

# CHAPTER 10

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## Farm Evictions and Increasing Rural Local Municipalities' Responsibilities

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## 10.1 Introduction

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 dwellers<sup>31</sup> and farm workers. The land reform policy programmes introduced fall under three pillars: land restitution, land redistribution and land tenure. However, an unintended consequence of the land reform programmes is the creation of a climate of uncertainty in the sector, which has resulted in illegal farm occupations and 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 in society and at risk of being evicted from the farms. In some instances, farmers relocate their workers to rural towns in order to avoid possible land reform measures emanating from legislation such as the ESTA. Local municipalities increasingly have 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 the 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, resulting in 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.

## 10.2 Legal Precedent Relevant to Human Rights and Farm Evictions

### 10.2.1 The Grootboom case (2000)<sup>32</sup>

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 water provision and sewage removal, and a house are all needed and 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 the 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.

### 10.2.2 Blue Moonlight case (2011)<sup>33</sup>

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

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<sup>31</sup> Farm dwellers are defined here as people living on farms in farm areas of South Africa (ILO, 2015).

<sup>32</sup> 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)

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

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.

### 10.2.3 Implications of farm evictions for rural local municipalities

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 so-called "meaningful engagement" (ILO, 2015: 192). However, these have become mere procedural formalities. Although evictees are supposed to contact the Department of Rural Development and Land Reform (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, 2005: 192), especially given the

long waiting lists, lack of available funding for housing and existing settlements that are bursting at their seams.

## 10.3 Extent and Scale 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 R3200 per month: 65.1% earned less than R1600 and 17.2% earned between R1601 and R3200. However, 2.5% earned more than R25,600 per month (Stats SA, 2013b) cited in (ILO, 2015:10).

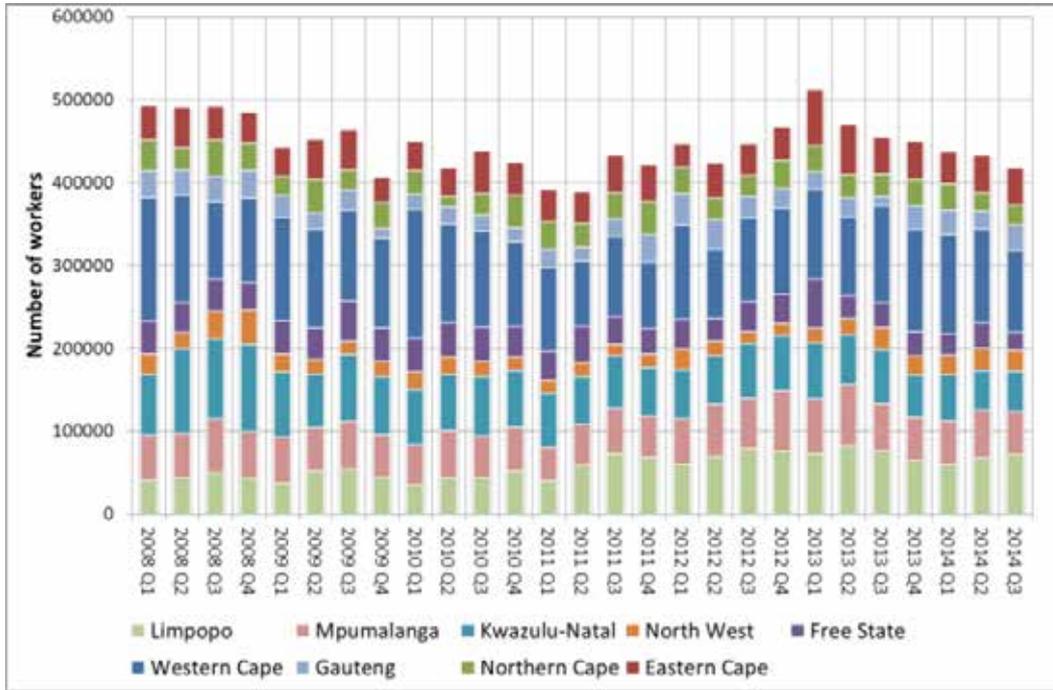
Between 2008 and 2014, the number of farm workers and labourers has declined throughout South Africa (Figure 79). The nature of farming is changing (ILO, 2015: 1), as "feudal relationships between farmers and farm workers are increasingly breaking down through movement off farms (for various reasons, 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 80 shows that, although numbers fluctuate, the number of farm workers and labourers show a persistent decline in three provinces: Free State, KwaZulu-Natal and North West.

