

DIE OKKUPEERDER

NEWSLETTER OF THE SECURITY OF FARM WORKERS PROJECT

ISSUE NO. 2, SEPTEMBER 2012

ABOUT THIS ISSUE

Lawyers for Human Rights Security of Farm Workers Project aims to protect the rights of farm workers in the Western and Northern Cape. These farm workers are fighting for their dignity, fair labour practices, access to housing and security of tenure.

This issue of *Die Okkupeerder* highlights recent courtroom victories and successful negotiations with government on behalf of farm workers. Other initiatives covered in this issue include educational and outreach projects for a more just and

equitable South Africa, specifically for farm workers and dwellers.

Over the next six months we plan to bring you regular reports about our work. We also welcome your feedback.

Please send any comments or suggestions to lesirelal@lhr.org.za or annelie@lhr.org.za. For more information on the articles in this issue, please visit our website at <http://www.lhr.org.za/programme/security-farm-workers-project>. Follow us on Facebook or Twitter @LHR_SA

YOUTH DAY CELEBRATIONS

LHR offices in Upington celebrated Youth Day on 20 June 2012 at the Kalahari Water Resort. About 150 children from 12 different schools took part in human rights workshops. These workshops taught children about their rights, as stated in the Bill of Rights, as well as other farm workers and dwellers rights in terms of the Extension of Tenure Act 62 of 1997. About 10 organisations and government departments attended the sessions, including the Government Communication and Information System, the Department of Education, the Women on Farms Project, You and Your Money, the South African Human Rights Commission, Love Life, KOOR and the Department of Cooperative Governance, Human Settlements and Traditional Affairs. A dance group from Warmzand opened the event with a lively performance, and participants soon joined in the fun.



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Piketberg family fights for their home

The Klaasen family fights an eviction order forcing them to move from their farm home.

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Rubbish-dump residents relocated

Occupiers of Die Duine rubbish dump in Upington were evicted from the area after living there for 10 years. LHR steps in to ensure they are given alternative housing.

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Tafelsig dwellers' right to accommodation

LHR represents Tafelsig residents in an eviction case.

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Decades-long wait for land

Residents of Eksteenskuil wait for the land they've been living on for 60 years to be declared legally theirs.

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Lights, camera, action

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LHR discusses illegal evictions in Parliament.

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PIKETBERG FAMILY DEMANDS RIGHT TO OCCUPY FARMLAND



SFP client Mrs Klaasen shows LHR staff members the faulty water connection near her home



Mrs Klaasen shares a laugh with LHR lawyer Annelie du Plessis

In the case of A Miko No 176 (Edms) Bpk trading as Pomona Farms v Gerhard Klaasen and others, LHR represented Mr Klaasen and his family in opposing an eviction order instructing them to leave their home on a farm.

Mr Klaasen, his wife, three children and one grandchild live on the farm. Mr and Mrs Klaasen have worked on the farm since 1997. The farm was sold to its current owner, a private company, in 2003. Mr Klaasen was dismissed in 2010, but his wife continued to work as a crèche teacher

on the farm. In November 2010, the owner applied for an eviction order against the Klaasen family in the Piketburg Magistrate's Court.

LHR contended that Mrs Klaasen is a land occupier in her own right and the family cannot be evicted because Mr Klaasen no longer works on the farm.

Based on LHR's argument, the court ruled in favour of the Klaasens, stating that as long as Mrs Klaasen is employed on the farm, her family can lawfully live on the farmland.

As long as Mrs Klaasen is employed on the farm, her family can lawfully live on the farmland

UNCOVERING GENDER JUSTICE

On 6 June 2012, Women's Link World Wide (<http://www.womenslinkworldwide.org>) presented the 4th Gender Justice Uncovered Awards in Barcelona. The awards highlight judicial decisions that have a positive or negative impact on gender equality. Ninety one decisions from 32 countries, including South Africa, were nominated.

The awards aim to emphasise the influence that judges have in advancing or limiting the rights of women and girls. This year's panel of judges included: Virada Somwasdi, Albie Sachs and Angela Patricia Janiot.

Mrs Klaasen's case was nominated for an award.

UPINGTON MUNICIPALITY GIVES LOCAL RUBBISH-DUMP RESIDENTS MARCHING ORDERS

In November 2011, LHR Upington office assisted 13 people evicted by the local municipality from a local rubbish dump, known as “Die Duine”.

