in providing formal employment, although at very low wages.

14.1.1 Objectives

The study aims to answer the following research questions:

- How many people have been evicted, and what is the rate of evictions?
- Can the cost impact on rural local municipalities be measured? What budgetary pressures does it exert on rural local municipalities?
- How do rural local municipalities deal with the problem and the costs?
- How have/can the intergovernmental fiscal relations (IGFR) instruments deal with the problem?
- How could the issue be better addressed?

14.2 Legal Precedent Relevant to Human Rights and Farm Evictions

14.2.1 The Grootboom case (2000)⁵⁵

In this case, the applicants (who included a number of children) were evicted from the private land that they were unlawfully occupying. Following the eviction, they camped on a sports field in the area. The Constitutional Court held that the state had an obligation to ensure, at the very least, that the eviction was executed humanely. It stated that “[t]he respondents were evicted a day early and to make matters worse, their possessions and building materials were not merely removed, but destroyed and burnt”. The Court found that the manner in which the eviction was carried out amounted to a breach of the obligation embodied in the right of access to adequate housing recognised under Section 26(1) of the Constitution (Grootboom [88]).

Housing entails more than bricks and mortar. For a person to have access to adequate housing, there must be land, services and a dwelling. Therefore, available land, appropriate services such as provision of water and sewage removal, and a house are needed, and these have to be financed. A right of access to adequate housing also suggests that the state is not the only party responsible for providing housing, but that other role-players (including individuals) must be enabled to provide housing. The state’s duty is to “create the conditions for access to adequate housing for people at all economic levels of our society” (ibid [35]) and to “take reasonable legislative and other measures, within its available resources, to achieve the progressive realisation of this right” (ibid [19]).

The Constitutional Court found the state to be in violation of Section 26(2) of the Constitution, which “requires the state to devise and implement within its available resources a comprehensive and coordinated programme progressively to realise the right of access to adequate housing” (ibid [99]). Although the state housing programme satisfied all the other requirements of the reasonableness test, the state was unreasonable in that “no provision was made for relief to the categories of people in desperate need” (ibid [69]). Accordingly, a declaratory order was made requiring the government to meet the obligations of Section 26(2), which included devising, funding, implementing and supervising measures aimed at providing relief to those in desperate need.

14.2.2 Blue Moonlight case (2011)⁵⁶

In this case, the owner of property in the inner city of Johannesburg sued the occupiers for eviction in the South Gauteng High Court (High Court) under the Prevention of Illegal Eviction (PIE) Act (No. 19 of 1998). The occupiers (poor people who had lived on the property for many years) claimed that the eviction would render them homeless. They joined the City of Johannesburg (the City) in the case, maintaining that the City was obliged to provide them with emergency housing. They contended that the City’s housing policy was unconstitutional because it did not oblige the City to furnish them with emergency housing.

The City appealed to the Constitutional Court, saying that it was not obliged to provide emergency housing, its housing policy was good and that it had no resources to provide the housing in any event. The Court found that the City was obliged to provide temporary emergency accommodation for the occupiers. The Court was not persuaded that the City did not have sufficient resources to provide this accommodation, holding that the City had wrongly budgeted on the basis that it was not obliged to provide them with emergency housing.

14.3 Literature Review

14.3.1. The concept of farm evictions

This study uses the United Nations’ definition of eviction, i.e. “the permanent or temporary removal against their will of individuals, families and/or communities from the homes and/or land which they occupy, without the provision of, and access to, appropriate forms of legal or other protection” (UN, 2014). Evictions, or movement from farms to alternative areas, is another form of migration. They are “distinct from other forms of displacement, as they are involuntary, permanent and involve some element of coercion or force” (Wegerif et al., 2005: 91). Pull factors, or motives for choosing to relocate to a specific type of settlement, include personal preference and affordability; those who move to rural areas select rural townships that have better access to housing and infrastructure, and clearer tenure rights (ibid). There are also push factors, which are the undesirable factors that cause people to leave a settlement or are reasons for migrating.