Thirteen case study municipalities were selected, based on whether the municipality was (i) located in a rural province, and (ii) experiencing farm evictions (and thus was classified by the DRDLR as a "hotspot" for land tenure disputes). Furthermore, as the case studies were selected in order to provide a representative spread of all nine provinces in South Africa, 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).

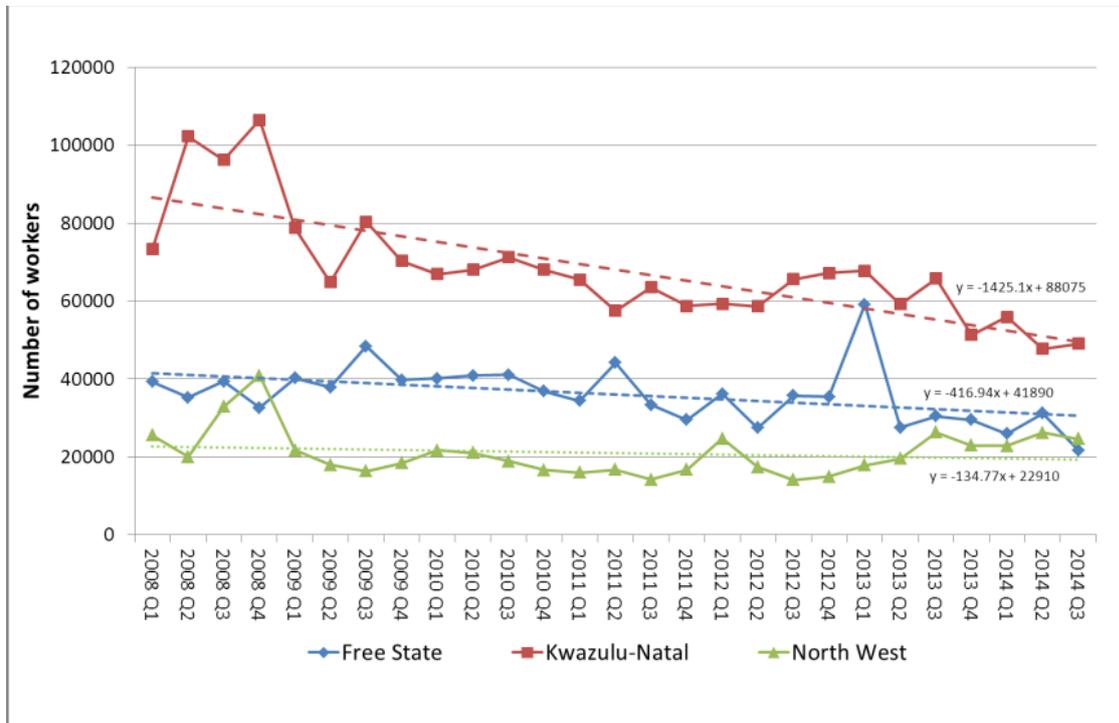
Within all the case study municipalities, employment in the agriculture sector has declined continuously since 2005 (Figure 81). This decline concurs with Figure 79, which shows a decline in the number of farm workers in most provinces in the country.