The settlement residents lived in cardboard and plastic makeshift structures. Some of them had stayed in the area for more than 10 years, making a living by salvaging rubbish and selling it at local scrap yards.

LHR lawyers entered into a discussion with the applicants and the Municipality of Khara Heis about their constitutional obligation to provide housing. The municipality cannot arbitrarily evict vulnerable people. An eviction order would have rendered these people homeless and resulted in future illegal squatting.

The municipality agreed to look at alternative ways to resolve the issue. A settlement was reached and residents of Die Duine will be accommodated in



the municipality’s informal settlement programme. They will be given a site in the Rosedale informal settlement, as well as temporary housing, running water and sanitation facilities. The municipality agreed that the group could continue to salvage rubbish at Die Duine pending the appointment of a service provider.

Residents of Die Duine will now be accommodated in the municipality’s informal settlement programme



EMERGENCY HOUSING: A CONSTITUTIONAL ISSUE

LHR provided key findings in the case of the City of Johannesburg v Blue Moonlight Properties and others. The Constitutional Court admitted LHR as *amicus curiae* in July 2011, which means we were not involved in the case, but we were allowed to offer information to help the court make a decision.

The case raised important constitutional issues about temporary emergency accommodation. We submitted arguments based on the principles of cooperative government, which oblige both national and local government to respond reasonably to emergency housing needs. LHR introduced key findings from a National Evictions Survey conducted by the Nkuzi Development Association and Social Surveys Africa in 2005 to demonstrate the extent, nature and impact of evictions from farms and rural land.

These evictions have far-reaching consequences for rural communities and under-resourced municipalities. These arguments had a positive impact on the Constitutional Court’s judgment, which was handed down in December 2011 and can be viewed on our website.

TAFELSIG DWELLERS GET THE RED LIGHT



LHR staff interview
Tafelsig residents



LHR recently represented a group of backyard dwellers in Tafelsig, Mitchell's Plain, who faced an eviction order by the City of Cape Town.

Urgent eviction proceedings were brought against the occupiers in May 2011. About 400 backyard dwellers moved onto the vacant municipal land in Tafelsig in desperation, due to intolerable and sometimes dangerous conditions at their previous dwellings.

The City of Cape Town obtained an urgent eviction order against the occupiers without offering any emergency or alternative accommodation. During the court proceedings, there were violent confrontations with the City of Cape Town's land invasion unit when the occupiers tried to keep their dwellings from being demolished, their furniture damaged and belongings dispersed. This was widely covered in the media.

With LHR's help, the occupiers appealed the eviction order in the Western Cape High Court on the basis that alternative accommodation must be provided for people facing homelessness. After some deliberations, the City of Cape Town offered the community alternative accommodation in Blikkiesdorp, Delft.

However, the group could not accept this offer due to high levels of crime, overcrowding and lack of services in the area. The matter then proceeded to court, and Judge NC Erasmus confirmed the order but with the condition that parties involved discuss the availability of alternative accommodation.



There were violent confrontations with the City of Cape Town's land invasion unit when occupiers tried to keep their dwellings from being demolished



A LONG WAIT FOR EKSTEENSKUIL RESIDENTS

Residents of Eksteenskuil in Upington, who have lived on this land for 60 years, continue to wait while the place they call home is declared legally theirs. A group of 38 families live on land in the area.

According to elderly members of the community, the previous owner, Mr Abraham Nurick, leased the property to the Congregational Church. The church allowed its members to occupy and work on the land in exchange for a third of their crops. But the church was never allowed to take ownership of the land, which belongs to Magna Meubles CC.

The residents of Eksteenskuil approached LHR for help when the land owner cut the water supply and residents were forced to drink water from the Orange River. The office's lawyers negotiated with Gawie Esterhuyzen, a member of the owner company, and the problem was resolved.

The residents approached LHR's office for a second time to help them acquire ownership of the land. Gawie Esterhuyzen agreed to sell off the section of the land occupied by the residents.

The Department of Rural Development and Land Affairs agreed to buy the land and the Kai Garib Municipality would develop it.

But the process was never finalised, and three years later residents are still waiting for an outcome. In early 2011, LHR met with residents and held discussions with the Department of Land Affairs and Rural Development. The department is willing to assist with the purchase of the land if the municipality agrees to develop the land.

In November 2011, LHR explained to the Kai Garib Municipality's Executive Council why the land should be developed for the affected community. The municipality has still not responded to our request.