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⁵⁵ Government of the Republic of South Africa and Others v Grootboom and Others (CCT11/00) [2000] ZACC 19; 2001 (1) SA 46; 2000 (11) BCLR 1169 (4 October 2000)

⁵⁶ City of Johannesburg Metropolitan Municipality v Blue Moonlight Properties 39 (Pt) Ltd and Another (CC) [2011] ZACC 33; 2012 (2) BCLR 150 (CC); 2012 (2) SA 104 (CC) (1 December 2011)

14.3.2 Causes of Evictions

Some of the main causes of evictions (and job losses) are:

- Changes in land uses, in particular when a farm is converted from agricultural production to game farming and tourism ventures (Wegerif et al., 2005).
- New labour legislation and policies, such as the proclaimed minimum wage, which many farm owners blame for increased retrenchments and evictions of farm workers.
- Overcrowding, or people who live but do not work on the farm, is an issue for most producers. Common complaints from producers are that these people cause overcrowding of houses and consequently put a lot of stress on existing infrastructure, especially on sewage systems (ILO, 2015).
- Vulnerability to land claims, such as when farmers evict women and children upon the deaths of their husbands who used to work on the farm, to avoid potential land claims (Wegerif et al., 2005).
- Epidemic of criminal farm attacks, which adds to anxiety in the sector and negative attitudes towards government's new policies (Mntungwa, 2014).

Indeed, non-economic considerations mostly drive the collective decision to shed permanent workers in the farming section. These considerations include above all: the fear of losing control of one's land to resident farm workers due to new (and possible future) legislations; and a sense that farm workers are more difficult to manage than they were prior to 1994 because of democracy and a commitment by the state to safeguard human rights (Mntungwa, 2014).

14.3.3. The extent of evictions

Agriculture has in the past played a major role in providing formal employment, although at very low wages. However, the new minimum wage for farm workers (introduced in December 2012) and strikes by farm workers have led to a harsh backlash against farm workers and their organisations, "including a spate of dismissals and retrenchments, and of farm evictions and lockouts" (ILO, 2015: 83).

According to the 2011 Census, 759 127 households (or 2 732 605 people, equal to 5.28% of the national population) live in farm areas. Of these, 592 298 households (or 2 078 723 people) live on farms (ILO, 2015). Excluding employed people who earn no income (typically business owners and family members working in those businesses) and those who did not specify their incomes, in 2011 over 80% (82.3%) of employed farm dwellers earned less than R3,200 per month: 65.1% earned less than R1,600 and 17.2% earned between R1,601 and R3,200. However, 2.5% earned more than R25,600 per month (Stats SA, 2013b) cited in (ILO, 2015:10).

14.3.4. Effects of evictions

When evictions occur, religious and cultural strings are disturbed, such as when graveyards of the evictees' ancestors and families who were buried at the farm are suddenly abandoned when the evictees relocate to other areas. Evictees have to leave arable land, which they used for cultivating their own food, and so have to adopt new food security approaches. The manner in which some evictions are carried out can have negative psychological effects on evictees, as they have to adjust to a different way of life from the one they have known for a long period of time. Evictions result in large numbers of ex-farm dwellers having no access to decent housing and services, and for many, inadequate means of support (ILO, 2015).

Those evicted include children of various ages, and so school-going children have their education distributed. The depopulation of farms that results from evictions means that many government social services (such as farm schools and clinics) decline or disappear, prompting a further migration from the farms.

14.3.5 Post evictions dilemmas

Case law has ruled that, in an attempt to find suitable alternative accommodation for the potential evictee, the relevant municipality, the land owner and the occupier are supposed to have a "meaningful engagement" (ILO, 2015: 192). However, these have become mere procedural formalities. Although the evictees are supposed to contact the DRDLR for help, they often end up on the doorstep of the municipalities. And municipalities are "generally unsure of how to implement the emergency housing policy" (ILO, 2015: 193).

The National Housing Code provides for an Emergency Housing Programme, and the national Department of Human Settlements allocates funds for emergency housing to provincial departments of human settlements. Municipalities are considered "the first party responsible for responding to emergencies" and can therefore obtain funding for such emergency housing from provincial government (HDA, 2012: 20). The Emergency Housing Programme is designed to offer temporary relief, through providing secure access to land, engineering services and shelter. It stipulates that "emergency housing should be limited to absolute essentials" (ibid: 16). This means that emergency housing is unlikely to meet the requirements of "suitable, alternative accommodation" as defined by ESTA (ILO, 2015: 194).

Rural local municipalities have a mandate to deliver services to citizens, (including the farm evictees) living within their area of jurisdiction. Yet the same municipalities face many challenges. On the one hand, they have to deal with the

perception that democracy means basic services will be provided for free (Breier and Visser, 2006), and on the other hand, they are often financially unviable because they have minimal own-revenue sources, when the “collection of own revenue is a critical determinant of the financial viability of municipalities” (Manyaka, 2014: 127). As a result, municipal managers are overwhelmed, clearly frustrated and unsure of what they should do (ILO, 2015: 192), especially given the long waiting lists, lack of available funding for housing and existing settlements that are bursting at their seams.