**Figure 79. Formally employed farm workers and labourers in the agriculture sector (2008–2014)**

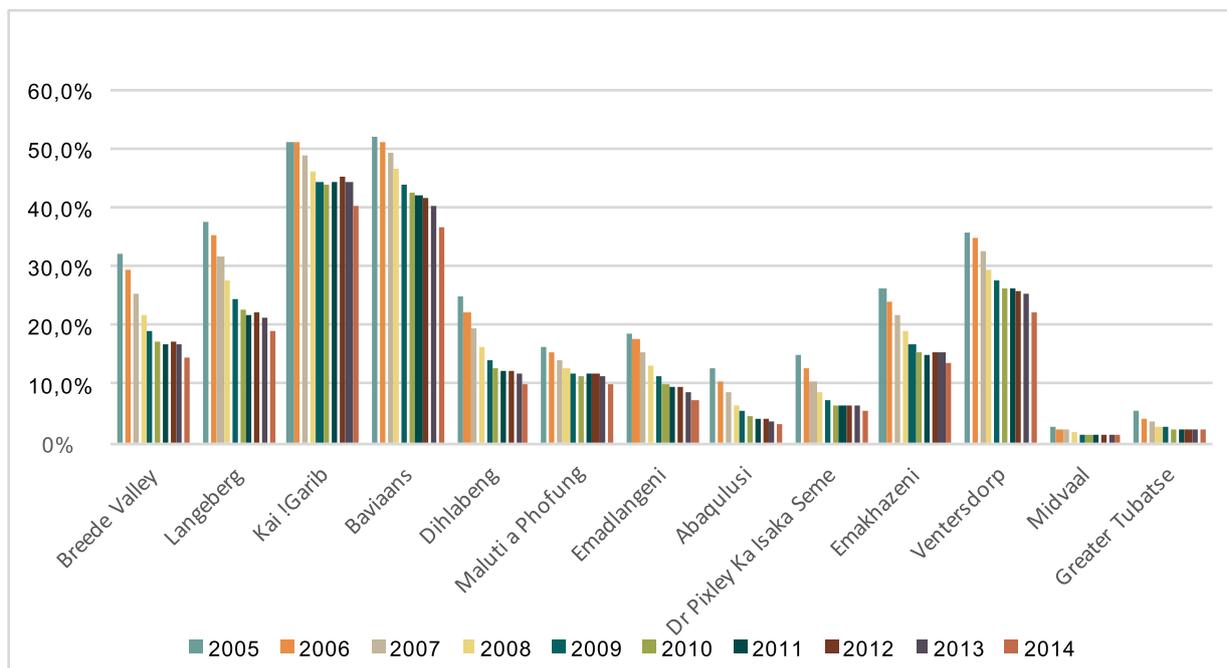


Source: ILO (2015: 19)

**Figure 80. 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 81. Employment in the agriculture sector for the 13 municipalities (2005–2014)**

Source: Global Insight (2015)

