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National Land Committee

REPRESENTATIONS ON THE POSITION OF FARM DWELLERS AND LABOUR TENANTS IN SOUTH AFRICA

TO: CODESA

ATTENTION: WORKING GROUPS 1, 3, 5

**FROM: NATIONAL LAND COMMITTEE ON BEHALF OF THE LABOUR
TENANT COMMUNITIES AND CONCERNED BODIES AS LISTED
BELOW**

DATE: 28 FEBRUARY 1991

ABSTRACT

This submission is made to the Convention of a Democratic South Africa because of our concern that a very unstable situation caused by the escalation of evictions is developing in the rural areas. Uncertainty about the transition to a democratic society has led to fears on the part of white farmers about their future position. In turn they have resorted to drive black people off the farms. The uncertainty, instability and violence which accompanies evictions are contrary to the creation of a climate conducive to peaceful transition. We therefore suggest that this Working Group of CODESA addresses this problem. We believe and propose that as an interim measure a **MORATORIUM** on evictions should be declared pending the negotiation process.

INTRODUCTION

On the 1st and 2nd February 1992, representatives from 16 communities of people living on farms around the country met to discuss their present situation and agreed on a set of proposals on how their plight can be addressed.

The participants at the meeting represented labour tenant communities in the Eastern Transvaal and Natal Midlands districts and also represented about 2 000 people in the Western Transvaal living on "private land". Like the labour tenants, these people are presently threatened with evictions from the land they have occupied for generations.

These communities are only a fraction of the people who are in a similar position throughout the country. The majority of labour tenants and farm

The National Land Committee comprises:

Association for Rural Advancement (AFRA, Natal), Farmworkers' Resource and Research Project (FRRP), Grahamstown Rural Committee (GRC, Border), Southern Cape Land Committee (SCLC), Surplus People Project (SPP, Western Cape), Transvaal Rural Action Committee (TRAC).

dwellers were evicted from farms between 1960 and 1980 as a result of mechanisation, and a deliberate government policy and laws which deprived African people access to and ownership of land. Yet, a more significant number of farm dwellers than is often supposed, have tenaciously held on to the land.

Regional structures of the National Land Committee (NLC), Legal Resources Centre (LRC), and Lawyers for Human Rights (LHR) have on numerous occasions been (and are still being) approached for assistance by, and have acted on behalf of, people and communities faced with evictions from land they have occupied for generations.

This submission to the Convention for a Democratic South Africa is made on behalf of the affected communities and at the behest of the above-mentioned meeting.

THE PRESENT CONTEXT

The unabated rate of evictions from farms has increased in the last couple of months. It is not by chance that the increase in evictions coincide with some developments in the process of change taking place in the country.

In 1991 the Government repealed the Land Acts and other discriminatory legislation. Despite the fact the land reform was a step in a right direction, it fell far short of addressing the present racial and inequitable distribution of land.

It failed to address the plight and position of labour tenant communities. It seems that the labour tenant question did not enter into the discussion and thinking of the policy makers at all. The lack of consultation and involvement of labour tenants in policy formulation clearly accounts for this ignorance and neglect.

The removal of racial exclusion to land ownership has been received in some quarters as a threat and has been perceived as prejudicial to white ownership of land. The prospect of a new government, which it is assumed, will impose terms of ownership that arbitrarily favour black people, in other words 'reverse' apartheid, has turned land rights into an explosive issue in the rural areas. The paranoia of many white farmers that they will lose land rights, has been exacerbated by an orchestrated campaign by right wing groups and articles in farmers' journals advising them to get rid of black people off their land before a new government is in place.

At the receiving end of this fomented fear are the labour tenants. It is ironic that they are being subjected to evictions at a time when the legal and political environment should be much more conducive to finding lasting and just solutions to their situation.

WHO ARE THE AFFECTED PEOPLE?

The affected people are the descendants of families who have lived on particular farms for generations. The land on which they live, does not belong to them but to the white farm owners by virtue of title deeds. In order to secure access to land for farming, grazing, residential and cultural purposes, the families agree to work for the legal owner of the land. The families retain this right as long as an able bodied member of the family works for the farmer.

Historically, the ordinary contractual rights to buy and sell land and to enter into lease agreements had been curtailed on the basis of race by the Land Acts of 1913 and 1936, and the Group Areas Act. The provisions of these laws created a situation in which African farmers had to be labour tenants and had to endure extremely exploitative conditions on farms, out of necessity.