14.3.6 International perspective

Migration in rural areas is not peculiar to South Africa. Migration in industrialised countries includes not only rural to urban, but also urban to rural and rural to rural (Human and Feridhanusetyawan (2007) cited in Henning et al., 2011). The migration of people to other areas takes two forms: “voluntary”⁵⁷ or “involuntary”⁵⁸. Evictions are non-voluntary migration, whereas voluntary migration involves an economic decision, such as moving to places for better employment and earnings possibilities. This type of migration is also described as “voting with the feet”, which “implies that migration decisions correspond to choices between regionally provided bundles of quality-of-life factors including local wage levels, employment opportunities and local amenities and disamenities” (Henning et al., 2011: 97).

In China, migration is seen as correlated with better chances of entrepreneurial success in origin communities when people return home (Hu and Wu, 2012). This is because human capital accumulated during the past migration periods enhanced the entrepreneurial activities of the returnees, and returned migrants are more likely to invest in productive farm assets than their non-migrant counterparts (ibid). A study conducted among Mexican rural households revealed that rural migration may have a positive effect on the rural sector itself, and remittances open up a possibility for poor households to accelerate productive asset accumulation (Chiodi et al. 2012).

14.4 Research Methodology

The analysis used secondary and primary data. The secondary data entailed desktop research to review existing legislation, reports and literature (both local and international) on the impact of farm evictions, rural migration and effects of rural population growth on the responsibilities and capabilities of rural local municipalities. Primary data was gathered using the case study approach.

Thirteen (13) municipalities were selected from all nine (9) provinces in South Africa. Officials and councillors in the case study municipalities were asked for information about the pressures caused by farm evictions and migration in the various municipalities.

One municipality was selected from each province, plus an additional municipality from the four provinces where most of the hot spots are located, i.e. the Western Cape, KwaZulu-Natal, Mpumalanga and Free State. The 13 case study municipalities are:

- KwaZulu-Natal; Abaqulusi Local Municipality and eMadlangeni Local Municipality
- North West: Ventersdorp Local Municipality
- Limpopo: Greater Tubatse Local Municipality
- Eastern Cape: Baviaans Local Municipality
- Free State: Maluti-A-Phofung Local Municipality and Dihlabeng Local Municipality
- Gauteng: Midvaal Local Municipality
- Mpumalanga: Dr Pixley Ka Isaka Seme Local Municipality and Emakhazeni Local Municipality
- Northern Cape: Kai !Garib Local Municipality
- Western Cape: Breede Valley Local Municipality and Langeberg Local Municipality⁵⁹

The 13 case study municipalities were selected in order to provide a representative spread of all nine provinces in South Africa, and certain municipalities were selected based on agriculture being one of their main economic sectors (with reported land tenure disputes in their area of jurisdiction), increase in population and service delivery backlogs (water, sanitation and electricity).

The senior officials who participated in the research, work within the areas of basic services (water, sanitation etc.), infrastructure, town or development planning, finance, integrated planning, community services, economic development and emergency services. Councillors (Mayor and Exco/Mayoral Committee) also participated in the research because they are the elected community representatives and the link between local municipalities and communities. Interviews with evictees (both farm workers and dwellers) were not part of this research because the study's focus is on increased responsibilities for local municipalities as a result of farm evictions.

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⁵⁷ Voluntary migration is where individuals or households choose to migrate.

⁵⁸ Involuntary migration is where individuals or households are forced to move.

⁵⁹ The Langeberg Municipality was formed by the merger of Robertson, Ashton, Bonnievale, McGregor and Montagu.

