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Poverty and Legal Empowerment

A Minor Field Study of South African Farm Workers and
Dwellers

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“ The law, in its majestic equality, forbids the rich as well as the poor, to sleep under bridges, to beg in the streets and to steal bread. ”

(Anatole France, *Le Lyse Rouge*, 1894)

Abstract

Reducing and eradicating poverty is one of humanities pressing challenges, one that the UN Commission of Legal Empowerment of the Poor has taken on. This thesis describes the prevailing poverty of South African farm workers and dwellers and explores why the empowerment efforts that have been made have not lifted them out of poverty. The results of this study are contrasted with the results of the Commission.

The findings build on a case study undertaken in South Africa. They constitute first, the empowerment strategies employed by grassroot organisations; they put emphasis on education and awareness-building next to solidarity and organisation. The organisations' request for reform from the government is described in the realms of access to justice and the rule of law, labour rights and property rights. Second, a description of the constituting factors of farm workers' and dwellers' poverty, identified as a system of paternalism, a generally high unemployment, and unbeneficial inclusion in the formal economy.

The thesis concludes that the case of South African farm workers and dwellers do not fit into the Commission's understanding of the cause of poverty, which to the Commission is the exclusion from the rule of law, hence legal empowerment is but one part of reducing poverty.

Key words: South Africa, farm workers, poverty, emancipation, empowerment

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List of Abbreviations

ADB	Asian Development Bank
ANC	African National Congress
CCMA	The Commission for Conciliation, Mediation and Arbitration
CLEP	Commission on Legal Empowerment of the Poor
CRLS	Centre for Rural Legal Studies
DLA	Department of Land Affairs
DoL	Department of Labour
ECARP	Eastern Cape Agricultural Research Project
ESTA	Extension of Security Tenure Act
GEAR	Growth, Employment and Redistribution
ILO	International Labour Organisation
LEP	Legal Empowerment of the Poor
NGO	Nongovernmental Organisation
NP	The National Party, in Afrikaans: Nasionale Party
PLAAS	The Institute for Poverty, Land and Agrarian Studies
SCLC	Southern Cape Land Committee
UIF	Unemployment Insurance Fund
WFP	Women on Farms Project

1 Introduction

South Africa is often described as the *Rainbow Nation*¹ and is best known for its relatively peaceful transition from apartheid to democracy. It is a country that has gone from rights and privileges for the few to all its citizens. Numerous efforts have been made, partly in terms of legal empowerment of the poor, to lift the historically disadvantaged peoples out of poverty.

This thesis, however, describes the prevailing poverty of South African farm workers and dwellers and the efforts that have been made to empower them. In doing this, the thesis criticises the Commission on Legal Empowerment of the Poor² report that argue that poverty is due to the exclusion from legal systems and says that legal empowerment “is the key to unlocking vital energies needed to end poverty” (CLEP 2008:1).

1.1 Purpose

The overall goal of this thesis is the emancipation of South African farm workers and dwellers. Quite clearly a thesis is not going to accomplish that but in line with critical theory I believe that emancipation, “that is, the progressive freeing of individuals and groups from structural and contingent human wrongs” should be the political goal or normative ambition of social research (Booth 2005:12).

The purpose is to describe the situation of South African farm workers and dwellers in order to contrast it to the Commission’s assumptions and take on legal empowerment as poverty reduction. The reason for this undertaking is manifold. The CLEP-report is a top policy document that carries great weight partly because of the high profile global leaders and scholars that constitute the Commission (see also Stephens 2009:140). A document like this has the potential to be norm and agenda setting and therefore deserves attention and critical reading. The reason for raising the situation of South African farm workers and dwellers in particular is first, a reaction to the International Labour Organisation (ILO) call for giving more attention to poverty among the employed and their working conditions since unemployment is a weak indicator of poverty in developing countries (Tørres

¹ A term intended to describe the coming-together of the multi-ethnic/cultural population.

² Hereafter CLEP or the Commission. The Commission on Legal Empowerment of the Poor was established by the United Nations in 2005 and terminated in 2008. It was co-chaired by Madeleine Albright, former U.S. Secretary of State, and Hernando de Soto, Peruvian economist and connected to the UNDP. CLEP is, according to its homepage, the first global initiative to focus specifically on the link between exclusion, poverty and law (www.undp.org/legalempowerment/).

2006:159). Second, the farming world has been described as a “no go area being closed off from the outside world” (Sassarsson & Strandh 2008:20). This is partly due to farm owners controlling access to farm workers and dwellers, and partly to workers being disinclined to talk to researchers because of their vulnerability to the farm owners (ibid.:21)³. Third, land issues have often been ignored in poverty reduction strategy processes even though they are central to peaceful and sustainable growth (Toulmin 2006:2), and therefore merit interest.

This chapter continues with a discussion on emancipating research and the experiences and difficulties found in the undertaken empirical study. The next chapter deals with empowerment at large and gives a brief overview of the report of the Commission on Legal Empowerment of the Poor. Chapter three describes the efforts made by grassroot organisations in trying to improve the situation of the rural poor and the demands that they have on government and on top down changes. Chapter four is devoted to describing the precarious situation of farm workers and dwellers in South Africa. The final chapter concludes the findings of the study and presents the criticism of the Commission’s report.

1.2 Method

This section deals with the normative underpinnings of this study and the methodological choices that have been informed by them.

1.2.1 Objective and Practice

Without examining the ins and outs of critical theory this thesis adopts the broader philosophy behind it as expressed by Booth: “The critical theory tradition is mainly (though not wholly) important in relation to how we might think about what is reliable knowledge (epistemology), and what should be done (emancipatory praxis). [---] All social and political theories have normative implications, to a lesser or greater extent, either implicitly or explicitly.” (2005a:264). The normative implication of this thesis is that empowerment is good and sought after and that “[w]e don’t have to live suppressed by human wrongs” (Booth 2005:11).

Reliable knowledge is here defined as the experiences of the farm workers and dwellers as described by them and the people working with them. Hence, the critical theory philosophy is complemented with Monica Dalen’s take on grounded theory, which is a study approach grounded in the empiric material (2007:50). In this thesis it is the description of farm workers’ and dwellers’

³ See 4.2.

situation that is the empirical material that creates the base for criticising the CLEP-report.