In the Western Transvaal, several communities had permission from the mining commissioner to establish their villages. In 1989 this permission was suddenly revoked without consultation and they lost their security of tenure to land.

The position of labour tenants and other long term occupants on farms has over time been adversely affected by a myriad of laws which undermine their status as farmers or long term occupants and relegate them to "squatters", who can be evicted from the land at any time with little legal recourse.

The Prevention of Illegal Squatting Act and the Trespass Act are often used to prosecute labour tenants in order to force them off the land. While these laws make no reference to race, it is mainly the African people on the farms who have born the brunt of these draconian laws, which criminalise the victims of discriminatory land and housing policies of the past. This essentially provides state backing and machinery for evictions which are mainly private and individual in nature.

These laws together with the common law proprietary provisions, which the African people have been denied by law, leave them at the whim of the land owners.

LABOUR TENANTS' CLAIM TO LAND

Until the recent scrapping of the Land Acts and other discriminatory land legislation, African occupation and ownership have been confined to only 13% of the South African land. Labour tenancy is an age-old system which has survived over the years and has enabled African peasant farmers remain on the land and in the farming sector. But for the prevailing laws of the country, the legal ownership of the land by these communities or the transfer thereof to them, would have been possible.

The labour tenants thus do not claim land on the basis of title deeds or lease agreements. Their claim is based on original ownership, generations of occupation and an insistence that, having lived within terms which denied them education, money and any other experience. They have a moral right to secure existence within a

farming way of living which they are familiar with and to which they are committed.

It should be noted that even though the labour tenants do not necessarily claim exclusive right to the land, the basis of entitlement to land needs to be levelled in order to accommodate people who have been discriminated against in the past as well as the present legal owners of land.

Indeed their claim can be contested only by a fair, just and legal process which up to now has been non-existent for the labour tenants. The present legal position of labour tenants leaves much to be desired and it cannot be allowed to continue unaddressed.

Similar claims can be made by residents on the mine diggings on the basis of long occupation. Certainly these villages are the home of the people and they know no other place. To make their security dependent on the whim of the present land owner is manifestly unjust.

The Advisory Commission on Land Allocation which has been established to address the issue of land claims would seem to be one of the few legal options available to the labour tenants to assert their rights to land. The terms of reference of the Commission should be understood in a broad sense to include the consideration of land allocation to labour tenants who have also been disadvantaged by the repeated laws. But there has not been any positive indication that the Commission is prepared to consider these types of claims at all.

With almost no legal protection, with little access to remedial processes and faced with the strong hostility of the present land owners, these communities are left with no choice but to use their own devices to remain on or get land. This do not help in reducing polarisation along racial lines and lawlessness in the rural areas.

THE DANGERS AND OPPORTUNITIES OF TRANSITION

The greatest danger of all during the transition period is the instability being created by panic actions, which not only put in jeopardy the lives of thousands of people, but upset the peace in the countryside. We have pointed out the danger of this already happening. If the present escalation of evictions is allowed to continue, we are concerned that this situation will play itself into the hands of forces bent on frustrating or subverting the process of finding lasting solutions to South African problems through peaceful negotiations.

We remain convinced that the time is ripe for giving serious attention to the land rights of labour tenants. The transition from the old order characterised by conflict, to a new just society should afford us an opportunity to address this burning and sensitive issue without undue haste and conflict. To stabilise the conflict we need to cool tempers and to establish fair ground rules.

WHAT ARE WE ASKING FOR? - MORATORIUM ON EVICTIONS

The current conflict and confrontation on farms need to be dealt with now. At the centre of this conflict is, on the one hand, the lack of security of tenure for the labour tenants and others and their aspirations to be rural producers. On the other is the apparent uncertainty and insecurity of the present land owners whose ownership has unfortunately been founded and protected by unjust racial laws and practices.

To stabilise land disputes and minimise the sufferings created by the existing uncertainty, we believe that a moratorium on evictions should be declared as a interim measure. We strongly believe that all intended or pending criminal proceedings which will result in the eviction of labour tenants be stayed during the transition period. This can be reviewed when fair and legal process to address their position is put in place.

We believe that such a course of action is necessary and in the interest of all parties with vested interests on the disputed land, without favouring one party above the other. Failure to act now will make the dispute a festering sore which will haunt the transition and a new democratic society.