## 10.4 Findings

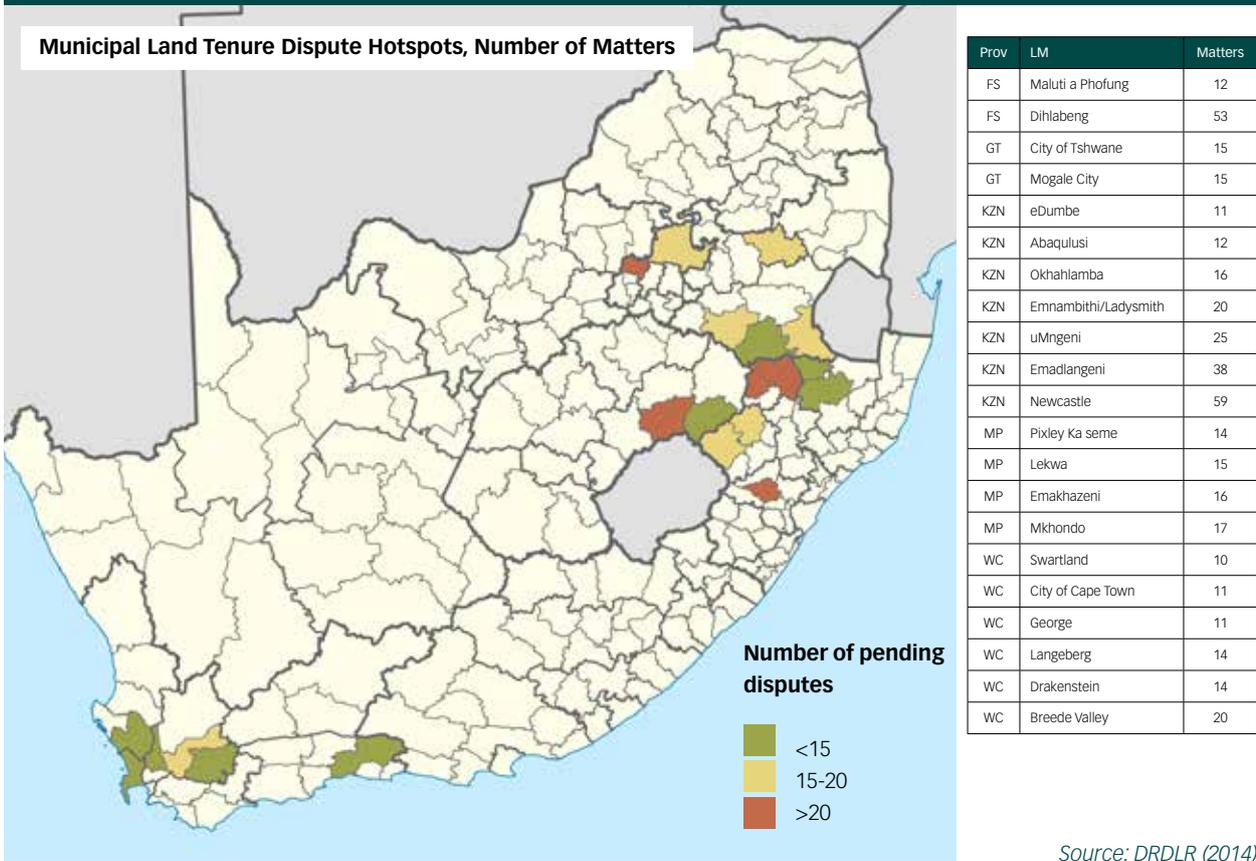
### 10.4.1 The scale of farm evictions problem

The maps in Figures 82 and 83 show the municipal hotspots, or the distribution of municipalities with at least 10 pending land tenure disputes for 2014 and 2015. Those with more than 20 disputes are shaded in red, while those with 15–20 disputes are shaded in yellow, and those with