How does the emancipating goal of critical theory translate into practice? Emancipating research can be defined as “research which attempts to centralize experiences of a marginalized group” (Truman et. al. 2000:25). In order to do this, semi-structured life world interviews as presented by Steinar Kvale (1997), was conducted. Dalen was helpful in the preparations for these interviews. She argues (in line with Truman’s definition of emancipating research above) that a qualitative interview can give insights in phenomena that deal with people and situations in the social reality of these people by focusing on the dimension of experience (2007:11). My ambition has been to make sure that the research has not only, not been harmful to the subjects, but has also been a pleasant experience. I have, when conducting the interviews, followed the practice of Susan Armitage. She prioritises that the respondents find the interview to be a good experience over getting all the necessary information (reference from Johansson 2005:256)⁴.

1.2.2 The Case Study

The empirical research for this thesis was conducted in the two southern provinces of South Africa, Eastern and Western Cape during June to August, 2009⁵. Ten interviews were conducted with farm workers and dwellers. To reach a more generalized understanding of South African rural life a researcher and a leader at two NGOs dealing with farm workers and dwellers, and the general secretary of a union were interviewed. I also participated in a women’s workshop given by Southern Cape Land Committee (SCLC) to see emancipating work in practice. Two farmers, a white man and a black woman, were also interviewed to give a deeper understanding of the relationship between employers and employees. An inspector from the Department of Labour was interviewed which was interesting both for general views and in terms of enforcement and access to justice for farm workers. Apart from the interviews and participatory observations I gathered material and reports from different organisations to get a sense of general trends and frequently occurring concerns.

About half of the interviews were held with one respondent and half were group interviews, all in all 38 individuals. The initial process of identifying an appropriate sample was inspired by Dalen’s description of ‘theoretical sample’ that is, looking for maximum variation in the studied phenomenon (2007:51⁶). I intended to reach both farm workers and dwellers, in other words people living on farms but not working there, people living and working on farms, people working

⁴ For an account of how this materialised see 1.2.3.

⁵ The study was financed by SIDA through a MFS (Minor Field Study) scholarship and by Lund University Initiative on Legal Empowerment of the Poor through LEP financial support for fieldwork.

⁶ Reference to Strauss and Corbin (1998). Basic of Qualitative Research. Grounded Theory Procedures and Technique. London: Sage Publications

on farms but not living there. I also wanted people with different levels of awareness, education and organisation. In the end this was achieved. The referents fell well within my aspiration, some had never heard of or engaged the work of NGOs or unions, and others had participated in workshops and were part of farm committees, others were heads of union branches, some were IsiXhosa-speakers and some spoke Afrikaans. Yet there were challenges along the way.

1.2.3 Challenges in Execution

The attempt of finding respondents was difficult due to the vulnerability of the group⁷ (Dalen 2007:63f). For example I received no replies at all when I had an ad placed in the local newspaper in Grahamstown, Eastern Cape, asking for farm workers and dwellers willing to tell their story. Hence in order to reach individuals that had had no contact with NGOs or unions I had to find other channels. This meant that I asked people unloading vegetables in town if they were farmers and if I could interview the workers. It led me to go with the Department of Labour (DoL) on an inspection tour. The vulnerability of the group also brought about that so many of the interviews are group interviews, as people then tended to be more talkative and at ease. But sometimes one person would take up space on the expense of others. This was dealt with by addressing specific, under-represented, persons when asking questions.

Some of the interviews were conducted in English but some required the use of an interpreter. I did not use professional interpreters. In most instances the interpreter functioned as a gate-keeper in that they were part of the bigger community, an NGO or union. Generally, when I had someone to introduce me I found that the interviewees were more confident with me. Still, some respondents found it difficult to express their feelings and thoughts when talking to me. The distance between me, as a white academic, and the respondents was sometimes great due to the racial component of the farm occupants' context. At one place the person who accompanied me there said that this was the first time the respondents had sat down and talked like this with a white person⁸.

The fact that they seldom or even never spoke in this manner with white persons most probably made them less inclined to open up. However, I had interviews where the respondents stated that they felt very good about being able to talk about their situation to someone who was truly interested: "I appreciate you coming here to listen to us and to take back what we have spoken about and I am feeling much better", said 'Amanda'⁹. 'Preston', another respondent, called me about a week after the interview saying that it had given the group of people I had met hope and energy to keep up the work of fighting the pending eviction. I

⁷ The vulnerability was touched upon in the purpose (section 1.1) and will be further discussed in chapter 4, more specifically in 4.2-4.3.

⁸ See also 4.2.

⁹ All the names of the respondents, except for the people at NGOs or unions, are fictive.

experienced that in the interviews where respondents stated that they enjoyed being interviewed I received thicker descriptions and a richer material.

On the other side of the scale I conducted an interview with 'Anna', a female farm worker, with the permission of the female farm owner, while she, the owner/employer, was working very close by. So close that she even asked me after hearing some of my questions: "Are you from the Department of Labour?" meaning I asked the same kind of questions as they do and it gave me a strong sense that she disapproved. More so, the woman that I was interviewing became uneasy and maybe even scared and did not really want to answer my questions after that. Not only did she probably at first feel obliged to give the interview since her employer asked her to but also while giving the interview she might not have felt free to give the answers she would have given had her employer not been there. This violated not only my goal of the respondent feeling good about the interview experience but also of general research ethics. The mistake from my part was created by initial lack of understanding of the nature of the relationship between employer and employee in rural South Africa that in many instances still prevail¹⁰.

¹⁰ See also 4.2.

2 Empowerment in Theory

This chapter handles empowerment as a concept (2.1) and positions legal empowerment of the poor in the area of a rights based approach to development (2.2). The last section of the chapter (2.3) gives an overview of legal empowerment as understood by the Commission.

2.1 Empowerment

Empowerment is comprehended as situated within the realm of human development which is “development that prioritises human well-being and aims at enlarging opportunities, freedoms and choices” (Banik 2009:9). Empowerment and emancipation¹¹ is defined in many different ways in the literature.