14.5 Findings

14.5.1 The scale of the farm evictions problem

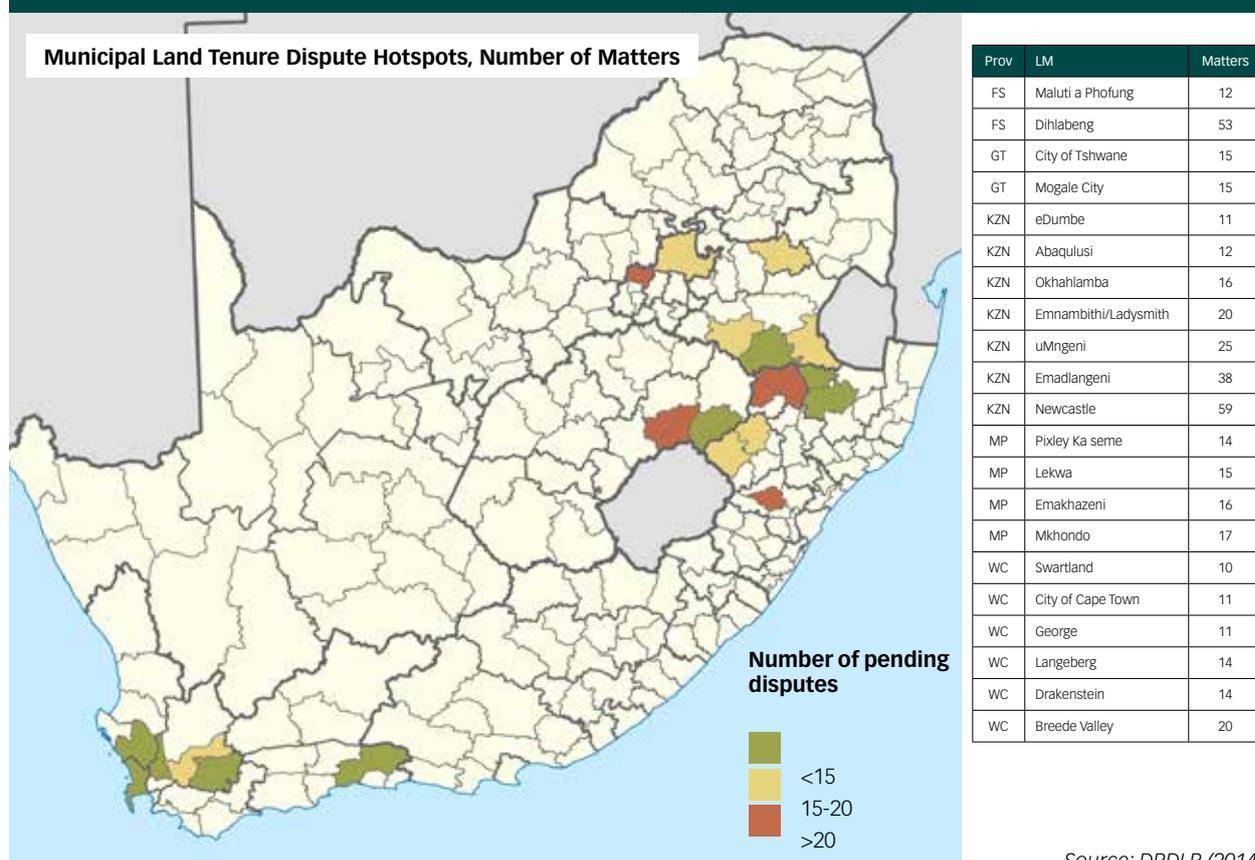
The maps in Figures 120 and 121 show the municipal hotspots and the distribution of municipalities with at least 10 pending tenure security disputes for 2014 and 2015. Those with more than 20 disputes are shaded in red, those with 15–20 disputes are shaded in yellow, and those with fewer than 15 disputes are shaded in green. The country as a whole has 21 municipal hotspots.

In 2014 and 2015, municipal hotspots were found in KwaZulu-Natal, Mpumalanga, Western Cape, Free State

and Gauteng. The provinces that contained municipal hotspots with more than 20 disputes pending (i.e. shaded in red) were KwaZulu-Natal, Mpumalanga and the Free State.

As Figure 122 shows, in 2015, over half (52%) of all tenure security cases in South Africa concerned evictions, and of these, 48% were evictions and 4% illegal evictions.⁶⁰ A third (32%) of all cases were threatened evictions, which might lead to either legal or illegal evictions.