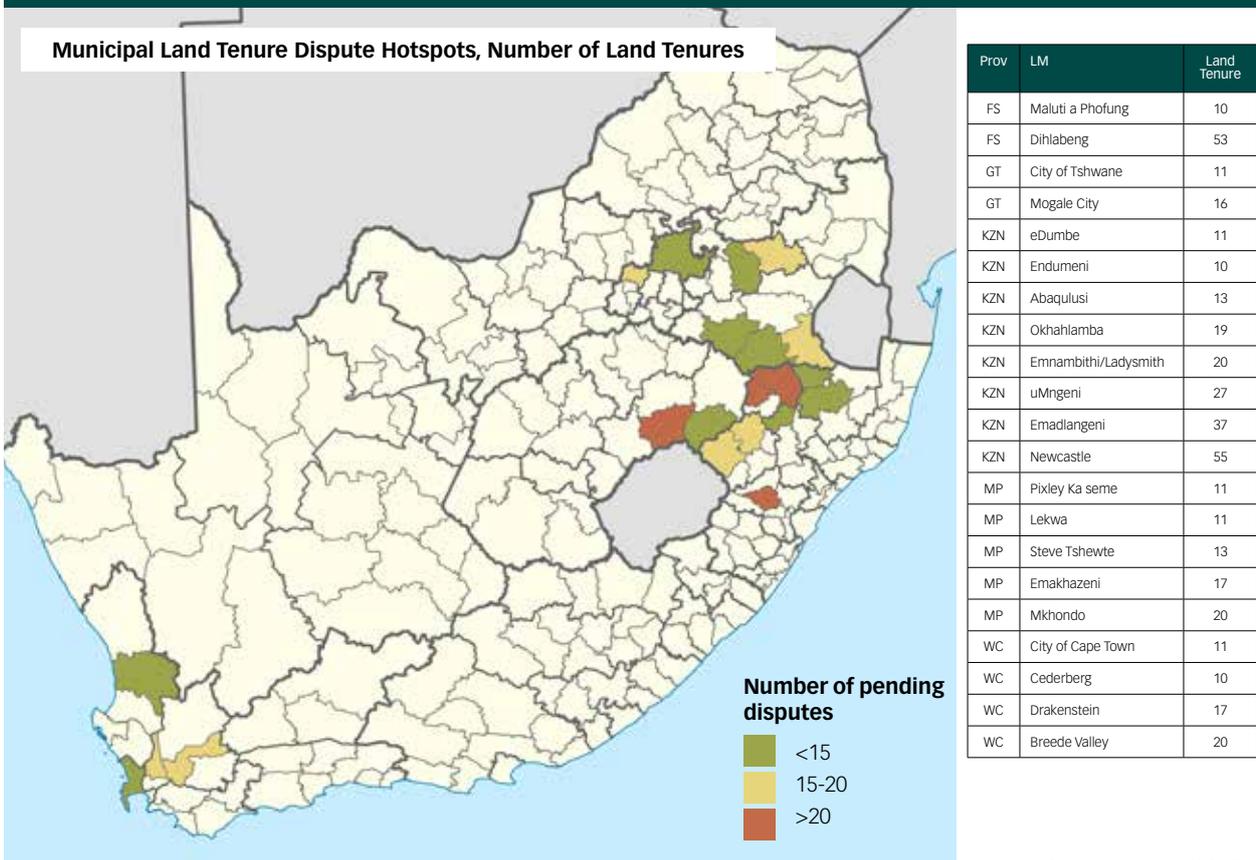
less than 15 disputes are shaded in green. The country as a whole has 21 municipal hotspots.

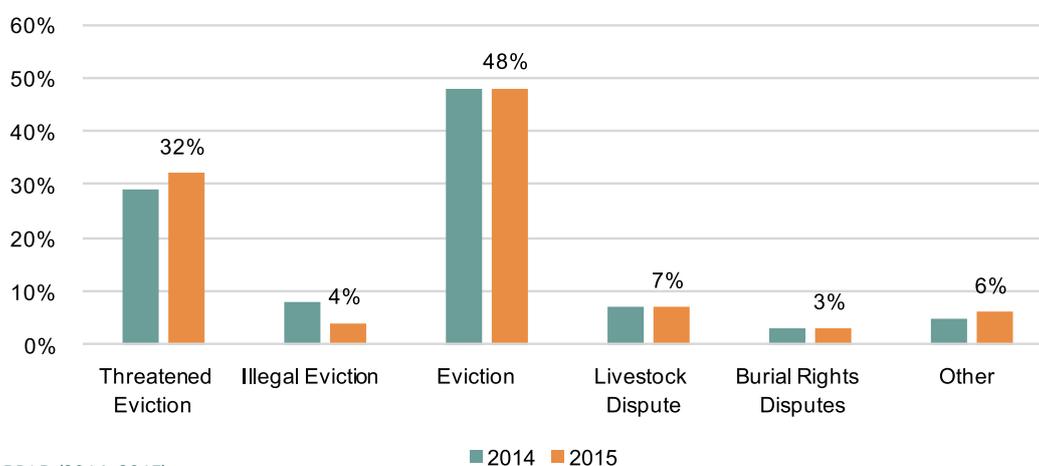
In 2014 and 2015, the municipal hotspots were found in KwaZulu-Natal, Mpumalanga, Western Cape, Free State and Gauteng. The provinces that contained municipal hotspots with more than 20 disputes pending (i.e. shaded in red) were KwaZulu-Natal, Mpumalanga and the Free State.