For the purpose of this thesis Kabeer’s definition is adopted because of her emphasis on the connection between poverty and empowerment. She implies that empowerment “refers to the expansion in people’s ability to make strategic life choices in a context where this ability was previously denied to them” (2002:19). She highlights the difference between having power and being empowered and stresses the logical link between poverty and disempowerment. If you cannot fulfil your basic needs you cannot make meaningful choices. Grobakken understands this as empowerment being both a dimension of poverty and a strategy to reduce and eliminate it (2006:207).

Kabeer’s definition is supplemented with Ruane & Todd’s saying that emancipation is “a process by which participants in a system which determines, distorts, and limits their potentialities come together actively to transform it, and in the process transform themselves” (2005:238)¹². This is done to highlight the change that happens in a person being empowered and to understand empowerment as a process. A process of emancipation has taken place when a person experiences a higher degree of freedom. Thus, poverty does not only imply lack of financial means or low income but depends also on your capability of achieving “certain ways of living that one has reasons to appreciate” (Sen 2002:103ff)¹³. Empowerment means the reduction of poverty, which is basically development. Hence the following discussion is on development and rights.

¹¹ Throughout this thesis the terms empowerment and emancipation will be used interchangeably.

¹² Also Wyn Jones says that emancipation is a “‘process’ rather than an ‘endpoint’, a direction rather than a destination” (2005:230).

¹³ Sen defines poverty as “deprivation of basic capabilities” (2002:36, see also 127).

2.2 A Rights-Based Approach to Development

There is something appealing with rights; as a rights-bearer you can claim your rights, in that way having a right is empowering in itself, instead of *asking* for something one can *claim* it. As expressed by Geoff Budlender, one of South Africa's leading public interest litigators: "Rights help ensure that people are not mere objects of political policy and government bureaucracies, but bearers of rights that require their claims to be taken seriously. They fundamentally change the power relations between citizen and state" (quoted in Liebenberg 2006:195¹⁴). Tørres argues that recognition of a rights-based approach boosts the likelihood of long-term sustainable development where developing countries can take responsibility for their own future (2006:174).

The concept of legal empowerment was introduced quite some time before the creation of the Commission on Legal Empowerment of the Poor (see for example Golub 2009:103 and Stephens 2009:135f) and is understood as a rights-based approach to development. Stephen Golub defines it as "the use of legal rights, services, systems, and reform, by and for the disadvantaged populations and often in combination with other activities, to directly alleviate their poverty, improve their influence on government actions and services, or otherwise increase their freedom." (2009:105)

The next section provides an overview of the Commissions approach on legal empowerment of the poor as presented in "Making the Law Work for Everyone, Volume I" (2008). The reason for not drawing on Volume II, the case studies from the working groups that Volume I is supposed to build on, as well, is that Volume I is the Commission's primary policy document and is worthy of being addressed as such.

2.3 Legal Empowerment of the Poor

The report from the Commission on Legal Empowerment of the Poor argues that "four billion people around the world are robbed of the chance to better their lives and climb out of poverty, because they are excluded from the rule of law" (CLEP 2008:1). The assets, work and businesses of the poor are insecure, unprotected and less productive than they might otherwise be. The poor operate outside the shelter of the law, legally dis-empowered as workers, businesspeople and owners of property. If there are legal protection and systems in place they are not accessible to the poor. The legal foundations of employment and market interaction, such as contracts and property rights, are unavailable to the poor. The poor therefore live and work in the informal economy (ibid:25ff). Their labour is

¹⁴ The quote is from a LLM lecture, University of the Western Cape, September 10 2003.

exploited and their assets remain insecure and unproductive, instead of living under the shelter of the law they are often oppressed by it (ibid.:2).

Legal empowerment is defined as “a process of systemic change through which the poor and excluded become able to use the law, the legal system, and legal services to protect and advance their rights and interests as citizens and economic actors.” (ibid.:3, see also another yet similar definition ibid.:26). The Commission’s policy recommendations build on four pillars:

- *Access to justice and the rule of law* e.g. repealing laws that are biased against the poor and facilitate organisations working for the excluded.

- *Property rights* e.g. broadening the availability of property rights and create a functioning market for exchanging assets.

- *Labour rights* e.g. improving the quality of labour regulation and social protection.

- *Business rights* e.g. making it easier and more affordable to set up a business. (ibid.:5ff).

The Commission states that legal empowerment, and its policy recommendations, cannot substitute other development programmes such as education, public service, and infrastructure, rather it complements them and creates “conditions for success” (ibid.:5). They stress that eradicating poverty will be difficult without legal empowerment (ibid: 11) yet their core message is more bold: “making the law work for everyone offers protection and opportunity for all” (ibid.:22). The Commission talks about empowerment in general in that “the poor can only escape poverty if they are empowered to help themselves” (ibid.:16,22). The main conditions for legal empowerment are acknowledged as identity and legal status, information and education, along with organisation and representation (ibid.:26f), how they are achievable is, however, not discussed.

The purpose of legal empowerment is described as the “expanding protection and opportunity for all: protecting poor people from injustice – such as wrongful eviction, expropriation, extortion, and exploitation – and offering them equal opportunity to access local, national, and international markets” (ibid.:28).

3 Empowerment Efforts - existing and sought after

This chapter first describes the legal empowerment efforts that have been made since the end of apartheid (3.1). Second, the work that is being done bottom-up by, for and with farm workers and dwellers (3.2) is described and their articulated demands for a top-down reform presented (3.3).

3.1 Legal Empowerment in South Africa

South Africa made the accomplishment of a relatively peaceful transition from the system of legal racial segregation of apartheid to democracy in 1994. Part of the apartheid policy was the Native Land Act of 1913, which gave 87 percent of the land to the whites and 13 percent to the African and coloured people. Yet Africans and coloured worked on the white-owned farms during the apartheid and had no legal status, they were not considered workers (Manganeng 2009, Pekeur 2009).

The new democratic government tried to address these and other past grievances when for example drafting the constitution. Thus the country's constitution is deemed one of the most progressive in the world. A human right-based approach to development is mandated in the South African constitution and the inclusion of socio-economic rights was predicted to ensure the protection of the interests and empowerment of disadvantaged and poor groups (Liebenberg 2006:168f). It seems clear that compared to the apartheid period the African and coloured populations in general have been empowered.