Figure 120. Municipal hotspots in South Africa (2014)

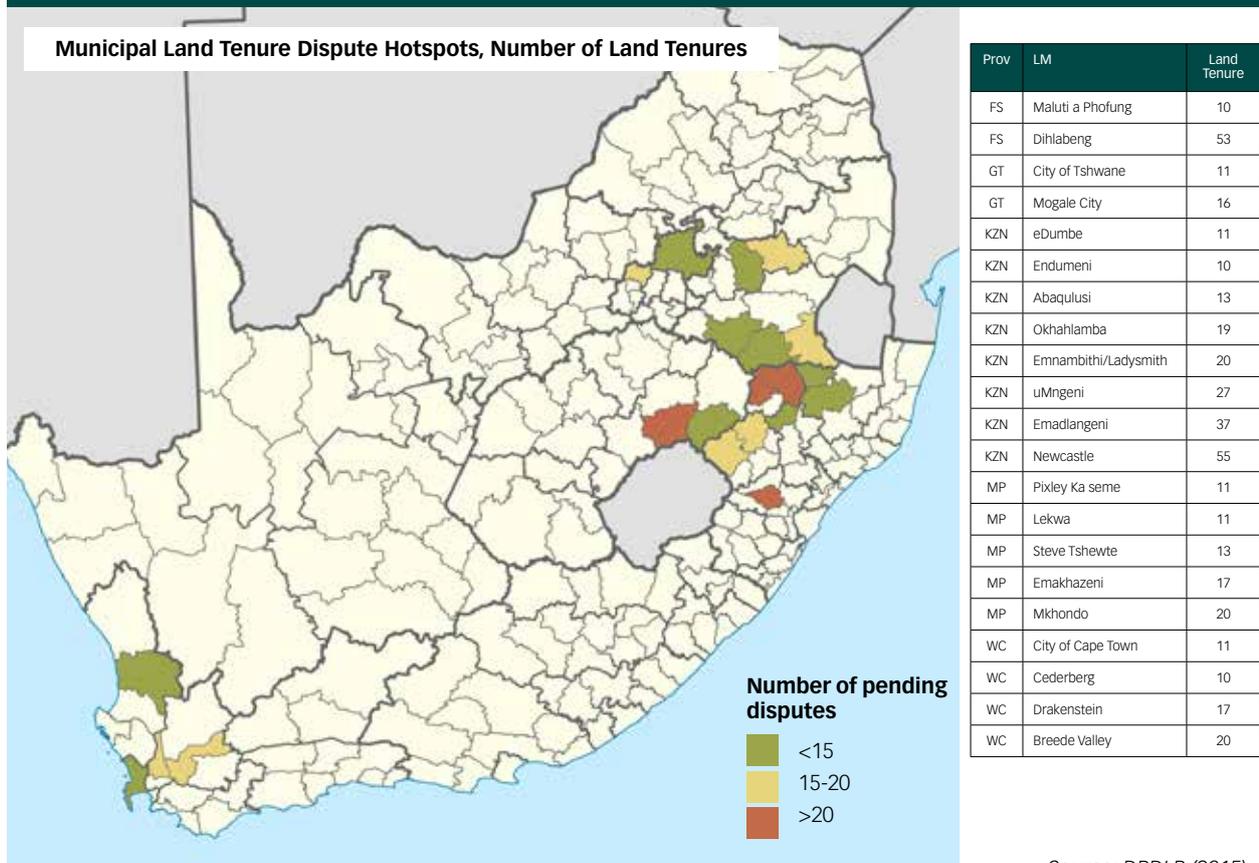


Source: DRDLR (2014)

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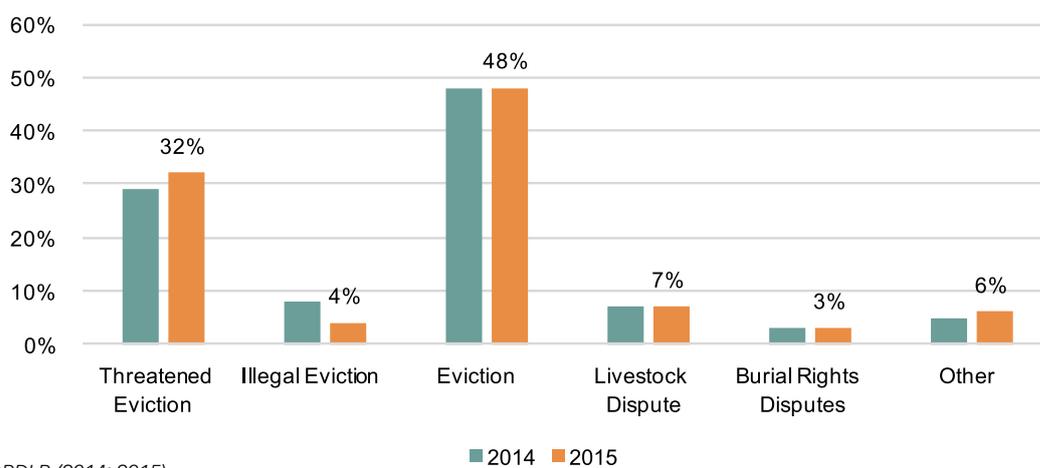
⁶⁰ Illegal evictions include all situations in which ESTA occupiers have moved off farms against their will and in the absence of a court order for their eviction (Hall, 2003: 8).