**Figure 82. Municipal hotspots in South Africa (2014)**

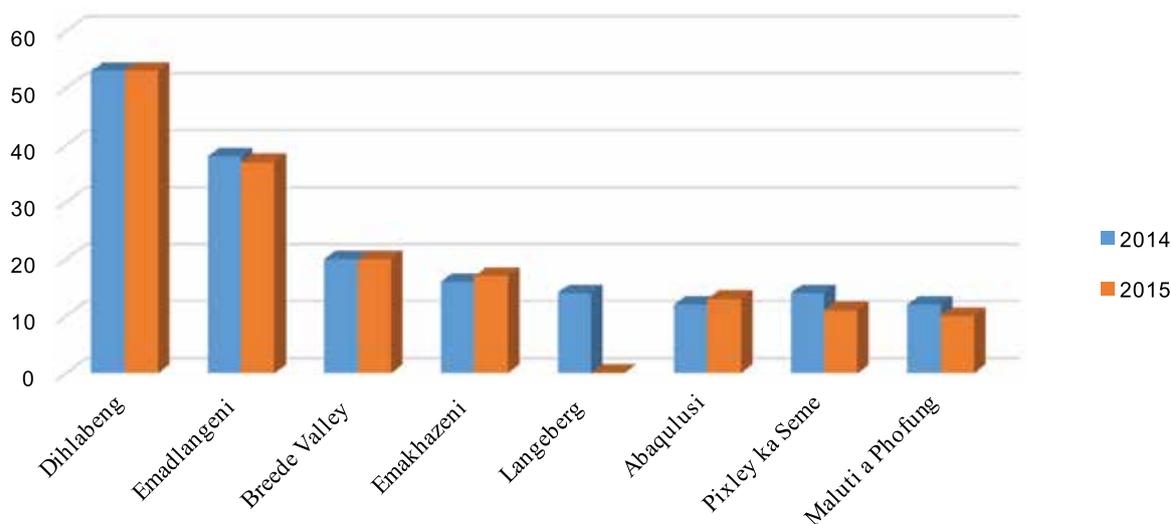


**Figure 83. Municipal hotspots in South Africa (2015)**



**Figure 84. Tenure security cases in South Africa (2014 and 2015)**

Source: DRDLR (2014; 2015)

**Figure 85. Land tenure disputes in municipal hotspots**

Source: DRDLR (2014; 2015)

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.<sup>34</sup> A third (32%) of all cases were threatened evictions, which might lead to either legal or illegal evictions (Figure 84).

When the number of land tenure disputes are compared between 2014 and 2015 (Figure 85), 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.

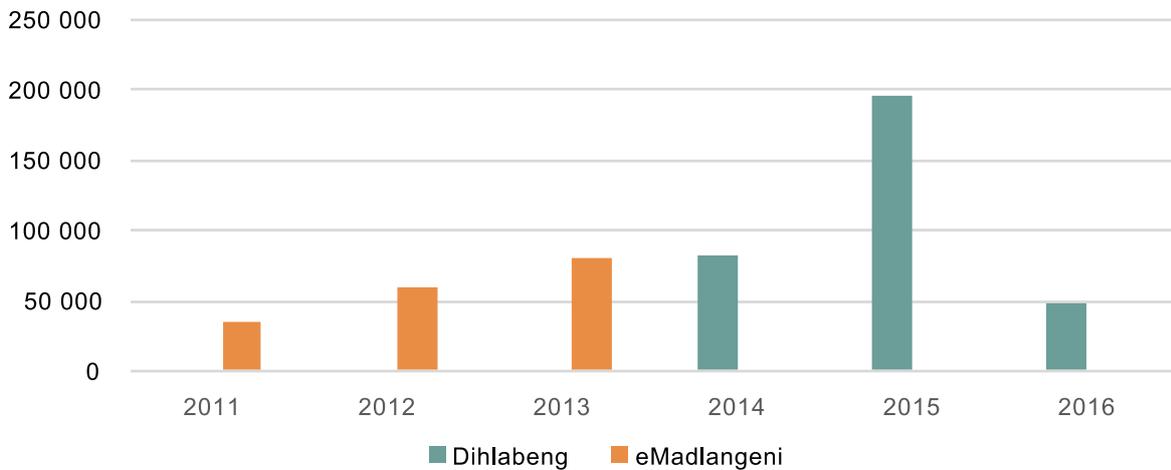
### 10.4.2 Cost implications of farm evictions