Ben Cousins at the Institute for Poverty, Land and Agrarian Studies (PLAAS) agrees that a large sub-population of South Africa's rural poor has seen a significant effort of 'legal empowerment' in the post-apartheid era. He argues that these poor are clearly located *within* the formal economy and that initiatives 'from above', by a democratic state, emphasizing human and socio-economic rights, in an effort to break with an oppressive past, have been met with civil society activism and mobilization 'from below'. Cousins argue that numerous strategies recommended in the CLEP-report have been implemented in South Africa, "including mobilization, establishing public-private partnerships, engaging with stakeholders, and linking with researchers." (2009:9)

Liebenberg argue that “the South African experience thus far suggests that integrated, justiciable¹⁵ human rights guarantees can provide the poor and marginalized with opportunities to assert their needs and interests in developmental processes” (Liebenberg 2006:169). What will be shown in the following sections is some of the efforts that have been made but also the areas where more needs to be done.

3.2 Bottom-Up Approach on Empowerment

The Asian Development Bank (ADB) claims that legal empowerment is compromised of three tiers: First, awareness of rights, the law and legal institutions. Second, understanding of the use of formal and informal dispute resolution bodies and executive agencies that decide on rights. Third, confidence and capacity to assert rights (Stephens 2009:137)¹⁶. Liebenberg argues that civil society organisations capable of mobilizing around fundamental reforms and strategically using legal actions to support their goals are perhaps the most important factor for legal strategies to be useful in facilitating pro-poor development (2006:194). The South African non-governmental organisations (NGOs) that were consulted in this study have changed their strategies over the years since the end of apartheid to raise awareness, educate and build confidence and capacity. Their work will now be described.

3.2.1 Awareness and Capacity

The most common answer given by farm workers and dwellers when asked what they think is needed to change the situation of their group, was education. This ring well with the Commission’s statement that: “Voice requires education, which, like information and identity, is too often asymmetrically available to the rich and poor.” (2008:28)

Manganeng at ECARP expresses that accessing information is a problem for farm workers and dwellers. ‘Freeman’ asks for “more organisations [---] to tell people about their rights.” Most of the respondents that know their rights ascribe it to having been educated and informed by NGOs and unions. ‘Sandy’ describes the empowerment that she has experienced after having received some training from an NGO (SCLC). “Most of the problems on the farms we can sort out, we don’t have to go to SCLC [anymore].” She says: “It feels good for me, it feels

¹⁵ *Justiciable* means capable of being decided by legal principals or by a court of justice according to <http://www.merriam-webster.com/dictionary/justiciable>.

¹⁶ To compare with CLEP that focus on access to justice and the rule of law, property rights, labour rights and business rights. Information and education is described as a condition in the CLEP-report. See 2.3.

very good.” The outcome of the affiliation with SCLC can not be understated. The new owner of the farm their families have been living and working on for generations wants to evict them. When asked what they would have done had they not met SCLC ‘Preston’ and ‘Sandy’ says: ”We would have been out. Sitting on the street or in the bushes or wherever”. Unfortunately¹⁷, they are still facing eviction, yet feeling that they are in charge of their own lives.

Pekeur at Sikhula Sonke thinks that the education that they as farm women received from Women on Farms Project (WFP¹⁸) was crucial for creating a union. “Through education we became empowered. We know our rights and that is why we are going strong today. Because we were informed we know what is right and what is wrong. We know how to challenge these things.”

It has been shown in this section that farm workers and dwellers themselves appreciate and prioritise education as a means of empowerment. The next step is coming together and organising.

3.2.2 Organisation

Once you have knowledge and awareness you need to put it into practice. The Commission says that: “Part of the problem is that the voices of the poor are not heard” (2008:14). The voices of the poor can be more audible through organising because when trying to enforce your rights it is an advantage to be more than one person “so that one person can’t be targeted because everybody is standing up in solidarity” (Pekeur 2009). Unfortunately, less than 5% of farm workers are unionised¹⁹ (CRLS undated paper). Manganeng says that if “there is going to be a meaningful change farm workers need to organise. The change, if it is to happen, has to be [on farm workers’ and dwellers’] own terms, what they see as rural development and transformation.”

Organisation on farms means both unions and farm committees. Farm committees are less formal but one of the first steps towards empowerment. There is a difference between the level of organisation and lack of capacity/empowerment in the Eastern compared to the Western Cape. In the Eastern Cape farm occupants talk about organising and protesting, but Lebogeng Manganeng says ”for them to reach that stage quite a lot needs to be done.” In an article Manganeng says that the success of farm committees is dependent on their structure and function being rooted in the strength of the farm workers and dwellers (2009a:21). ‘Herman’, organising a farm committee outside Mosselbay in the Western Cape says that the committees give the farm workers and dwellers hope. “But the people are not standing together²⁰; they are still sceptical of the

¹⁷ Due to conditions that will be discussed in 3.3.

¹⁸ WFP is an NGO in Stellenbosch.

¹⁹ Partly due to reasons discussed in 4.3.

²⁰ Arguably due to the problems that will be presented in chapter 4.

process”. In the Western Cape around Stellenbosch protests are happening now, like the Week of Action²¹.

Yet even a low level of organisation and education, such as farm committees, means that the farm occupants can start to take their lives into their own hands. “They are now able to enforce some of their rights without the involvement of [NGOs] or the DoL. But when there were no farm committees this was not the case. Now they are able to talk to the farmers and the issues are resolved quickly and with no big expenses.” (Manganeng 2009)

‘Amanda’ describes that this form of organisation gives a sense of solidarity since “[the union] means a lot to us, because if we have a problem they are standing right behind us.” Her colleague says: “With the union involved it has changed because at that time the farm workers must listen to the farmer, you must respect the farmer but now when we have the union it must come from both sides. You listen to me and I listen to you from most sides.” This has been achieved due to organisation.

Angela Conway says that in order for South African farm workers to rise out of poverty the informed and mobilized organisations and movements of people have to “challenge the current skewed power relationships. For SCLC this is tied to agrarian transformation – the right and ability of all to access the means of production”. Hence, the bottom-up advancements must be met with top-down policies. Because what happens to a person that has become aware of his/her rights and then realize that those rights are not enforceable due to corrupted government strategies?