Figure 121. Municipal hotspots in South Africa (2015)



Source: DRDLR (2015)

Figure 122. Tenure security cases in South Africa (2014 and 2015)

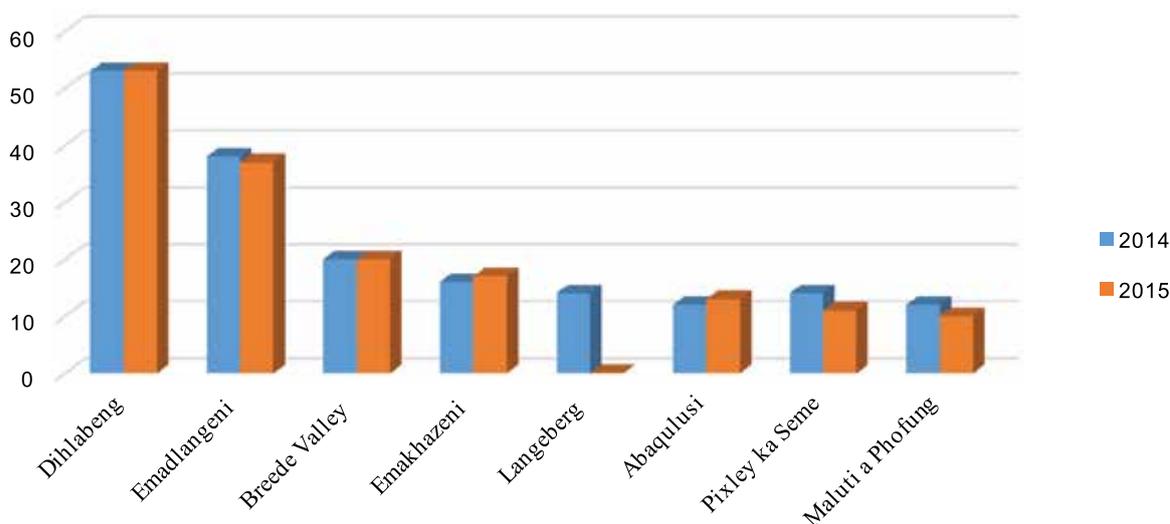


Source: DRDLR (2014; 2015)

When the number of land tenure disputes for 2014 and 2015 is compared (Figure 123), two of the municipalities (Emakhazeni and Abaqulusi) experienced an increase in

the number of disputes (from 16 to 17 and from 12 to 13 respectively), while three municipalities (Emadlangeni, Pixley ka Seme and Maluti a Phofung) saw a decrease.

Figure 123. Land tenure disputes in municipal hotspots (2014 and 2015)



Source: DRDLR (2014; 2015)

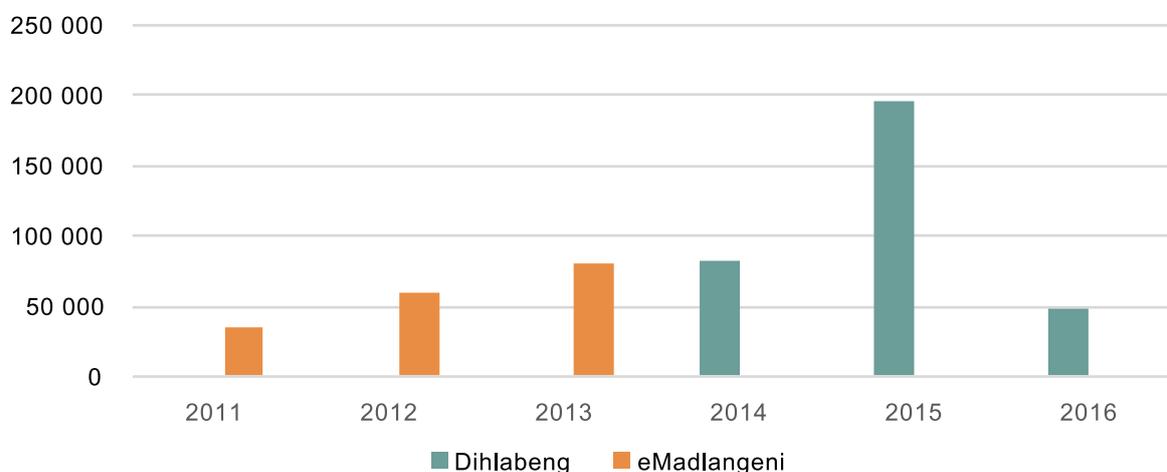
14.5.2. Cost implications of the farm evictions