The municipality has installed water tanks, which are filled every day. A few pit toilets have been built at some homes, but the majority of residents do not have toilet facilities.

To the right is an Afrikaans poem written by Winifred Fortuin about the residents' fight to have the land they have been living on declared legally theirs. Winifred is one of LHR's clients in the Louw and others matter.

Eksteenskuil by Winifred Fortuin

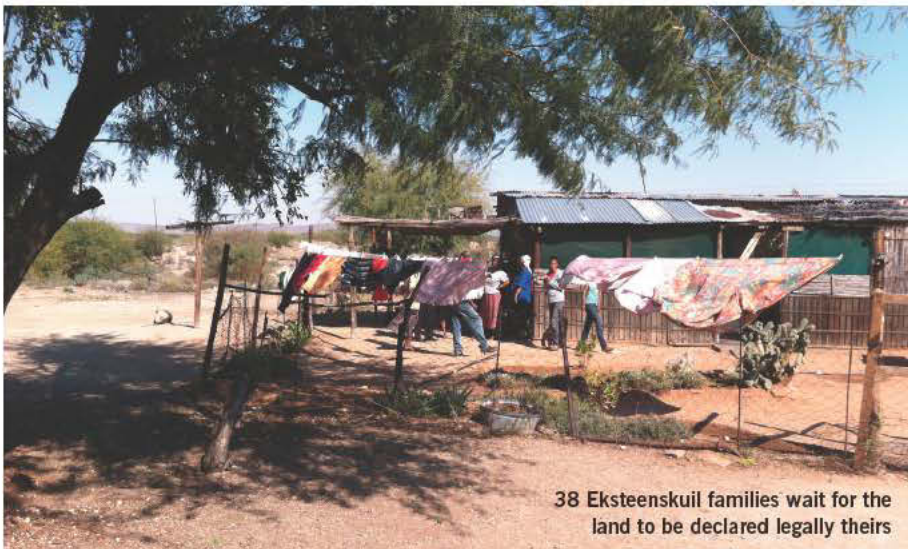
*“'n Plekkie met baie
geskiedenis
so na-aan ons
hart beslis.*

*Houtmaak en Kerslig
is ons voorland
dit bly altyd
byderhand.*

*Moet ons die omstandighede
aanvaar en verduur
by ons is dit al
tweede natuur.*

*Sien ons behoeftes raak
Hoop ons nuwe Raad
gaan verskil
kom maak.*

*Want ons inwoners van
Eksteenskuil
gaan ons plekkie
vir niks verruil”.*



38 Eksteenskuil families wait for the land to be declared legally theirs

THE STORY OF WOMEN ON FARMS

Natasha Burns of LHR recently produced and directed a short film highlighting the challenges facing women on farms in the Northern Cape.

The film, titled *The Story of Women on Farms*, was produced with the help of the Foundation for Human Rights. It explores the issue of poor housing and working conditions, gender-based violence and lack of land security.

The short story is a joint effort between LHR's Stellenbosch and Upington offices, as well as LHR's partner organisation, the Women on Farms Project.

The documentary is available on our website.



A film highlights the challenges facing women on farms in the Northern Cape



HUMAN RIGHTS DAY

On Human Rights Day (21 March 2012), LHR offices in Upington, along with the Women on Farms Project, screened the documentary at the Garipe and Grootdrink settlements in !Kheis Municipality in the Northern Cape. About 150 people attended the screening, along with the South African Human Rights Commission, Neighbour helping Neighbour and other government departments.

The events were a great success, celebrating and creating awareness on Human Rights Day.



Above: LHR's Desmonia Kordon addresses a group at the Human Rights day celebrations earlier this year

Right: Members of LHR, representatives of Neighbour helping Neighbour, GCIS, Home Affairs and Women on Farms join hands during Human Rights day celebrations



CHALLENGING UNLAWFUL EVICTIONS

LHR represented Mrs Luta Sithole in the case of *Freda Bonthuys v Brandon Rothwell and others*. Mrs Sithole lives and works on a farm just outside Stellenbosch in the Western Cape.

Mrs Sithole's eviction was illegal and the application was dismissed

Mr Fredrick Bonthuys employed her in 1996, and her employment was confirmed by Jan-Willem Roeloffs in 1997, when he entered into a lease agreement with Mr Bonthuys to manage the property.