3.3 Top-Down Legal Empowerment

“Rural and land issues have been shamefully neglected by government since 1994, with very small allocations the norm (around 1-2% of the overall budget), despite fine-sounding rhetoric at election time” (Cousins 2009a). Wendy Pekeur says “we have been voting since 1994 but farm workers are worse off so why should we continue to vote?” (Black Sash 2009) The bottom-up efforts have to be met by top-down practices. So what do grassroot organisations want from government?

The organisations interviewed all say that the state must play a pro-active role in facilitating sustainable rural development. Rather than promoting urbanisation they need to prioritise support to agrarian transformation and to rural settlements. Farm workers in particular need to be included in policies and plans of rural development and agrarian transformation. Farm workers and dwellers need land and housing where they are secure and can implement various livelihood

²¹ The Week of Action took place 27 July to 1 August 2009. Farm workers in Stellenbosch protested and demanded an end to inhumane forced evictions, appalling housing conditions and retrenchments.

strategies, they should for example be supported to be able to run farms themselves. In terms of enforcement it is the responsibility of the government to make sure that the policies which extend rights, like minimum wages and working conditions, are enforced and upheld on farms. (Conway 2009, Pekeur 2009, Manganeng 2009)

Three of the Commission's four pillars, access to justice and the rule of law, labour rights and property rights, will be used here to discuss the efforts that the grassroot movements would like to see from the top.

3.3.1 Access to Justice and the Rule of Law

Access to justice and the rule of law is essential for all other efforts of legal empowerment. As we have seen access has improved in general in South Africa during the last fifteen years. Patrick Sambo at SCLC says that constitutionally people are equal²² but in practice the law is not accessible to people without money. Hence, "it seems like laws are protecting us but in the end it is almost just a smoke screen" (Sambo at the SCLC workshop 2009). Evictions take place even though there are laws, according to Strydom because legal aid does not work (2004:121). Many farm workers and dwellers testify to feeling like they are excluded from the rule of law: "Nothing changed after apartheid was gone. The owner did not recognize our human rights. We did not get stuff like Unemployment Insurance Fund (UIF), we did not get maternity leave, and we had to work on public holidays and sometimes on Sundays, which he did not pay us for." In other words there are laws in place but they are not enforced.

The DoL-inspector became upset when asked whether he felt that the capacity of the department was sufficient saying "double the staff that we have and it would still not be enough." There are 600 labour inspectors in the whole of South Africa covering every sector, security, wholesale, retailers; all vulnerable sectors with low levels of organisation (Pekeur 2009). According to Faundez "[l]abour inspection is one of the weakest links in the labour law system of most development countries" (2009:163).

Moving on from enforcement to conflict resolution there have been complaints on whether the South African magistrates and justices are sensitive to the plight of farm workers and dwellers. The Commission for Conciliation, Mediation and Arbitration (CCMA) is an independent dispute resolution body, established after 1995, which for example conciliate work place disputes. Their commissioner have been criticised for not being sensitive to farm issues. Settling

²² In order to have any chance of access one has to have a legal identity and the two key conditions for legal empowerment, according to the Commission, are identity and voice (2008:26). All people in South Africa are supposed to have a legal identity. However, "many are struggling to access these and corruption levels in the Department of Home Affairs are high. [...] One can do VERY little without these documents" (Conway 2009). This is, however, not an issue that has been raised by the farm workers and dwellers that I have met.

a dispute is not always the best option for farm workers or dwellers if you settle for money and the people are still evicted. (Pekeur 2009)

Certain rights are in place but because of where the farm occupants are situated, not only geographically remote but also socially and economically on the outskirts of society; their access to justice and the rule of law is limited. It is still true to a certain extent that farm workers and dwellers are too poor, in terms of financial means, knowledge and confidence, to benefit from the justice and rule of law in South Africa. One example of this is how an evicted family, 'Herman's', took a settlement in the CCMA, when they could have gone to arbitration, because they did not have money or food in the house. In the end they had to take the money to feed themselves and their children in the short run.

The state must be serious in enforcing the laws, in supporting NGOs and other organisations that give legal aid to farm workers and dwellers, and in educating the legal staff and courts on farm people issues. Liebenberg says that broad-based human rights education is needed, as well as access to legal services and courts. Maybe most importantly changes in the legal culture are needed "to make judges and lawyers more receptive to socio-economic rights" and lastly proper implementations of judgments are crucial (2006:194).

How does legal empowerment and access to justice work for farm workers and dwellers in terms of labour rights?

3.3.2 Labour Rights

Tørres says that there is a three-fold strategic relationship between labour rights and development. First, enforced labour standards in themselves provide a higher level of development by removing e.g. discrimination, forced labour, and child labour. Second, labour standards give people a better chance of controlling their lives through organisation and bargaining. Third, labour standards have a positive impact on the establishment of institutions that can contribute to development policies and practices (2006:162).

There are different labour laws in place in South Africa and according to Manganeng they are "quite straight forward". For example there is the minimum wage set by the Sectoral Determination since 2003.

"A lot of business people have said [the labour laws] are rigid. It is difficult nowadays in SA to hire and fire because of the laws. [---] When the law has to take its course they will close down their businesses. Thus a lot of people will lose their jobs. And it is very difficult to find a job in SA" (DoL-inspector 2009). 'Kenneth', an Eastern Cape farmer testifies to this and says that the minimum wage is a problem for farmers. It "has gone up between 10 and 13 % each year for the last five or six years and I can only speak for pineapple, but last year we got the same rand per ton as we did in the year 2000. So that is why we only got half the farmers we had eight years ago" ('Kenneth'). Angela Conway at SCLC says that: "Some say that the imposition of minimum wages is also having a negative effect as farmers are laying off people as they cannot afford minimum wages. This is still to be really tested and researched." The minimum wage went up 4,5% (not

10-13%) in 2008, an increase that was consumed by the inflation (Sikhula Sonke 2008).

Although there is a problem of farmers dismissing workers and an already high unemployment, people need to be able to live of the wage they are earning. Sikhula Sonke is taking part in a living wage campaign and says the minimum wage is not enough for people to survive on, it does not allow people to meet their basic needs (Pekeur 2009). Pekeur says “Farm workers do contribute to the economy of the county, they feed the nation, and they produce the food that we are eating. The contradiction is the fact that they starve, they find it difficult to feed themselves and their families.”