Farm evictions result in costs that are carried by local municipalities. Between 2011/12 and 2015/16, Dihlabeng municipality had 21 reported farm eviction incidences, affecting 126 people, and Emakhazeni had 65 incidences. In a three-year period (2011–2013), six incidences were reported to the Emadlangeni municipality. However, the

actual number of incidences are likely to be much higher, as many evictions go unreported.

Figure 124 shows the direct costs for the two municipalities with the highest farm evictions: Emadlangeni in 2011–13 and Dihlabeng in 2014–16.

Figure 124. Expenditure related to farm eviction incidents in Dihlabeng and Emadlangeni



Source: Commission's calculations based on municipal data 2016

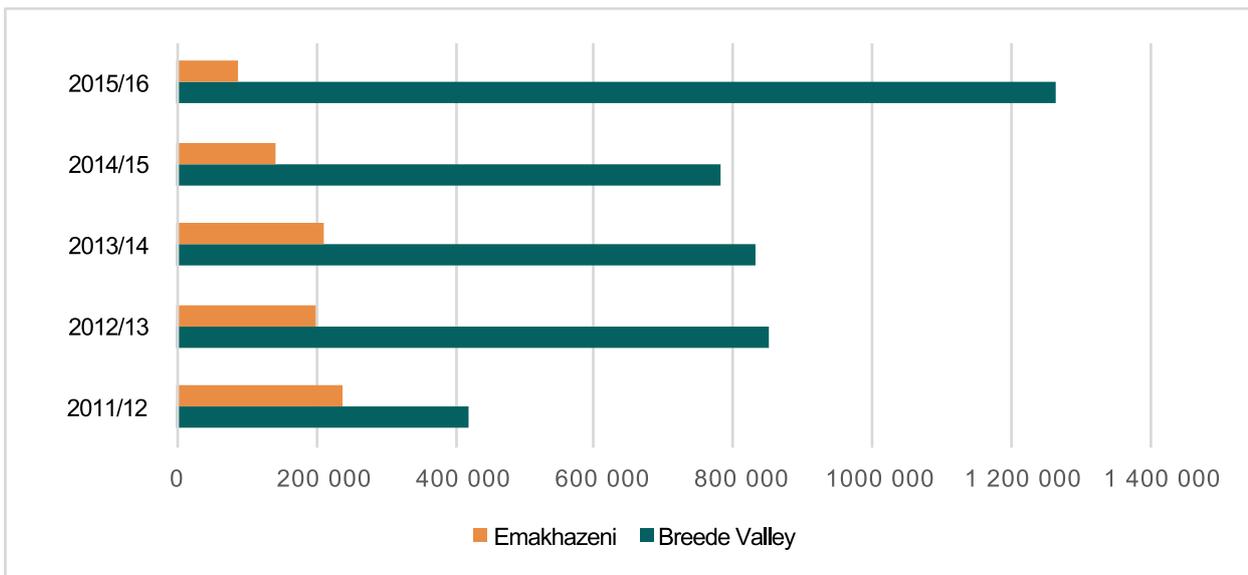
This expenditure represented 0.1% of Dihlabeng’s local government equitable share (LGES) in 2014 and 0.2% of its LGES in 2015. Over the three-year period, Dihlabeng has spent about R326,000 in total, including nearly R50,000 (R49,095.70) during the first two months of 2016, and the final costs for 2016 are likely to be far higher than in 2015 if the trend of previous years continues. Emadlangeni spent a total of about R175,000 over a three-year period, or the equivalent of 0.4% of its LGES in 2011, 0.5% in 2012 and 0.6% in 2013 respectively.

The expenditure includes only the direct costs incurred for providing temporary and indefinite accommodation (renting flats at municipal costs, erecting shacks on municipal property, buying tents) and providing food parcels and blankets. Other indirect costs carried by the municipalities are not specified. For example, the cost of providing temporary water and sanitation facilities for the

destitute families. As Figure 124 illustrates, expenditure related to farm evictions in both Dihlabeng and Emadlangeni has increased over the years, and yet no intergovernmental fiscal (IGFR) instruments are in place to support this type of expenditure.