When Mr Bonthuys passed away in 2011, his wife cancelled the lease agreement with Mr Roeloffs and filed an eviction application with the Western

Cape High Court against all farm occupiers, including our client.

LHR filed opposing papers on behalf of Mrs Sithole and represented her in court. We opposed the eviction on multiple grounds – the application was brought in an improper forum and went against the Extension of Security of Tenure Act. On 10 October 2011, the eviction application was dismissed.

LHR ATTENDS HUMAN RIGHTS CONFERENCE IN UGANDA

LHR lawyer Annelie du Plessis has returned from the Horizont 3000 Regional Conference on Human Rights and Civil Society in Uganda with fresh ideas and contacts for LHR.

The conference, held in Kampala in October 2011, highlighted advocacy strategies for human rights and civil society issues. Discussions covered the use of the media, policy influences and methods to hold governments

accountable in light of widespread corruption and human rights abuses. Annelie also gave a presentation entitled 'Land rights: enforcing and protecting farmworkers in South Africa' during the conference.



The Horizont 3000 Regional Conference on Human Rights was held in Kampala, Uganda in October 2011

A FUND FOR FARM WORKERS

In February this year, the Department of Labour confirmed that it will set up a provident fund for domestic and farm workers. Labour Director-General Nkosinathi Nhleko says the fund will be up and running by March next year. The level of contributions by employer and employee will depend on how the fund is structured, but government will need to look at affordability, administration and costs. The establishment of the fund dates back to documents tabled in Parliament by Finance Minister Pravin Gordhan during his Budget Speech.

FIGHTING ILLEGAL EVICTIONS: LHR GOES TO PARLIAMENT

In March 2011, LHR was invited by the Portfolio Committee on Rural Development and Land Reform to participate in meetings about living and working conditions of farm workers and farm dwellers.

During these discussions with land and agrarian reform stakeholders, we presented evidence that illegal evictions continue on farms. Many farm workers live on farms, so if they lose their jobs, they often lose their homes as well.

Magistrate's courts and the Land Claims Court continue to evict people who do not have alternative accommodation. The Extension of Security of Tenure Act provides for subsidies to pay for onsite and offsite developments to give farm workers long-term security – but these provisions have largely been ignored in practice.

The act also stipulates that notice must be given to a municipality before an eviction is granted. However, many municipalities ignore these notices, despite their constitutional obligation to provide plans for people evicted with no alternative accommodation.

FARM WORKERS GET A RAISE

In 2010, the Employment Conditions Commission launched an investigation into the minimum wages of farm workers in terms of Sectoral Determination 13, as part of the Basic Conditions of Employment Act. Sectoral Determination aims to protect vulnerable workers by setting minimum working hours, minimum wages, number of leave days and termination rules. This increase was approved and implemented from 1 March 2012, which means that farm workers now receive a minimum wage of about R1 503.90 per month.

Farm workers are also vulnerable to unfair labour practices because existing labour legislation (the Labour Relations Act of 1995 and the Basic Conditions of Employment Act of 1997) has not been properly enforced. Many farm workers do not have access to proper services or housing.

We made recommendations and defended the Draft Land Tenure Security Bill, which increases the legal threshold for evictions leading to homelessness. The bill states that there has to be consultation before an eviction order is granted, and a person cannot be evicted if it leads to homelessness or the violation of other human rights. Sheldon Magardie participated in the discussions. Detailed submissions can be viewed at <http://www.pmg.org.za>.

LHR participated in further discussion on these submissions, proposals and suggestions in March this year. The outcome of this follow-up meeting will be available on the same website.

These submissions support our work, while creating media awareness and holding government accountable.

STAFF NEWS

At the end of 2011, we bid farewell to Sheldon Magardie, LHR's Project Coordinator. Sheldon's keen litigation skills and dedication to protecting farmworker rights will be missed. We wish him well in his new position as director at the Legal Resources Centre in Cape Town.



We are pleased to welcome Lesirela Letsebe on board as the new Project Coordinator. Lesirela is an experienced attorney and a valuable addition to the team. He previously worked in LHR's Pretoria office, where he focused on refugee and migrant rights.

LHR office in Stellenbosch has also had two interns over the past 12 months. Natasha Burns from Australia and Hart Shouldice from Canada both made valuable contributions to the team for several months. For information on LHR intern programmes, visit <http://www.lhr.co.za>.

LHR IS FUNDED AND SUPPORTED BY

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