Farm evictions result in costs that are carried by the 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.

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<sup>34</sup> 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 86. Expenditure related to farm eviction incidents in Dihlabeng and Emadlangeni**



Source: Commission’s calculations based on municipal data 2016

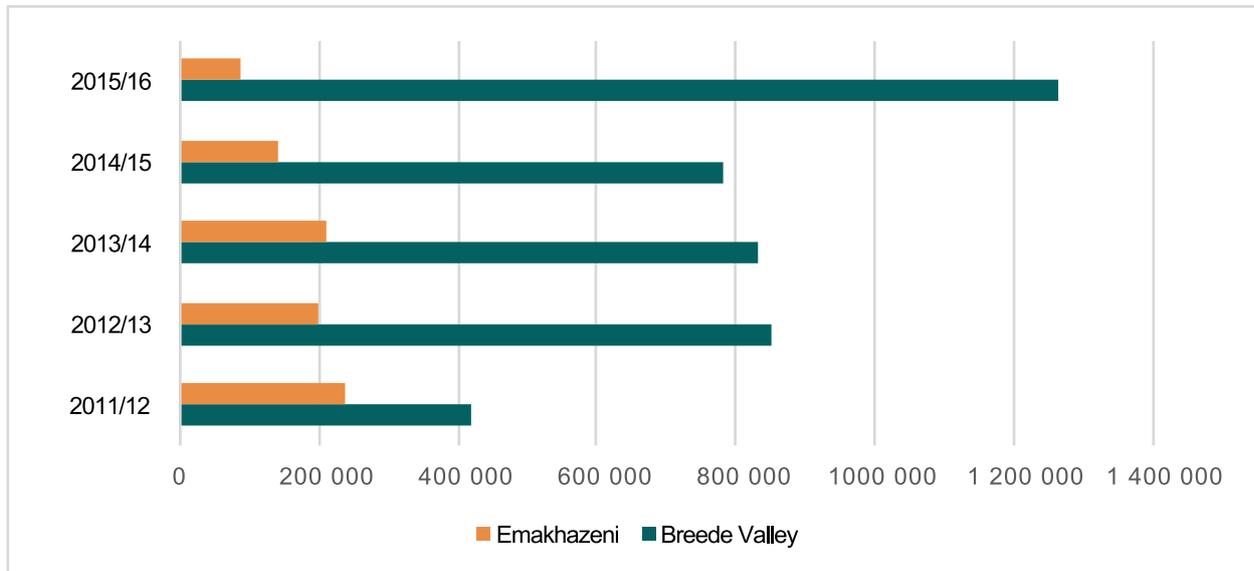
Figure 86 shows the direct costs for the two municipalities with the highest farm evictions: Emadlangeni in 2011–13 and Dihlabeng in 2014–2016.

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.

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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 86 illustrates, expenditure related to farm evictions in both Dihlabeng and Emadlangeni has increased over the years, and yet no intergovernmental fiscal (IGR) instruments are in place to support this type of expenditure.

Figure 87 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 rands (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 87. Expenditure related to farm eviction incidences in Emakhazeni and Breede Valley**

Source: Commission's calculations based on municipal data 2016

## 10.5 Conclusion

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.

## 10.6 Recommendations

*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 agri-villages programme.
  - Centralising the reporting of evictions and improve 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.