Farmers comply on a selective basis with the Sectoral Determination that sets the minimum wages (and with other labour regulations²³); hence it has not fundamentally changed the working, living and tenure conditions of farm workers. The low level of compliance is largely due to poor enforcement²⁴ and low levels of organisation amongst farm workers²⁵. ECARP argue that for “the Sectoral Determination to work effectively in addressing the living conditions of farm workers, they have to be linked to a broader agrarian transformation strategy” (Naidoo et.al. 2007:44). Manganeng says that it is all connected to land reform which will be discussed in the next section.

3.3.3 Property Rights

The Commission argues that: “Secure and accessible property rights provide a sense of identity, dignity, and belonging” (2008:34). Formalised property rights do exist in South Africa and the right to private property is protected in the constitution (Pekeur 2009). The problem is the historical injustice that still prevails. The context is different from the CLEP-report’s; in South Africa a minority still owns the majority of the land. For South African farm workers and dwellers accommodation “is about shelter even more fundamentally than it is about income, assets, or access to capital markets” (Golub 2009:112). The ownership of land is crucial because it can address many of the farm workers’ and dwellers’ other problems such as paternalism and dependency, income-, and food insecurity²⁶. Patrick Sambo at SCLC says that people need land for secure tenure and to be able to make a living.

The unequal land distribution is vast, whites still own 83% of the land, meaning only 5,2% has been redistributed since the end of apartheid (PLAAS

²³ This is also shown in 3.3.1.

²⁴ As shown in 3.3.1.

²⁵ The low level of organisation is discussed in 3.3.2. It is partly due to high unemployment and income insecurity described in 4.3.

²⁶ These problems are presented in chapter 4.

2009:1). Hence, the land reform program²⁷ is not working at the pace one would hope. It also does not address the needs of farm workers and dwellers; instead land reform focuses on redistribution of land for agricultural purposes. Hence, the much broader and more complex nature of farm dwellers needs, housing, services, and small-scale agriculture for example, are not addressed (Conway 2009).

The limited progress in the land reform will be discussed briefly. Pekeur says that the right to private property is problematic and that should be taken out of the constitution. Sikhula Sonke supports expropriation of farms, because “there is no way one family can have 20 farms when there is so many landless poor people in South Africa”. Pekeur contributes the fact that the right to private property is still in the constitution to ANC’s negotiations with NP in the transition to democracy. Also Centre for Rural Legal Studies (CRLS) argues that the reason lies some time back as well as in today’s political climate, which prevents the government from taking action to expropriate and redistribute the land. “Partly in response to pressures from international lending institutions, particularly the World Bank, the South African government committed itself early on to a market-led land reform based on redistribution through willing seller-willing buyer transactions” (CRLS 2003). Also Pekeur (2009) and Strydom (2004:123) argue that market principals like willing buyer-willing seller is challenging. The South African context gives a base to contest the CLEP call for strict limits on the state’s ability to expropriate land (2008:66).

Property rights are here understood not only as ownership of land but also as secure tenure rights. Not only is the ownership of land balance screwed there is also a problem for farm workers and dwellers with the lack of secure tenure. They are frequently evicted from the homes that their families have been living in for generations. The law that is supposed to protect their tenure rights, Extension of Security Tenure Act (ESTA) is not working. A million people were evicted from farms between 1994 and 2004. “More black people have been evicted from white farms in the first ten years of democracy than were evicted in the previous ten years under apartheid rule” (Wegerif et. al. 2005:185). 77% were women and children that were evicted because the husband/fathers job was terminated or he died, 1% went through court procedures, 99% of the evictions were illegal but there were no prosecutions (Wegerif et. al. 2005:40ff). That “so many people can be evicted with so little attention being given to the issue illustrates just how vulnerable and neglected farm dwellers are” (Wegerif et. al. 2005:188).

The reasons for there not being any prosecutions are complex and partly due to the vulnerability of farm workers and dwellers. Lack of access to justice and the rule of law²⁸ disturb the reformative goals of pro-poor legislation and policies.

Property rights and the exclusion from acquiring land are of immense importance for the respondents in this study. For workers on a farm in the Eastern

²⁷ The land reform had three cornerstones: returning of land, right of possession, and redistribution. If you had lost your land after the 19 of June 1913 you had the right of making a claim. The compensation is comprised of getting your original land back, get alternative land, or get economic compensation (Strydom 2004:115-116).

²⁸ As discussed in 3.3.1.

Cape, ownership of land would mean success and a better life. “If we could own land we could farm with cattle, and own cattle, we could be rich too.”

In order to achieve secure tenure and ownership of land for farm workers and dwellers “a multi-pronged intervention strategy is needed to strengthen the legislation, improve its implementation, and proactively implement long-term developmental solutions.” (Wegerif et.al. 2005:191) The rights of farm workers and dwellers also needs to be strengthened, awareness of rights and enforcement ensured, and action taken against non-compliers. The Nkuzi-study further argues, in line with the respondents of this study, that a ”developmental intervention is needed with the focus on creating new settlements within farming areas that give farm dwellers homes and production opportunities of their own” (ibid.).

This chapter has presented the empowerment work that exists and what is still sought after. The following chapter will show why these efforts are needed and why they are sometimes insufficient or failing.

4 Rural Life in South Africa

This chapter describes the prevailing poverty (4.1) of farm workers and dwellers and the characteristics of this poverty understood as paternalism and dependency (4.2), high unemployment and insecurity (4.3), and unfavourable inclusion in the formal economy (4.4).

4.1 Prevailing Poverty

Seemingly the Growth, Employment and Redistribution program (GEAR)²⁹ and other programs of the South African government have not reached the rural poor in a sufficient amount. Instead the farm workers and their families are in a situation where they are described as the most vulnerable, they are 78% of the rural population and chronically poor (CRLS undated paper).

