

ESTA Amendment Bill to be implemented?

The Extension of Security of Tenure Amendment Bill, which has dragged its feet through Parliament since 2015, was finally signed into law by the President earlier this year. As the Presidential Panel on Land Reform finalises its work and the country holds its breath to see what will happen post-elections, this is a crucial piece of land reform legislation that may have quietly slipped through the cracks.

The Amendment Bill brought about wide-sweeping changes to ESTA, some of which were somewhat contentious but others quite enabling. For instance, it is well known that an eviction can only be carried out lawfully on the back of a court order, granted after considering all of the relevant circumstances. However not all tenure disputes on farms result in eviction. One of the criticisms often levelled against ESTA was that it placed too much emphasis on formal litigation through the courts to resolve tenure disputes such as grazing rights, burials on farms and the like. The Bill sought to address this by creation multi-stakeholder institutions at the national and local level known as the Land Rights Management Board and local Land Rights Management Committees. These institutions were supported by Businesses during the consultation process as it catered for a natural venue where land owners and occupiers can meet and be guided by qualified mediators in an attempt to resolve disputes. One can only hope the that necessary fiscal support is put in place to ensure that these committees are capacitated with mediators and administrative staff.

Where a dispute cannot be resolved, the old Bill made provision for 'tenure subsidies' to be awarded to assist land owners to build housing for vulnerable occupiers. Unfortunately, these subsidies were never implemented and have now been replaced with 'tenure grants' that can be awarded directly to vulnerable occupiers to assist them if they wish to acquire off-farm housing. One can only hope that these will be implemented more effectively than the subsidies.

Of the more contentious issues in the Bill, a provision was inserted that would prevent a court from granting an eviction order if the occupier was not legally represented. The formal court process can be quite daunting and fortunately institutions such as the legal resources centre have assisted many occupiers in need of legal representation. However, where resources does not allow this, a prohibition such as the one now contained in ESTA could have the effect of stalling court proceedings indefinitely. A better solution could have been to consider a specialised tribunal where the presiding officer plays an active role, thereby ensuring fairness and obviating the need for legal representation. There are several such institutions already in operation that could have been used as a guide, most notably the CCMA or any industry ombudsman.



Once the Presidential Panel finalises its work and the dust has settled after the elections, one will hopefully have a better idea as to how these amendments will be capacitated and implemented.