Figure 125 shows the expenditure for Emakhazeni (in Mpumalanga) and Breede Valley (in the Western Cape). The Breede Valley municipality spent (in direct costs) the equivalent of 1% of its LGES every year over a three-year period (2012/13–2014/15). Over five years (2011/12–2015/16), the municipality spent over four million rand (R4.146,164) on emergency/housing, squatter/informal settlement control and legal services related to farm evictions. Emakhazeni also spent the equivalent of 1% of its LGES in 2012/13 and in 2013/14. Over five years (2011/12–2015/16), Emakhazeni spent R875,000.

Figure 125. Expenditure related to farm eviction incidences in Emakhazeni and Breede Valley



Source: Commission’s calculations based on municipal data 2016

14.6 Conclusion and Recommendations

According to the legislation and recent court rulings, municipalities are responsible for caring for vulnerable evictees. This creates an unfunded mandate, as providing shelter and other services for the evictees must come out of the municipal budget. Such an unfunded mandate has a far greater impact on the finances of rural local municipalities, given their financial situation that cannot be equated to metropolitan municipalities (e.g. City of Johannesburg). Metros are financially better off than rural local municipalities, which collect less (sometimes no) revenue and depend on grants for funding. The IGR instruments currently do not cater for evictions, and so municipalities have to use their own funds.

With respect to addressing the negative impact of farm evictions on rural municipalities' finances, the Commission recommends that:

1. The current Municipal Disaster Grant is allowed to cater for eviction-related emergencies. The same approach of accessing the portion of the Disaster Grant should be applicable to farm eviction incidences. This approach is aligned with the findings from previous research by the Commission that provinces and municipalities, rather than national government, appear better at ensuring grant funding is spent.
2. Government strengthens the coordination and implementation of existing programmes targeted at displaced farm workers and dwellers, through:
 - Including farm evictees among the beneficiaries for housing in rural towns, access to land for own production and the agri-villages programme.
 - Centralising the reporting of evictions and improving data collection.
3. The following government departments should be involved in coordinating and implementing programmes: DRDLR, the departments of agriculture, fisheries and forestry, home affairs, human settlements, cooperative governance and traditional affairs, social development, SAPS and municipalities.

14.7 References

- Breier, M and Visser, M. 2006. Community-based provision of development services in rural South Africa: South African Journal of Economics, 74:2.
- Chiodi, V, Jaimovich, E and Montes-Rojas, G. 2012. Migration, remittances and capital accumulation: evidence from rural Mexico. *Journal of Development Studies*, 48(8): 1139–1155.
- DRDLR (Department of Rural Development and Land Reform). 2014. Quarterly Report on Land Management Facility. Pretoria: DRDLR.
- DRDLR. 2015. Quarterly Report on Land Management Facility. Pretoria: DRDLR.
- Hall, R. 2003. Evaluating land and agrarian reform in South Africa. An Occasional Paper Series. Bellville: UWC, School of Government, PLAAS.
- HDA (Housing Development Agency). 2012. Implementation of Emergency Housing: Guidelines. Johannesburg: HDA.
- Henning, CHCA, Zarnekow, N and Kaufmann, P. 2011. Understanding rural migration in industrialised countries: the role of heterogeneity, amenities and social networks. *European Review of Agricultural Economics*, 40(1): 95–120.
- Hu, F and Wu, S. 2012. Migration experience of village leaders and local economic development: evidence from rural China. *China & World Economy*, 20(3): 37–53.
- ILO (International Labour Organization). 2015. Farm Workers' Living and Working Conditions in South Africa: Key Trends, Emergent Issues, and Underlying and Structural Problems. Pretoria: ILO.
- Manyaka, RK. 2014. Collection of municipal own revenue in South Africa : challenges and prospects. *Journal of Public Administration*, Vol. 49(1): 127–139.
- Mtungwa, D. 2014. The Impact of Land Legislation on Farm Dweller evictions, Thesis (M.A.), University of the Witwatersrand, Faculty of Humanities, Political Studies.
- UN (United Nations). 2014. Forced Evictions. Fact Sheet No. 25/Rev 1. New York and Geneva: United Nations, Office of the United Nations High Commissioner for Human Rights.
- Wegerif, M, Russell, B and Grundling, I. 2005. Still Searching for Security: the reality of farm dweller evictions in South Africa, Polokwane and Johannesburg: Nkuzi Development Association and Social Surveys.