They are supposed to benefit from the Sectoral Determination for Agriculture³⁰ setting the minimum wage. The minimum wage for farm workers in South Africa is R989 per month³¹, an amount that often have to support a whole family. Due to high inflation (and food prices) the low increase of the minimum wage (4,5% in 2008) left the farm workers worse off, in relative terms, according to Sikhula Sonke (2008). Conway says that “the majority of rural households are now dependent on state welfare grants for survival”.

Focusing on capability poverty the problem is as big as in income poverty. ‘Freeman’, living on a farm outside Mosselbay, finds that since the end of apartheid “everything has changed, but not on the farms. For other people things have changed, in Cape Town and Jo-burg. But on the farms nothing has changed.” ‘Freeman’s’ statement is in line with demands presented by farm workers, farm dwellers, and small-scale farmers in the Eastern Cape:

“Thirteen years after apartheid and there is still no change in the conditions that we face. Farm workers and dwellers still face evictions and violation of tenure rights. We do not have access to legal services to challenge violations of our rights. The land reform programme has failed us. We have still not been able to meet our basic needs,

²⁹ GEAR was created in 1996 as a five-year plan that focused on privatization and the elimination of exchange controls.

³⁰ The Sectoral Determination for Agriculture came into effect on the 16 December 2002. It prescribes minimum wages and terms and conditions of employment (CRLS 2006:1).

³¹ R100 is about USD14 and 9 Euro. This was the minimum wage in the rural areas until the 28th of March 2008 according to the Department of Labour <http://www.labour.gov.za/legislation/acts/basic-guides/basic-guide-to-minimum-wages-farm-workers>. The minimum wage now however, is higher, R1231 according to Pekeur 2009.

secure land rights to keep livestock and plough and to enhance livelihoods. We still do not have access to schools, clinics and parks. We still live under very poor conditions, with no access to water and toilets. On many farms, farm workers and dwellers still have to share the water sources with animals.” (Land demands presented by farm workers, farm dwellers, small-scale farmers, ECARP and SCLC in the Eastern Cape 2007)

An inspector from the Department of Labour describes the situation: “We still live in the same South Africa, and we still have the same employers. Fifteen years is nothing to change the mindsets and the attitudes of people. We still live in the same society; we have better laws, now we must educate society on those laws. [--] The employers are still the same; the workers are still the same workers.” The inspector describes a situation where laws refer to everyone and where laws are better but *still* poverty prevails. Something else seems to be standing in the way, something that he attributes to the mindsets and attitudes of people.

4.2 Paternalism and Dependency

What is striking about rural life in South Africa, in particular to an outsider³², is the relationship, the mindset and attitude, between farm owners and farm workers and dwellers. Many of the farm workers and dwellers have been fostered in an environment of paternalism for generations. Wendy Pekeur at Sikhula Sonke says that “people don’t understand the nature of the relationship between farmers and workers, the control they have over workers”.

The dependency and insecurity that the paternalistic system has created is vast. Mariana Japhtha at SCLC describes an extended family that was unlawfully evicted, as vulnerable to the farmer’s manipulation. “Because they had been on the farm for so many years they listened to him and he was still an authority figure saying this is what you must do and they basically obeyed the command”.

‘Sandy’, living on a farm outside Mosselbay describes the relationship with the farm owner: “It was like a father and a mother, grandmother, we loved each other. It was like we were part of, it was not they are white, we are brown, and we were like a family together.” In the reference to the farmer as a parent or older relative we can interpret that paternalism created not only dependency but also unhealthy respect from the farm workers and dwellers towards the farmer. An inspector at the Department of Labour described the South African society as troubled, he means that there is a sense of inferiority and superiority embedded in people. ‘Freeman’, living on the same farm as ‘Sandy’ says “most of the people on the farm are afraid of the farmer. But I don’t know why, in the old system or is it just in the people. I don’t know what it is, if it is a psychological thing.” Manganeng at ECARP expressed that the fear is due to farm workers being dependent on farmers for basically everything, “whether it is access to water, a

³² Especially coming from a, relatively speaking, more equal country, like Sweden.

place to sleep, transport to town, basically everything. [---] We still don't see services on farms. They still depend on farmers for housing, water, and services. So the dependence I think plays a role."

'Kenneth', a farmer in the Eastern Cape, describes how he used to supply the workers not only with seeds and land to plant, but that he also used to do it himself. "Each year they ask and I send my tractor up and I plough their vegetable lands for them, all for free." However he is aware of the problem of paternalism. "People have been lead to believe that you must be given everything for free, without a doubt. And it is a major problem that we are still trying to get over. Even now, I'll show you behind my seat I have a container there with flu tablets, headache tablets, sore throat, kidney tablets, eye ointment." He also said "I am afraid the majority of people think they must just be handed things. It is changing though, it is changing for the better, and they are beginning to understand now that things don't happen unless you make them happen."

When trying to address problems of paternalism and take the responsibility away from farmers, another actor needs to deliver service. This other actor is preferably the state. Yet Eastern Cape Agricultural Research Project (ECARP) note that while other sectors of society protest about service delivery being poor, for farm workers and dwellers the complaints revolve around the *non-existence* of service delivery. Hence, the provisions of the South African Constitution described above remain imaginary and abstract for them (ECARP 2007)³³.

Paternalism leads to people being less used to taking charge of their own lives; it means they have a low level of education and awareness, not only of their rights but of the possibility of a different life, it means that they, at times, have a low self-esteem. As stated in the case study-section (1.2.2) many of the farm workers and dwellers found it difficult to express their thoughts when talking to me, as a white academic. Since this was not always the case, especially not with people that had benefited from the work of NGOs and unions, it can not solely be contributed to the natural distance between researcher and respondent. Instead I connect this to the mental consequences of the paternalistic system. Pekeur also contribute it to internalised oppression. "People have been oppressed for so many years so they thought this is how it should be. That is why we need education but also building people's self-esteem to deal with the whole thing."³⁴ The reason for farm workers and dwellers dependency on farmers is not only historical. High unemployment and general income insecurity also play their part. This will be dealt with in the following section.

³³ The state's role was discussed in 3.3.

³⁴ This type of bottom-up work is discussed in 3.2.

4.3 High Unemployment and Insecurity

The general unemployment is high in South Africa: 23,6% (Quarterly Labour Force Survey Quarter 2, 2009³⁵). With the extended definition of unemployment that counts unemployed people who wants to work but have given up looking for a job the percentage reaches 40%. There is a big difference in the rates according to race, the unemployment rate for black/Africans is 27,9% and for white 4,6% (usual definition, Quarterly Labour Force Survey Quarter 2, 2009).

The high unemployment complicates the picture of the rural situation. People tend to take any job, for any pay and under any conditions just to get out of their non-income life. Amartya Sen argues that unemployment has many long ranging consequences besides lack of income, such as psychological strain, loss of work motivation, qualifications and self confidence, loss of family relations and social life, social exclusion, and so on (2002:138). He also says that deprived groups often adapt or suppress their original preferences and desires in order to survive. A labour-inspector testifies to this in the South African context. "High unemployment causes workers to compromise their rights. You find that one worker supports maybe ten people back at home. So if they dare lose their job, these ten people will suffer. So whatever the conditions may be at work the workers will continue to work, under harsh circumstances. When the Department of Labour comes in you will find sometimes there is reluctance among the workers to come out because of the fear of losing jobs." He also says "In general, yes [people are aware of their rights] but in operative I would not say yes. Because of the nature of the economy of our country people at the present moment are struggling to find jobs, if you get a job you will live under whatever conditions, simply because if you start talking about your rights you know that you might not be there for the following month. The employer will go for someone who will not ask for the recognition of their rights. That is where we are as a country at the moment."

Part of the problem is that the farmers take advantage of the situation. Pekeur says that she thinks farmers prefer to bring people from informal settlements "because the people living there really need a job and they will do whatever to keep the job even if it means not getting enough [money, recognition of rights ---]. That is why there are all these dismissals of permanent workers because as people become aware of their rights they can challenge the employer". Pekeur, furthermore, gives an example of farmers in Paarl employing workers from Malawi, apparently stating that there were no workers in the area. "I said how the hell, there is a 40% unemployment rate how is it possible that there is no workers here? This is the excuse; they bring in migrant labour to exploit people."

High unemployment is said to have other partly external causes. Phumelolo Booyesen at SCLC says that it is connected to the rest of the world; South Africa is

³⁵ In the Eastern Cape the unemployment rate is 27,9% and in the Western Cape 20,5%.

competing but is less equipped. In Europe there are agricultural subsidies, while there are none in South Africa. Also Gumede refers to Europe saying that free trade agreement with the European Union made subsidised farm products flood South Africa and cause unemployment (2004:67).

High unemployment and general income-insecurity leads, as we have seen, to people sacrificing their rights. It leads to employers taking advantage and not providing rights. It is also an indication on how farm workers are included in the formal economy, but on a, for them, not so beneficial basis. This is what the next section deals with.

4.4 Inclusion on Unfavourable Terms

The Commission on Legal Empowerment of the Poor states that most of the world's poor work in the informal economy and do insecure and poorly paid jobs (2008:37). This leads to them not living under the shelter of the law, but far from its protection and the opportunities it offers (ibid.:2).

This is, however, not true for the majority of farm workers in South Africa. Most South African farm workers operate in the formal economy but are still underemployed or working poor³⁶. They work on farms that for example produce wine and fruits that are sold not only nationally but internationally. They are situated not only in the formal economy but in the global economy. The inclusion is on an unfavourable basis. Cousins argue that: "Poverty and inequality are found in dynamic market economies governed by the r[u]le of law, not because people are 'excluded' from the formal economy, but because the terms of their inclusion in the economy are highly adverse" (2009:2). Also Tørres notes this from various World Bank reports that state that "most poor people are poor not because they don't work, but because their labour does not provide them with sufficient means to escape poverty" (2006:168). 'Linda', head of a union branch, describes the inclusion like this: "The people on farms get little money for the job they do on the wine farms but the wine is sold overseas, the people on that side get lots of money. But the people working only get a little."

This chapter has highlighted three of the constituting factors of South African farm workers' and dwellers' poverty. It can be summarised by a female farm worker's general feeling of lack of capability and opportunities: "I have nowhere to go, I must just stay here, I must just carry on day by day". A man working with these women states: "They are on a survival course for the rest of their life".

The last and following chapter will conclude the findings of this study and its criticism of the Commission's report.

³⁶ The working poor are "people with work that earn less than what is required to sustain a minimum level of wellbeing" (Tørres 2006:156).

5 Conclusions

This study has described the situation of South African farm workers and dwellers which present a challenging case. First, their poverty is strongly connected to the history of apartheid and the paternalistic system that was created during that time and still lives on in rural settings. This system weakens farm workers and dwellers' capability in taking charge of their own lives since the internalised oppression leaves them with low self-esteem. To lift themselves out of poverty they first need to be given a sense of self worth and trust in their own ability. The Commission mentions education as a condition for legal empowerment but does not deal with mental and internal components of poverty.

Second, farm workers are poor *but also* part of the formal economy of South Africa. There are laws to improve their lives yet the outcome is not pro-poor. This contests the Commission's statement that poor people are poor because they operate in the informal economy outside "the law's protection and the opportunities it affords" (CLEP 2008:2).

Third, the high unemployment and subsequent income-insecurity compel people to not make use of their rights. The global so called free-trade economy is part of creating this situation. The aggregated level of analysis of the global order is not dealt with by the Commission, but this study implies that farm owners are not the only ones exploiting farm workers, exploitation is happening on a global scale.

Fourth, in South Africa formal systems for private property and ownership of land are functional. But instead of providing security to poor people in rural areas it leaves them outside the land market. When market is left to set prices in a country like South Africa, where foreigners buy land for game reserves and golf resorts, prices will effectively shut poor people out from acquiring land. This strongly disputes the CLEP anticipation that functioning property rights will reap economic benefits for the poor (2008:44).

Fifth, this study has shown that access to land, secure tenure, basic services, and education are needed to address poverty amongst farm workers and dwellers. Hall argues that a greater degree of state intervention, planning and support with a holistic take on land and agricultural policies is necessary, along with less reliance on markets, coupled with a greater participation from farm workers, dwellers and small-scale farmers and decentralisation (Hall 2009:250).

To conclude, in the context of South African farm workers and dwellers, and arguably in other more general contexts, legal empowerment is only one aspect of poverty eradication.

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